

LEGISLATIVE BILL 888

Approved by the Governor April 1, 2010

Introduced by Conrad, 46.

FOR AN ACT relating to limited liability companies; to amend sections 9-614, 67-248.02, 70-1903, 77-2704.57, 77-2716, and 77-2734.01, Reissue Revised Statutes of Nebraska, and sections 21-2601 and 21-2654, Revised Statutes Supplement, 2009; to adopt the Nebraska Uniform Limited Liability Company Act; to terminate the Limited Liability Company Act; to provide applicability; to change provisions relating to charging orders involving limited liability companies; to harmonize provisions; to provide an operative date; to provide severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. (ULLCA 101) Sections 1 to 97 of this act shall be known and may be cited as the Nebraska Uniform Limited Liability Company Act.

Sec. 2. (ULLCA 102) In the Nebraska Uniform Limited Liability Company Act:

(1) Certificate of organization means the certificate required by section 17 of this act. The term includes the certificate as amended or restated.

(2) Certificate of registration means either a document prepared and issued by a regulatory body or the electronic accessing of the regulatory body's licensing records by the Secretary of State.

(3) Contribution means any benefit provided by a person to a limited liability company:

(A) in order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

(B) in order to become a member after formation of the company and in accordance with an agreement between the person and the company; or

(C) in the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

(4) Debtor in bankruptcy means a person that is the subject of:

(A) an order for relief under Title 11 of the United States Code or a successor statute of general application; or

(B) a comparable order under federal, state, or foreign law governing insolvency.

(5) Designated office means:

(A) the office that a limited liability company is required to designate and maintain under section 13 of this act; or

(B) the principal office of a foreign limited liability company.

(6) Distribution, except as otherwise provided in subsection (g) of section 34 of this act, means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.

(7) Effective, with respect to a record required or permitted to be delivered to the Secretary of State for filing under the Nebraska Uniform Limited Liability Company Act, means effective under subsection (c) of section 21 of this act.

(8) Foreign limited liability company means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company.

(9) Limited liability company, except in the phrase foreign limited liability company, means an entity formed under the Nebraska Uniform Limited Liability Company Act.

(10) Manager means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in subsection (c) of section 36 of this act.

(11) Manager-managed limited liability company means a limited liability company that qualifies under subsection (a) of section 36 of this act.

(12) Member means a person that has become a member of a limited liability company under section 30 of this act and has not dissociated under section 45 of this act.

(13) Member-managed limited liability company means a limited liability company that is not a manager-managed limited liability company.

(14) Operating agreement means the agreement, whether or not

referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member. The term includes the agreement as amended or restated.

(15) Organizer means a person that acts under section 17 of this act to form a limited liability company.

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

(17) Principal office means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.

(18) Professional service means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which includes, but is not limited to, personal services rendered by a certified public accountant, dentist, osteopathic physician, physician and surgeon, veterinarian, real estate broker, associate real estate broker, real estate salesperson, or attorney at law. For purposes of the act, those professions pertaining to the diagnosis, care, and treatment of humans shall be considered to be of the same profession.

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

(20) Regulatory body means a board, commission, court, or governmental authority which is charged with licensing or regulating the rendering of a professional service in this state.

(21) Sign means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(22) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(23) Transfer includes an assignment, conveyance, deed, bill of sale, lease, mortgage, trust deed, security interest, encumbrance, gift, and transfer by operation of law.

(24) Transferable interest means the right, as originally associated with a person's capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.

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

Sec. 3. (ULLCA 103) (a) A person knows a fact when the person:

(1) has actual knowledge of it; or

(2) is deemed to know it under subdivision (d) (1) of this section or law other than the Nebraska Uniform Limited Liability Company Act.

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

(1) has reason to know the fact from all of the facts known to the person at the time in question; or

(2) is deemed to have notice of the fact under subdivision (d) (2) of this section.

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

(d) A person that is not a member is deemed:

(1) to know of a limitation on authority to transfer real property as provided in subsection (g) of section 27 of this act; and

(2) to have notice of a limited liability company's:

(A) dissolution, ninety days after a statement of dissolution under subdivision (b) (1) (B) of section 48 of this act becomes effective;

(B) termination, ninety days after a statement of termination under subdivision (b) (2) (E) of section 48 of this act becomes effective; and

(C) merger, conversion, or domestication, ninety days after articles of merger, conversion, or domestication under sections 70 to 84 of this act become effective.

Sec. 4. (ULLCA 104) (a) A limited liability company is an entity distinct from its members.

(b) A limited liability company may have any lawful purpose.

(c) A limited liability company has perpetual duration.

(d) A limited liability company shall be classified for state income tax purposes in the same manner as it is classified for federal income tax purposes.

Sec. 5. (ULLCA 105) A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities, including the power to render a professional service within or without this state.

Sec. 6. (ULLCA 106) The law of this state governs:

(1) the internal affairs of a limited liability company; and

(2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company.

Sec. 7. (ULLCA 107) Unless displaced by particular provisions of the Nebraska Uniform Limited Liability Company Act, the principles of law and equity supplement the act.

Sec. 8. (ULLCA 108) (a) The name of a limited liability company must contain the words limited liability company or limited company or the abbreviation L.L.C., LLC, L.C., or LC. Limited may be abbreviated as Ltd., and company may be abbreviated as Co.

(b) Unless authorized by subsection (c) of this section, the name of a limited liability company must not be the same as or deceptively similar to, in the records of the Secretary of State:

(1) the name of each person that is not an individual and that is incorporated, organized, or authorized to transact business in this state; and

(2) each name reserved under section 9 of this act or other state laws allowing the reservation or registration of business names, including fictitious or assumed name statutes.

(c) A limited liability company may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon the records of the Secretary of State, one or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if, as to each noncomplying name:

(1) the present user, registrant, or owner of the noncomplying name consents in a signed record to the use; or

(2) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court establishing the applicant's right to use in this state the name applied for.

(d) Subject to section 59 of this act, this section applies to a foreign limited liability company transacting business in this state which has a certificate of authority to transact business in this state or which has applied for a certificate of authority.

Sec. 9. (ULLCA 109) (a) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious or assumed name for a foreign limited liability company whose name is not available, by delivering an application to the Secretary of State for filing. The application must state the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the name applied for is available, it must be reserved for the applicant's exclusive use for a one-hundred-twenty-day period.

(b) The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the Secretary of State for filing a signed notice of the transfer which states the name and address of the transferee.

Sec. 10. (ULLCA 110) (a) To the extent the operating agreement does not otherwise provide for a matter, the Nebraska Uniform Limited Liability Company Act governs the matter.

(b) An operating agreement may not:

(1) vary a limited liability company's capacity under section 5 of this act to sue and be sued in its own name;

(2) vary the law applicable under section 6 of this act;

(3) vary the power of the court under section 20 of this act;

(4) subject to subsections (c) through (f) of this section, eliminate the duty of loyalty or the duty of care;

(5) subject to subsections (c) through (f) of this section, eliminate the contractual obligation of good faith and fair dealing under subsection (d) of section 38 of this act;

(6) unreasonably restrict the duties and rights stated in section 39 of this act;

(7) vary the power of a court to decree dissolution in the circumstances specified in subdivisions (a)(4) and (5) of section 47 of this act;

(8) vary the requirement to wind up a limited liability company's

business as specified in subsection (a) and subdivision (b) (1) (A) of section 48 of this act;

(9) unreasonably restrict the right of a member to maintain an action under sections 64 to 69 of this act;

(10) except as otherwise provided in section 83 of this act, restrict the right to approve a merger, conversion, or domestication of a member that will have personal liability with respect to a surviving, converted, or domesticated organization; or

(11) except as otherwise provided in subsection (b) of section 12 of this act, restrict the rights under the act of a person other than a member or manager.

(c) If not manifestly unreasonable, the operating agreement may:

(1) restrict or eliminate the duty:

(A) as required in subdivision (b) (1) and subsection (g) of section 38 of this act, to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity;

(B) as required in subdivision (b) (2) and subsection (g) of section 38 of this act, to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

(C) as required by subdivision (b) (3) and subsection (g) of section 38 of this act, to refrain from competing with the company in the conduct of the company's business before the dissolution of the company;

(2) identify specific types or categories of activities that do not violate the duty of loyalty;

(3) alter the duty of care, except to authorize intentional misconduct or knowing violation of law;

(4) alter any other fiduciary duty, including eliminating particular aspects of that duty; and

(5) prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under subsection (d) of section 38 of this act.

(d) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

(e) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under the Nebraska Uniform Limited Liability Company Act and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

(f) The operating agreement may alter or eliminate the indemnification for a member or manager provided by subsection (a) of section 37 of this act and may eliminate or limit a member's or manager's liability to the limited liability company and members for money damages, except for:

(1) breach of the duty of loyalty;

(2) a financial benefit received by the member or manager to which the member or manager is not entitled;

(3) a breach of a duty under section 35 of this act;

(4) intentional infliction of harm on the company or a member; or

(5) an intentional violation of criminal law.

(g) The court shall decide any claim under subsection (c) of this section that a term of an operating agreement is manifestly unreasonable. The court:

(1) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(2) may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:

(A) the objective of the term is unreasonable; or

(B) the term is an unreasonable means to achieve the provision's objective.

Sec. 11. (ULLCA 111) (a) A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

(b) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(c) Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

Sec. 12. (ULLCA 112) (a) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under subdivision (b) (2) of section 42 of this act to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

(c) If a record that has been delivered by a limited liability company to the Secretary of State for filing and has become effective under the Nebraska Uniform Limited Liability Company Act contains a provision that would be ineffective under subsection (b) of section 10 of this act if contained in the operating agreement, the provision is likewise ineffective in the record.

(d) Subject to subsection (c) of this section, if a record that has been delivered by a limited liability company to the Secretary of State for filing and has become effective under the act conflicts with a provision of the operating agreement:

(1) the operating agreement prevails as to members, dissociated members, transferees, and managers; and

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

Sec. 13. (ULLCA 113) (a) A limited liability company shall designate and continuously maintain in this state:

(1) an office, which need not be a place of its activity in this state; and

(2) an agent for service of process.

(b) A foreign limited liability company that has a certificate of authority under section 56 of this act shall designate and continuously maintain in this state an agent for service of process.

(c) An agent for service of process of a limited liability company or foreign limited liability company must be an individual who is a resident of this state or other person with authority to transact business in this state.

Sec. 14. (ULLCA 114) (a) A limited liability company or foreign limited liability company may change its designated office, its agent for service of process, or the address of its agent for service of process by delivering to the Secretary of State for filing a statement of change containing:

(1) the name of the company;

(2) the street and mailing addresses of its current designated office;

(3) if the current designated office is to be changed, the street and mailing addresses of the new designated office;

(4) the name and street and mailing addresses and post office box number, if any, of its current agent for service of process; and

(5) if the current agent for service of process or an address of the agent is to be changed, the new information.

(b) Subject to subsection (c) of section 21 of this act, a statement of change is effective when filed by the Secretary of State.

Sec. 15. (ULLCA 115) (a) To resign as an agent for service of process of a limited liability company or foreign limited liability company, the agent must deliver to the Secretary of State for filing a statement of resignation containing the company name and stating that the agent is resigning.

(b) The Secretary of State shall file a statement of resignation delivered under subsection (a) of this section and mail or otherwise provide or deliver a copy to the designated office of the limited liability company or foreign limited liability company and another copy to the principal office of the company if the mailing addresses of the principal office appears in the records of the Secretary of State and is different from the mailing address of

the designated office.

(c) An agency for service of process terminates on the earlier of:

(1) the thirty-first day after the Secretary of State files the statement of resignation; or

(2) when a record designating a new agent for service of process is delivered to the Secretary of State for filing on behalf of the limited liability company and becomes effective.

Sec. 16. (ULLCA 116) (a) An agent for service of process appointed by a limited liability company or foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served on the company.

(b) If a limited liability company or foreign limited liability company does not appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent's street address, service of any process, notice, or demand on the limited liability company or foreign limited liability company may be made by registered or certified mail, return receipt requested, to the company at its designated office.

(c) Service is effected under subsection (b) of this section at the earliest of:

(1) the date the limited liability company or foreign limited liability company receives the process, notice, or demand;

(2) the date shown on the return receipt, if signed on behalf of the company; or

(3) five days after the process, notice, or demand is deposited with the United States Postal Service, if correctly addressed and with sufficient postage.

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

Sec. 17. (ULLCA 201) (a) One or more persons may act as organizers to form a limited liability company by signing and delivering to the Secretary of State for filing a certificate of organization and, if applicable, a current certificate of registration as provided in sections 85 to 89 of this act.

(b) A certificate of organization must state:

(1) the name of the limited liability company, which must comply with section 8 of this act;

(2) the street and mailing addresses of the initial designated office and the name and street and mailing addresses and post office box number, if any, of the initial agent for service of process of the company; and

(3) if the company is organized to render a professional service, the professional service its members, managers, professional employees, and agents are licensed or otherwise legally authorized to render in this state.

(c) Subject to subsection (c) of section 12 of this act, a certificate of organization may also contain statements as to matters other than those required by subsection (b) of this section. However, a statement in a certificate of organization is not effective as a statement of authority.

(d) The following rules apply to the filing of a certificate of organization:

(1) A limited liability company is formed when the Secretary of State has filed the certificate of organization and a certificate of registration, if applicable, and the company has at least one member, unless the certificate states a delayed effective date pursuant to subsection (c) of section 21 of this act.

(2) If the certificate states a delayed effective date, a limited liability company is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the Secretary of State for filing and the Secretary of State files the certificate.

(3) Subject to any delayed effective date and except in a proceeding by this state to dissolve a limited liability company, the filing of the certificate of organization by the Secretary of State is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

Sec. 18. (ULLCA 202) (a) A certificate of organization may be amended or restated at any time.

(b) To amend its certificate of organization, a limited liability company must deliver to the Secretary of State for filing an amendment stating:

(1) the name of the company;

(2) the date of filing of its certificate of organization; and

(3) the changes the amendment makes to the certificate as most

recently amended or restated.

(c) To restate its certificate of organization, a limited liability company must deliver to the Secretary of State for filing a restatement, designated as such in its heading, stating:

(1) in the heading or an introductory paragraph, the company's present name and the date of the filing of the company's initial certificate of organization;

(2) if the company's name has been changed at any time since the company's formation, each of the company's former names; and

(3) the changes the restatement makes to the certificate as most recently amended or restated.

(d) Subject to subsection (c) of section 12 of this act and subsection (c) of section 21 of this act, an amendment to or restatement of a certificate of organization is effective when filed by the Secretary of State.

(e) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly:

(1) cause the certificate to be amended; or

(2) if appropriate, deliver to the Secretary of State for filing a statement of change under section 14 of this act or a statement of correction under section 22 of this act.

Sec. 19. (ULLCA 203) (a) A record delivered to the Secretary of State for filing pursuant to the Nebraska Uniform Limited Liability Company Act must be signed as follows:

(1) Except as otherwise provided in subdivisions (2) and (3) of this subsection, a record signed on behalf of a limited liability company must be signed by a person authorized by the company.

(2) A limited liability company's initial certificate of organization must be signed by at least one person acting as an organizer.

(3) A record filed on behalf of a dissolved limited liability company that has no members must be signed by the person winding up the company's activities under subsection (c) of section 48 of this act or a person appointed under subsection (d) of such section to wind up those activities.

(4) A statement of cancellation under subdivision (d)(2) of section 17 of this act must be signed by each organizer that signed the initial certificate of organization, but a personal representative of a deceased or incompetent organizer may sign in the place of the decedent or incompetent.

(5) A statement of denial by a person under section 28 of this act must be signed by that person.

(6) Any other record must be signed by the person on whose behalf the record is delivered to the Secretary of State.

(b) Any record filed under the act may be signed by an agent.

Sec. 20. (ULLCA 204) (a) If a person required by the Nebraska Uniform Limited Liability Company Act to sign a record or deliver a record to the Secretary of State for filing under the act does not do so, any other person that is aggrieved may petition the district court to order:

(1) the person to sign the record;

(2) the person to deliver the record to the Secretary of State for filing; or

(3) the Secretary of State to file the record unsigned.

(b) If a petitioner under subsection (a) of this section is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the company a party to the action.

Sec. 21. (ULLCA 205) (a) A record authorized or required to be delivered to the Secretary of State for filing under the Nebraska Uniform Limited Liability Company Act must be captioned to describe the record's purpose, be in a medium permitted by the Secretary of State, and be delivered to the Secretary of State. If the filing fees have been paid, unless the Secretary of State determines that a record does not comply with the filing requirements of the act, the Secretary of State shall file the record and:

(1) for a statement of denial under section 28 of this act, send a copy of the filed statement and a receipt for the fees to the person on whose behalf the statement was delivered for filing and to the limited liability company; and

(2) for all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

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

(c) Except as otherwise provided in sections 15 and 22 of this act,

a record delivered to the Secretary of State for filing under the act may specify an effective time and a delayed effective date. Subject to section 15 of this act, subdivision (d) (1) of section 17 of this act, and section 22 of this act, a record filed by the Secretary of State is effective:

(1) if the record does not specify either an effective time or a delayed effective date, on the date and at the time the record is filed as evidenced by the Secretary of State's endorsement of the date and time on the record;

(2) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(3) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(A) the specified date; or

(B) the ninetieth day after the record is filed; or

(4) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(A) the specified date; or

(B) the ninetieth day after the record is filed.

Sec. 22. (ULLCA 206) (a) A limited liability company or foreign limited liability company may deliver to the Secretary of State for filing a statement of correction to correct a record previously delivered by the company to the Secretary of State and filed by the Secretary of State, if at the time of filing the record contained inaccurate information or was defectively signed.

(b) A statement of correction under subsection (a) of this section may not state a delayed effective date and must:

(1) describe the record to be corrected, including its filing date, or attach a copy of the record as filed;

(2) specify the inaccurate information and the reason it is inaccurate or the manner in which the signing was defective; and

(3) correct the defective signature or inaccurate information.

(c) When filed by the Secretary of State, a statement of correction under subsection (a) of this section is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

(1) for the purposes of subsection (d) of section 3 of this act; and

(2) as to persons that previously relied on the uncorrected record and would be adversely affected by the retroactive effect.

Sec. 23. (ULLCA 207) (a) If a record delivered to the Secretary of State for filing under the Nebraska Uniform Limited Liability Company Act and filed by the Secretary of State contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from:

(1) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(2) subject to subsection (b) of this section, a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:

(A) the record was delivered for filing on behalf of the company; and

(B) the member or manager had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:

(i) effected an amendment under section 18 of this act;

(ii) filed a petition under section 20 of this act; or

(iii) delivered to the Secretary of State for filing a statement of change under section 14 of this act or a statement of correction under section 22 of this act.

(b) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the company to the Secretary of State for filing under the act and imposes that responsibility on one or more other members, the liability stated in subdivision (a) (2) of this section applies to those other members and not to the member that the operating agreement relieves of the responsibility.

(c) An individual who signs a record authorized or required to be filed under the act affirms under penalty of perjury that the information stated in the record is accurate.

Sec. 24. (ULLCA 208) (a) The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of

existence for a limited liability company if the records filed in the office of the Secretary of State show that the company has been formed under section 17 of this act and the Secretary of State has not filed a statement of termination pertaining to the company. A certificate of existence must state:

- (1) the company's name;
- (2) that the company was duly formed under the laws of this state and the date of formation;
- (3) whether all fees, taxes, and penalties due under the Nebraska Uniform Limited Liability Company Act or other law to the Secretary of State have been paid;
- (4) whether the company's most recent biennial report required by section 25 of this act has been filed by the Secretary of State;
- (5) whether the Secretary of State has administratively dissolved the company;
- (6) whether the company has delivered to the Secretary of State for filing a statement of dissolution;
- (7) that a statement of termination has not been filed by the Secretary of State; and
- (8) other facts of record in the office of the Secretary of State which are specified by the person requesting the certificate.

(b) The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited liability company if the records filed in the office of the Secretary of State show that the Secretary of State has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state:

- (1) the company's name and any alternate name adopted under subsection (a) of section 59 of this act for use in this state;
- (2) that the company is authorized to transact business in this state;
- (3) whether all fees, taxes, and penalties due under the act or other law to the Secretary of State have been paid;
- (4) whether the company's most recent biennial report required by section 25 of this act has been filed by the Secretary of State;
- (5) that the Secretary of State has not revoked the company's certificate of authority and has not filed a notice of cancellation; and
- (6) other facts of record in the office of the Secretary of State which are specified by the person requesting the certificate.

(c) Subject to any qualification stated in the certificate, a certificate of existence or certificate of authorization issued by the Secretary of State is conclusive evidence that the limited liability company is in existence or the foreign limited liability company is authorized to transact business in this state.

Sec. 25. (ULLCA 209) (a) Each odd-numbered year, a limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report that states:

- (1) the name of the company;
- (2) the street and mailing addresses of the company's designated office and the name and street and mailing addresses and post office box number, if any, of its agent for service of process in this state;
- (3) the street and mailing addresses of its principal office; and
- (4) in the case of a foreign limited liability company, the state or other jurisdiction under whose law the company is formed and any alternate name adopted under subsection (a) of section 59 of this act.

(b) Information in a biennial report under this section must be current as of the date the report is delivered to the Secretary of State for filing.

(c) The first biennial report under this section must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which a limited liability company was formed or a foreign limited liability company was authorized to transact business. A report must be delivered to the Secretary of State between January 1 and April 1 of each subsequent odd-numbered calendar year.

(d) If a biennial report under this section does not contain the information required in subsection (a) of this section, the Secretary of State shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) of this section and delivered to the Secretary of State within thirty days after the effective date of the notice, it is timely delivered.

Sec. 26. (ULLCA 301) (a) A member is not an agent of a limited

liability company solely by reason of being a member.

(b) A person's status as a member does not prevent or restrict law other than the Nebraska Uniform Limited Liability Company Act from imposing liability on a limited liability company because of the person's conduct.

Sec. 27. (ULLCA 302) (a) A limited liability company may deliver to the Secretary of State for filing a statement of authority. The statement:

(1) must include the name of the company and the street and mailing addresses of its designated office;

(2) with respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:

(A) execute an instrument transferring real property held in the name of the company; or

(B) enter into other transactions on behalf of, or otherwise act for or bind, the company; and

(3) may state the authority, or limitations on the authority, of a specific person to:

(A) execute an instrument transferring real property held in the name of the company; or

(B) enter into other transactions on behalf of, or otherwise act for or bind, the company.

(b) To amend or cancel a statement of authority filed by the Secretary of State under subsection (a) of section 21 of this act, a limited liability company must deliver to the Secretary of State for filing an amendment or cancellation stating:

(1) the name of the company;

(2) the street and mailing addresses of the company's designated office;

(3) the caption of the statement being amended or canceled and the date the statement being affected became effective; and

(4) the contents of the amendment or a declaration that the statement being affected is canceled.

(c) A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

(d) Subject to subsection (c) of this section and subsection (d) of section 3 of this act and except as otherwise provided in subsections (f), (g), and (h) of this section, a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

(e) Subject to subsection (c) of this section, a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

(1) the person has knowledge to the contrary;

(2) the statement has been canceled or restrictively amended under subsection (b) of this section; or

(3) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

(f) Subject to subsection (c) of this section, an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company and that is recorded by certified copy in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(1) the statement has been canceled or restrictively amended under subsection (b) of this section and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

(2) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective and a certified copy of the later-effective statement is recorded in the office for recording transfers of the real property.

(g) Subject to subsection (c) of this section, if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.

(h) Subject to subsection (i) of this section, an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of subsection (f) of this section

and is a limitation on authority for the purposes of subsection (g) of this section.

(i) After a statement of dissolution becomes effective, a limited liability company may deliver to the Secretary of State for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority. The statement operates as provided in subsections (f) and (g) of this section.

(j) Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under subsection (f) or (g) of this section.

(k) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for the purposes of subdivision (f) (1) of this section.

Sec. 28. (ULLCA 303) A person named in a filed statement of authority granting that person authority may deliver to the Secretary of State for filing a statement of denial that:

(1) provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and

(2) denies the grant of authority.

Sec. 29. (ULLCA 304) (a) The debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise:

(1) are solely the debts, obligations, or other liabilities of the company; and

(2) do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager.

(b) The mere failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on the members or managers for the debts, obligations, or other liabilities of the company.

(c) Any member, manager, or employee of a limited liability company with the duty to collect, account for, or pay over any taxes imposed upon a limited liability company or with the authority to decide whether the limited liability company will pay taxes imposed upon a limited liability company shall be personally liable for the payment of such taxes in the event of willful failure on his or her part to have a limited liability company perform such act. Such taxes shall be collected in the same manner as provided under section 77-1783.01.

Sec. 30. (ULLCA 401) (a) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

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

(c) After formation of a limited liability company, a person becomes a member:

(1) as provided in the operating agreement;

(2) as the result of a transaction effective under sections 70 to 84 of this act;

(3) with the consent of all the members; or

(4) if, within ninety consecutive days after the company ceases to have any members:

(A) the last person to have been a member, or the legal representative of that person, designates a person to become a member; and

(B) the designated person consents to become a member.

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

Sec. 31. (ULLCA 402) A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

Sec. 32. (ULLCA 403) (a) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate

is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the company.

(b) A creditor of a limited liability company which extends credit or otherwise acts in actual reliance on an obligation described in subsection (a) of this section may enforce the obligation.

Sec. 33. (ULLCA 404) (a) Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 41 of this act and any charging order in effect under section 42 of this act.

(b) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(c) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in subsection (c) of section 54 of this act, a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

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

Sec. 34. (ULLCA 405) (a) A limited liability company may not make a distribution if after the distribution:

(1) the company would not be able to pay its debts as they become due in the ordinary course of the company's activities; or

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

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

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

(1) in the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the company, as of the date money or other property is transferred or debt incurred by the company; and

(2) in all other cases, as of the date:

(A) the distribution is authorized, if the payment occurs within one hundred twenty days after that date; or

(B) the payment is made, if the payment occurs more than one hundred twenty days after the distribution is authorized.

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

(e) A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection (a) of this section if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

(f) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(g) In subsection (a) of this section, distribution does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

Sec. 35. (ULLCA 406) (a) Except as otherwise provided in subsection (b) of this section, if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of section 34 of this act and in consenting to the distribution fails to comply with section 38 of this act, the member or manager is personally liable to the company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of section 34 of this act.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection (a) of this section applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(c) A person that receives a distribution knowing that the distribution to that person was made in violation of section 34 of this act is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 34 of this act.

(d) A person against which an action is commenced because the person is liable under subsection (a) of this section may:

(1) implead any other person that is subject to liability under subsection (a) of this section and seek to compel contribution from the person; and

(2) implead any person that received a distribution in violation of subsection (c) of this section and seek to compel contribution from the person in the amount the person received in violation of subsection (c) of this section.

(e) An action under this section is barred if not commenced within two years after the distribution.

Sec. 36. (ULLCA 407) (a) A limited liability company is a member-managed limited liability company unless the operating agreement:

(1) expressly provides that:

(A) the company is or will be manager-managed;

(B) the company is or will be managed by managers; or

(C) management of the company is or will be vested in managers; or

(2) includes words of similar import.

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

(1) The management and conduct of the company are vested in the members.

(2) Each member has equal rights in the management and conduct of the company's activities.

(3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members.

(4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.

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

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

(1) Except as otherwise expressly provided in the Nebraska Uniform Limited Liability Company Act, any matter relating to the activities of the company is decided exclusively by the managers.

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

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

(4) The consent of all members is required to:

(A) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company's property, with or without the goodwill, outside the ordinary course of the company's activities;

(B) approve a merger, conversion, or domestication under sections 70 to 84 of this act;

(C) undertake any other act outside the ordinary course of the company's activities; and

(D) amend the operating agreement.

(5) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.

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

(7) A person's ceasing to be a manager does not discharge any debt,

obligation, or other liability to the limited liability company or members which the person incurred while a manager.

(d) An action requiring the consent of members under the Nebraska Uniform Limited Liability Company Act may be taken without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

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

(f) The Nebraska Uniform Limited Liability Company Act does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

Sec. 37. (ULLCA 408) (a) A limited liability company shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member of a member-managed company or the manager of a manager-managed company in the course of the member's or manager's activities on behalf of the company, if, in making the payment or incurring the debt, obligation, or other liability, the member or manager complied with the duties stated in sections 34 and 38 of this act.

(b) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under subsection (f) of section 10 of this act, the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

Sec. 38. (ULLCA 409) (a) A member of a member-managed limited liability company owes to the company and, subject to subsection (b) of section 64 of this act, the other members the fiduciary duties of loyalty and care stated in subsections (b) and (c) of this section.

(b) The duty of loyalty of a member in a member-managed limited liability company includes the duties:

(1) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member:

(A) in the conduct or winding up of the company's activities;

(B) from a use by the member of the company's property; or

(C) from the appropriation of a limited liability company opportunity;

(2) to refrain from dealing with the company in the conduct or winding up of the company's activities as or on behalf of a person having an interest adverse to the company; and

(3) to refrain from competing with the company in the conduct of the company's activities before the dissolution of the company.

(c) Subject to the business judgment rule, the duty of care of a member of a member-managed limited liability company in the conduct and winding up of the company's activities is to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the company. In discharging this duty, a member may rely in good faith upon opinions, reports, statements, or other information provided by another person that the member reasonably believes is a competent and reliable source for the information.

(d) A member in a member-managed limited liability company or a manager-managed limited liability company shall discharge the duties under the Nebraska Uniform Limited Liability Company Act or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) It is a defense to a claim under subdivision (b)(2) of this section and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

(f) All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

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

(1) Subsections (a), (b), (c), and (e) of this section apply to the manager or managers and not the members.

(2) The duty stated under subdivision (b)(3) of this section continues until winding up is completed.

(3) Subsection (d) of this section applies to the members and

managers.

(4) Subsection (f) of this section applies only to the members.

(5) A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member.

Sec. 39. (ULLCA 410) (a) In a member-managed limited liability company, the following rules apply:

(1) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or the Nebraska Uniform Limited Liability Company Act.

(2) The company shall furnish to each member:

(A) without demand, any information concerning the company's activities, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or the act, except to the extent the company can establish that it reasonably believes the member already knows the information; and

(B) on demand, any other information concerning the company's activities, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(3) The duty to furnish information under subdivision (a)(2) of this section also applies to each member to the extent the member knows any of the information described in such subdivision.

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

(1) The informational rights stated in subsection (a) of this section and the duty stated in subdivision (a)(3) of this section apply to the managers and not the members.

(2) During regular business hours and at a reasonable location specified by the company, a member may obtain from the company and inspect and copy full information regarding the activities, financial condition, and other circumstances of the company as is just and reasonable if:

(A) the member seeks the information for a purpose material to the member's interest as a member;

(B) the member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(C) the information sought is directly connected to the member's purpose.

(3) Within ten days after receiving a demand pursuant to subdivision (b)(2)(B) of this section, the company shall in a record inform the member that made the demand:

(A) of the information that the company will provide in response to the demand and when and where the company will provide the information; and

(B) if the company declines to provide any demanded information, the company's reasons for declining.

(c) On ten days' demand made in a record received by a limited liability company, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by subdivision (b)(2) of this section. The company shall respond to a demand made pursuant to this subsection in the manner provided in subdivision (b)(3) of this section.

(d) A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(e) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subsection (g) of this section applies both to the agent or legal representative and the member or dissociated member.

(f) The rights under this section do not extend to a person as transferee.

(g) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing

nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

Sec. 40. (ULLCA 501) A transferable interest is personal property.

Sec. 41. (ULLCA 502) (a) A transfer, in whole or in part, of a transferable interest:

(1) is permissible;

(2) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities; and

(3) subject to section 43 of this act, does not entitle the transferee to:

(A) participate in the management or conduct of the company's activities; or

(B) except as otherwise provided in subsection (c) of this section, have access to records or other information concerning the company's activities.

(b) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

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

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

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

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

(g) Except as otherwise provided in subdivision (4)(B) of section 45 of this act, when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

(h) When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under section 32 of this act and subsection (c) of section 35 of this act known to the transferee when the transferee becomes a member.

Sec. 42. (ULLCA 503) (a) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a) of this section, the court may:

(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) make all other orders necessary to give effect to the charging order.

(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a member, and is subject to section 41 of this act.

(d) At any time before completion of the foreclosure sale under subsection (c) of this section, the member or transferee whose transferable interest is subject to a charging order under subsection (a) of this section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) At any time before completion of the foreclosure sale under subsection (c) of this section, a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) The Nebraska Uniform Limited Liability Company Act does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

(g) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

Sec. 43. (ULLCA 504) If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in subsection (c) of section 41 of this act and, for the purposes of settling the estate, the rights of a current member under section 39 of this act.

Sec. 44. (ULLCA 601) (a) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under subdivision (1) of section 45 of this act.

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

(1) is in breach of an express provision of the operating agreement;

or

(2) occurs before the termination of the company and:

(A) the person withdraws as a member by express will;

(B) the person is expelled as a member by judicial order under subdivision (5) of section 45 of this act;

(C) the person is dissociated under subdivision (7)(A) of section 45 of this act by becoming a debtor in bankruptcy; or

(D) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

(c) A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to section 64 of this act, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the member to the company or the other members.

Sec. 45. (ULLCA 602) A person is dissociated as a member from a limited liability company when:

(1) the company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the company had notice, on that later date;

(2) an event stated in the operating agreement as causing the person's dissociation occurs;

(3) the person is expelled as a member pursuant to the operating agreement;

(4) the person is expelled as a member by the unanimous consent of the other members if:

(A) it is unlawful to carry on the company's activities with the person as a member;

(B) there has been a transfer of all of the person's transferable interest in the company, other than:

(i) a transfer for security purposes; or

(ii) a charging order in effect under section 42 of this act which has not been foreclosed;

(C) the person is a corporation and, within ninety days after the company notifies the person that it will be expelled as a member because the person has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated;
or

(D) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) on application by the company, the person is expelled as a member by judicial order because the person:

(A) has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's activities;

(B) has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under section 38 of this act; or

(C) has engaged in, or is engaging in, conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member;

(6) in the case of a person who is an individual:

(A) the person dies; or

(B) in a member-managed limited liability company:

(i) a guardian or general conservator for the person is appointed;

or

(ii) there is a judicial order that the person has otherwise become incapable of performing the person's duties as a member under the Nebraska Uniform Limited Liability Company Act or the operating agreement;

(7) in a member-managed limited liability company, the person:

(A) becomes a debtor in bankruptcy;

(B) executes an assignment for the benefit of creditors; or

(C) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;

(8) in the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the company is distributed;

(9) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is distributed;

(10) in the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member;

(11) the company participates in a merger under sections 70 to 84 of this act, if:

(A) the company is not the surviving entity; or

(B) otherwise as a result of the merger, the person ceases to be a member;

(12) the company participates in a conversion under sections 70 to 84 of this act;

(13) the company participates in a domestication under sections 70 to 84 of this act, if, as a result of the domestication, the person ceases to be a member; or

(14) the company terminates.

Sec. 46. (ULLCA 603) (a) When a person is dissociated as a member of a limited liability company:

(1) the person's right to participate as a member in the management and conduct of the company's activities terminates;

(2) if the company is member-managed, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation; and

(3) subject to section 43 of this act and sections 70 to 84 of this act, any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.

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

Sec. 47. (ULLCA 701) (a) A limited liability company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

(1) an event or circumstance that the operating agreement states causes dissolution;

(2) the consent of all the members;

(3) the passage of ninety consecutive days during which the company has no members;

(4) on application by a member, the entry by the district court of an order dissolving the company on the grounds that:

(A) the conduct of all or substantially all of the company's activities is unlawful; or

(B) it is not reasonably practicable to carry on the company's activities in conformity with the certificate of organization and the operating agreement; or

(5) on application by a member, the entry by the district court of an order dissolving the company on the grounds that the managers or those members in control of the company:

(A) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(B) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

(b) In a proceeding brought under subdivision (a)(5) of this

section, the court may order a remedy other than dissolution.

Sec. 48. (ULLCA 702) (a) A dissolved limited liability company shall wind up its activities, and the company continues after dissolution only for the purpose of winding up.

(b) In winding up its activities, a limited liability company:

(1) shall:

(A) discharge the company's debts, obligations, or other liabilities, settle and close the company's activities, and marshal and distribute the assets of the company; and

(B) deliver to the Secretary of State for filing a statement of dissolution stating the name of the company and that the company is dissolved; and

(2) may:

(A) preserve the company activities and property as a going concern for a reasonable time;

(B) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(C) transfer the company's property;

(D) settle disputes by mediation or arbitration;

(E) deliver to the Secretary of State for filing a statement of termination stating the name of the company and that the company is terminated; and

(F) perform other acts necessary or appropriate to the winding up.

(c) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities of the company. If the person does so, the person has the powers of a sole manager under subsection (c) of section 36 of this act and is deemed to be a manager for the purposes of subdivision (a) (2) of section 29 of this act.

(d) If the legal representative under subsection (c) of this section declines or fails to wind up the company's activities, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

(1) has the powers of a sole manager under subsection (c) of section 36 of this act and is deemed to be a manager for the purposes of subdivision (a) (2) of section 29 of this act; and

(2) shall promptly deliver to the Secretary of State for filing an amendment to the company's certificate of organization to:

(A) state that the company has no members;

(B) state that the person has been appointed pursuant to this subsection to wind up the company; and

(C) provide the street and mailing addresses of the person.

(e) The district court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities:

(1) on application of a member, if the applicant establishes good cause;

(2) on the application of a transferee, if:

(A) the company does not have any members;

(B) the legal representative of the last person to have been a member declines or fails to wind up the company's activities; and

(C) within a reasonable time following the dissolution a person has not been appointed pursuant to subsection (d) of this section; or

(3) in connection with a proceeding under subdivision (a) (4) or (5) of section 47 of this act.

Sec. 49. (ULLCA 703) (a) Except as otherwise provided in subsection (d) of this section, a dissolved limited liability company may give notice of a known claim under subsection (b) of this section, which has the effect as provided in subsection (c) of this section.

(b) A dissolved limited liability company may in a record notify its known claimants of the dissolution. The notice must:

(1) specify the information required to be included in a claim;

(2) provide a mailing address to which the claim is to be sent;

(3) state the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the notice is received by the claimant; and

(4) state that the claim will be barred if not received by the deadline.

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

(1) the claim is not received by the specified deadline; or

(2) if the claim is timely received but rejected by the company:

(A) the company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within ninety days after the claimant receives the notice; and

(B) the claimant does not commence the required action within the ninety days.

(d) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

Sec. 50. (ULLCA 704) (a) A dissolved limited liability company shall publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

(b) The notice required by subsection (a) of this section must:

(1) be published three successive weeks in some legal newspaper of general circulation in the county in this state in which the dissolved limited liability company's principal office is located or, if it has none in this state, in the county in which the company's designated office is or was last located;

(2) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(3) state that a claim against the company is barred unless an action to enforce the claim is commenced within five years after the publication date of the third required notice.

(c) If a dissolved limited liability company publishes a notice in accordance with subsection (b) of this section, unless the claimant commences an action to enforce the claim against the company within five years after the publication date of the third required notice, the claim of each of the following claimants is barred:

(1) a claimant that did not receive notice in a record under section 49 of this act;

(2) a claimant whose claim was timely sent to the company but not acted on; and

(3) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(d) A claim not barred under this section may be enforced:

(1) against a dissolved limited liability company, to the extent of its undistributed assets; and

(2) if assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this subdivision does not exceed the total amount of assets distributed to the person after dissolution.

Sec. 51. (ULLCA 705) (a) The Secretary of State may dissolve a limited liability company administratively if the company does not:

(1) pay, within sixty days after the due date, any fee, tax, or penalty due to the Secretary of State under the Nebraska Uniform Limited Liability Company Act or law other than the act; or

(2) deliver, within sixty days after the due date, its biennial report to the Secretary of State.

(b) If the Secretary of State determines that a ground exists for administratively dissolving a limited liability company, the Secretary of State shall file a record of the determination and serve the company with a copy of the filed record.

(c) If within sixty days after service of the copy pursuant to subsection (b) of this section a limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist, the Secretary of State shall dissolve the company administratively by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The Secretary of State shall serve the company with a copy of the filed declaration.

(d) A limited liability company that has been administratively dissolved continues in existence but, subject to section 52 of this act, may carry on only activities necessary to wind up its activities and liquidate its assets under sections 48 and 54 of this act and to notify claimants under sections 49 and 50 of this act.

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

Sec. 52. (ULLCA 706) (a) A limited liability company that has been administratively dissolved may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The

application must be delivered to the Secretary of State for filing and state:

(1) the name of the company and the effective date of its dissolution;

(2) that the grounds for dissolution did not exist or have been eliminated; and

(3) that the company's name satisfies the requirements of section 8 of this act.

(b) If the Secretary of State determines that an application under subsection (a) of this section contains the required information and that the information is correct, the Secretary of State shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited liability company with a copy.

(c) When a reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume its activities as if the dissolution had not occurred.

Sec. 53. (ULLCA 707) (a) If the Secretary of State rejects a limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall prepare, sign, and file a notice that explains the reason for rejection and serve the company with a copy of the notice.

(b) Within thirty days after service of a notice of rejection of reinstatement under subsection (a) of this section, a limited liability company may appeal from the rejection by petitioning the district court of Lancaster County to set aside the dissolution. The petition must be served on the Secretary of State and contain a copy of the Secretary of State's declaration of dissolution, the company's application for reinstatement, and the Secretary of State's notice of rejection.

(c) The court may order the Secretary of State to reinstate a dissolved limited liability company or take other action the court considers appropriate.

Sec. 54. (ULLCA 708) (a) In winding up its activities, a limited liability company must apply its assets to discharge its obligations to creditors, including members that are creditors.

(b) After a limited liability company complies with subsection (a) of this section, any surplus must be distributed in the manner set forth in the operating agreement or, if not so set forth, in the following order, subject, in any case, to any charging order in effect under section 42 of this act:

(1) to each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 41 of this act.

(c) If a limited liability company does not have sufficient surplus to comply with subdivision (b)(1) of this section, any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

(d) All distributions made under subsections (b) and (c) of this section must be paid in money.

Sec. 55. (ULLCA 801) (a) The law of the state or other jurisdiction under which a foreign limited liability company is formed governs:

(1) the internal affairs of the company; and

(2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of the company.

(b) A foreign limited liability company may not transact business in this state until it qualifies with the Secretary of State as provided in sections 56 and 58 of this act. A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the law of the jurisdiction under which the company is formed and the law of this state.

(c) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this state.

Sec. 56. (ULLCA 802) (a) A foreign limited liability company must apply for a certificate of authority to transact business in this state by delivering an application and, if applicable, a current certificate of registration as provided in sections 85 to 89 of this act and fees to the Secretary of State for filing. The application must state:

(1) the name of the company and, if the name does not comply with

section 8 of this act, an alternate name adopted pursuant to subsection (a) of section 59 of this act;

(2) the name of the state or other jurisdiction under whose law the company is formed;

(3) the street and mailing addresses of the company's principal office and, if the law of the jurisdiction under which the company is formed requires the company to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and

(4) the name and street and mailing addresses and post office box number, if any, of the company's initial agent for service of process in this state.

(b) A foreign limited liability company shall deliver with a completed application under subsection (a) of this section a certificate of existence or a record of similar import signed by the Secretary of State or other official having custody of the company's publicly filed records in the state or other jurisdiction under whose law the company is formed.

Sec. 57. (ULLCA 803) (a) Activities of a foreign limited liability company which do not constitute transacting business in this state within the meaning of sections 55 to 63 of this act include:

(1) maintaining, defending, or settling an action or proceeding;

(2) carrying on any activity concerning its internal affairs, including holding meetings of its members or managers;

(3) maintaining accounts in financial institutions;

(4) maintaining offices or agencies for the transfer, exchange, and registration of the company's own securities or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(8) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, or maintaining property so acquired;

(9) conducting an isolated transaction that is completed within thirty days and is not in the course of similar transactions; and

(10) transacting business in interstate commerce.

(b) For purposes of sections 55 to 63 of this act, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (a) of this section, constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under law of this state other than the Nebraska Uniform Limited Liability Company Act.

Sec. 58. (ULLCA 804) Unless the Secretary of State determines that an application for a certificate of authority does not comply with the filing requirements of the Nebraska Uniform Limited Liability Company Act, the Secretary of State, upon payment of all filing fees, shall file the application of a foreign limited liability company, prepare, sign, and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the company or its representative.

Sec. 59. (ULLCA 805) (a) A foreign limited liability company whose name does not comply with section 8 of this act may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with section 8 of this act. A foreign limited liability company that adopts an alternate name under this subsection and obtains a certificate of authority with the alternate name need not comply with any fictitious or assumed name statute. After obtaining a certificate of authority with an alternate name, a foreign limited liability company shall transact business in this state under the alternate name unless the company is authorized under any fictitious or assumed name statute to transact business in this state under another name.

(b) If a foreign limited liability company authorized to transact business in this state changes its name to one that does not comply with section 8 of this act, it may not thereafter transact business in this state until it complies with subsection (a) of this section and obtains an amended certificate of authority.

Sec. 60. (ULLCA 806) (a) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by

the Secretary of State in the manner provided in subsections (b) and (c) of this section if the company does not:

(1) pay, within sixty days after the due date, any fee, tax, or penalty due to the Secretary of State under the Nebraska Uniform Limited Liability Company Act or law other than the act;

(2) deliver, within sixty days after the due date, its biennial report required under section 25 of this act;

(3) appoint and maintain an agent for service of process as required by subsection (b) of section 13 of this act; or

(4) deliver for filing a statement of a change under section 14 of this act within thirty days after a change has occurred in the name or address of the agent.

(b) To revoke a certificate of authority of a foreign limited liability company, the Secretary of State must prepare, sign, and file a notice of revocation and send a copy to the company's agent for service of process in this state, or if the company does not appoint and maintain a proper agent in this state, to the company's designated office. The notice must state:

(1) the revocation's effective date, which must be at least sixty days after the date the Secretary of State sends the copy; and

(2) the grounds for revocation under subsection (a) of this section.

(c) The authority of a foreign limited liability company to transact business in this state ceases on the effective date of the notice of revocation unless before that date the company cures each ground for revocation stated in the notice filed under subsection (b) of this section. If the company cures each ground, the Secretary of State shall file a record so stating.

Sec. 61. (ULLCA 807) To cancel its certificate of authority to transact business in this state, a foreign limited liability company must deliver to the Secretary of State for filing a notice of cancellation stating the name of the company and that the company desires to cancel its certificate of authority. The certificate is canceled when the notice becomes effective.

Sec. 62. (ULLCA 808) (a) A foreign limited liability company transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

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

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

Sec. 63. (ULLCA 809) The Attorney General may maintain an action to enjoin a foreign limited liability company from transacting business in this state in violation of sections 55 to 63 of this act.

Sec. 64. (ULLCA 901) (a) Subject to subsection (b) of this section, a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or the Nebraska Uniform Limited Liability Company Act or arising independently of the membership relationship.

(b) A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

Sec. 65. (ULLCA 902) A member may maintain a derivative action to enforce a right of a limited liability company if:

(1) the member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the company to bring an action to enforce the right, and the managers or other members do not bring the action within a reasonable time; or

(2) a demand under subdivision (1) of this section would be futile.

Sec. 66. (ULLCA 903) (a) Except as otherwise provided in subsection (b) of this section, a derivative action under section 65 of this act may be maintained only by a person that is a member at the time the action is commenced and remains a member while the action continues.

(b) If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member of the limited liability company to be substituted as plaintiff.

Sec. 67. (ULLCA 904) In a derivative action under section 65 of this act, the complaint must state with particularity:

- (1) the date and content of the plaintiff's demand and the response to the demand by the managers or other members; or
- (2) if a demand has not been made, the reasons a demand under subdivision (1) of section 65 of this act would be futile.

Sec. 68. (ULLCA 905) (a) If a limited liability company is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the company. If the company appoints a special litigation committee, on motion by the committee made in the name of the company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from enforcing a person's right to information under section 39 of this act or, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee may be composed of one or more disinterested and independent individuals, who may be members.

(c) A special litigation committee may be appointed:

- (1) in a member-managed limited liability company:
 - (A) by the consent of a majority of the members not named as defendants or plaintiffs in the proceeding; and
 - (B) if all members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants; or
- (2) in a manager-managed limited liability company:
 - (A) by a majority of the managers not named as defendants or plaintiffs in the proceeding; and
 - (B) if all managers are named as defendants or plaintiffs in the proceeding, by a majority of the managers named as defendants.

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

- (1) continue under the control of the plaintiff;
- (2) continue under the control of the committee;
- (3) be settled on terms approved by the committee; or
- (4) be dismissed.

(e) After making a determination under subsection (d) of this section, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination, giving notice to the plaintiff. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) of this section and allow the action to proceed under the direction of the plaintiff.

Sec. 69. (ULLCA 906) (a) Except as otherwise provided in subsection (b) of this section:

- (1) any proceeds or other benefits of a derivative action under section 65 of this act, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and
- (2) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

(b) If a derivative action under section 65 of this act is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.

Sec. 70. (ULLCA 1001) In sections 70 to 84 of this act:

- (1) Constituent limited liability company means a constituent organization that is a limited liability company.
- (2) Constituent organization means an organization that is party to a merger.
- (3) Converted organization means the organization into which a converting organization converts pursuant to sections 75 to 78 of this act.
- (4) Converting limited liability company means a converting organization that is a limited liability company.
- (5) Converting organization means an organization that converts into another organization pursuant to section 75 of this act.

(6) Domesticated company means the company that exists after a domesticating foreign limited liability company or limited liability company effects a domestication pursuant to sections 79 to 82 of this act.

(7) Domesticating company means the company that effects a domestication pursuant to sections 79 to 82 of this act.

(8) Governing statute means the statute that governs an organization's internal affairs.

(9) Organization means a general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, business trust, corporation, or any other person having a governing statute. The term includes a domestic or foreign organization.

(10) Organizational documents means:

(A) for a domestic or foreign general partnership, its partnership agreement;

(B) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(C) for a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement, or comparable records as provided in its governing statute;

(D) for a business trust, its agreement of trust and declaration of trust;

(E) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

(F) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(11) Personal liability means liability for a debt, obligation, or other liability of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(A) by the governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(B) by the organization's organizational documents under a provision of the governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, obligations, or other liabilities of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

(12) Surviving organization means an organization into which one or more other organizations are merged whether the organization preexisted the merger or was created by the merger.

Sec. 71. (ULLCA 1002) (a) A limited liability company may merge with one or more other constituent organizations pursuant to this section, sections 72 to 74 of this act, and a plan of merger, if:

(1) the governing statute of each of the other organizations authorizes the merger;

(2) the merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes; and

(3) each of the other organizations complies with its governing statute in effecting the merger.

(b) A plan of merger must be in a record and must include:

(1) the name and form of each constituent organization;

(2) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(4) if the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record; and

(5) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

Sec. 72. (ULLCA 1003) (a) Subject to section 83 of this act, a plan of merger must be consented to by all the members of a constituent limited liability company.

(b) Subject to section 83 of this act and any contractual rights, after a merger is approved, and at any time before articles of merger are

delivered to the Secretary of State for filing under section 73 of this act, a constituent limited liability company may amend the plan or abandon the merger:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

Sec. 73. (ULLCA 1004) (a) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(1) each constituent limited liability company, as provided in subsection (a) of section 19 of this act; and

(2) each other constituent organization, as provided in its governing statute.

(b) Articles of merger under this section must include:

(1) the name and form of each constituent organization and the jurisdiction of its governing statute;

(2) the name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;

(3) the date the merger is effective under the governing statute of the surviving organization;

(4) if the surviving organization is to be created by the merger:

(A) if it will be a limited liability company, the company's certificate of organization; or

(B) if it will be an organization other than a limited liability company, the organizational document that creates the organization that is in a public record;

(5) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record;

(6) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute; and

(7) any additional information required by the governing statute of any constituent organization.

(c) Each constituent limited liability company shall deliver the articles of merger for filing in the office of the Secretary of State.

(d) A merger becomes effective under sections 70 to 84 of this act:

(1) if the surviving organization is a limited liability company, upon the later of:

(A) compliance with subsection (c) of this section; or

(B) subject to subsection (c) of section 21 of this act, as specified in the articles of merger; or

(2) if the surviving organization is not a limited liability company, as provided by the governing statute of the surviving organization.

Sec. 74. (ULLCA 1005) (a) When a merger becomes effective:

(1) the surviving organization continues or comes into existence;

(2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) all property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) all debts, obligations, or other liabilities of each constituent organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;

(5) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(6) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect; and

(8) except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of sections 47 to 54 of this act;

(9) if the surviving organization is created by the merger:

(A) if it is a limited liability company, the certificate of organization becomes effective; or

(B) if it is an organization other than a limited liability company, the organizational document that creates the organization becomes effective; and

(10) if the surviving organization preexisted the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(b) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or other liability.

Sec. 75. (ULLCA 1006) (a) An organization other than a limited liability company or a foreign limited liability company may convert to a limited liability company, and a limited liability company may convert to an organization other than a foreign limited liability company pursuant to this section, sections 76 to 78 of this act, and a plan of conversion, if:

(1) the other organization's governing statute authorizes the conversion;

(2) the conversion is not prohibited by the law of the jurisdiction that enacted the other organization's governing statute; and

(3) the other organization complies with its governing statute in effecting the conversion.

(b) A plan of conversion must be in a record and must include:

(1) the name and form of the organization before conversion;

(2) the name and form of the organization after conversion;

(3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(4) the organizational documents of the converted organization that are, or are proposed to be, in a record.

Sec. 76. (ULLCA 1007) (a) Subject to section 83 of this act, a plan of conversion must be consented to by all the members of a converting limited liability company.

(b) Subject to section 83 of this act and any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered to the Secretary of State for filing under section 77 of this act, a converting limited liability company may amend the plan or abandon the conversion:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

Sec. 77. (ULLCA 1008) (a) After a plan of conversion is approved:

(1) a converting limited liability company shall deliver to the Secretary of State for filing articles of conversion, which must be signed as provided in subsection (a) of section 19 of this act and must include:

(A) a statement that the limited liability company has been converted into another organization;

(B) the name and form of the organization and the jurisdiction of its governing statute;

(C) the date the conversion is effective under the governing statute of the converted organization;

(D) a statement that the conversion was approved as required by the Nebraska Uniform Limited Liability Company Act; and

(E) a statement that the conversion was approved as required by the governing statute of the converted organization; and

(2) if the converting organization is not a converting limited liability company, the converting organization shall deliver to the Secretary of State for filing a certificate of organization, which must include, in addition to the information required by subsection (b) of section 17 of this act:

(A) a statement that the converted organization was converted from another organization;

(B) the name and form of that converting organization and the jurisdiction of its governing statute; and

(C) a statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

(b) A conversion becomes effective:

(1) if the converted organization is a limited liability company, when the certificate of organization takes effect; and

(2) if the converted organization is not a limited liability company, as provided by the governing statute of the converted organization.

Sec. 78. (ULLCA 1009) (a) An organization that has been converted pursuant to sections 70 to 84 of this act is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting organization remains vested in the converted organization;

(2) all debts, obligations, or other liabilities of the converting organization continue as debts, obligations, or other liabilities of the converted organization;

(3) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(4) except as prohibited by law other than the Nebraska Uniform Limited Liability Company Act, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(6) except as otherwise agreed, the conversion does not dissolve a converting limited liability company for the purposes of sections 47 to 54 of this act.

(c) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting limited liability company is liable if, before the conversion, the converting limited liability company was subject to suit in this state on the debt, obligation, or other liability.

Sec. 79. (ULLCA 1010) (a) A foreign limited liability company may become a limited liability company pursuant to this section, sections 80 to 82 of this act, and a plan of domestication, if:

(1) the foreign limited liability company's governing statute authorizes the domestication;

(2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(3) the foreign limited liability company complies with its governing statute in effecting the domestication.

(b) A limited liability company may become a foreign limited liability company pursuant to this section, sections 80 to 82 of this act, and a plan of domestication, if:

(1) the foreign limited liability company's governing statute authorizes the domestication;

(2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(3) the foreign limited liability company complies with its governing statute in effecting the domestication.

(c) A plan of domestication must be in a record and must include:

(1) the name of the domesticating company before domestication and the jurisdiction of its governing statute;

(2) the name of the domesticated company after domestication and the jurisdiction of its governing statute;

(3) the terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating company into any combination of money, interests in the domesticated company, and other consideration; and

(4) the organizational documents of the domesticated company that are, or are proposed to be, in a record.

Sec. 80. (ULLCA 1011) (a) A plan of domestication must be consented to:

(1) by all the members, subject to section 83 of this act, if the domesticating company is a limited liability company; and

(2) as provided in the domesticating company's governing statute, if the company is a foreign limited liability company.

(b) Subject to any contractual rights, after a domestication is approved, and at any time before articles of domestication are delivered to the Secretary of State for filing under section 81 of this act, a domesticating limited liability company may amend the plan or abandon the domestication:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

Sec. 81. (ULLCA 1012) (a) After a plan of domestication is approved, a domesticating company shall deliver to the Secretary of State for filing articles of domestication, which must include:

(1) a statement, as the case may be, that the company has been domesticated from or into another jurisdiction;

(2) the name of the domesticating company and the jurisdiction of its governing statute;

(3) the name of the domesticated company and the jurisdiction of its governing statute;

(4) the date the domestication is effective under the governing statute of the domesticated company;

(5) if the domesticating company was a limited liability company, a statement that the domestication was approved as required by the Nebraska Uniform Limited Liability Company Act; and

(6) if the domesticating company was a foreign limited liability company, a statement that the domestication was approved as required by the governing statute of the other jurisdiction.

(b) A domestication becomes effective:

(1) when the certificate of organization takes effect, if the domesticated company is a limited liability company; and

(2) according to the governing statute of the domesticated company, if the domesticated organization is a foreign limited liability company.

Sec. 82. (ULLCA 1013) (a) When a domestication takes effect:

(1) the domesticated company is for all purposes the company that existed before the domestication;

(2) all property owned by the domesticating company remains vested in the domesticated company;

(3) all debts, obligations, or other liabilities of the domesticating company continue as debts, obligations, or other liabilities of the domesticated company;

(4) an action or proceeding pending by or against a domesticating company may be continued as if the domestication had not occurred;

(5) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the domesticating company remain vested in the domesticated company;

(6) except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect; and

(7) except as otherwise agreed, the domestication does not dissolve a domesticating limited liability company for the purposes of sections 47 to 54 of this act.

(b) A domesticated company that is a foreign limited liability company consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by the domesticating company, if, before the domestication, the domesticating company was subject to suit in this state on the debt, obligation, or other liability.

(c) If a limited liability company has adopted and approved a plan of domestication under section 79 of this act providing for the company to be domesticated in a foreign jurisdiction, a statement surrendering the company's certificate of organization must be delivered to the Secretary of State for filing setting forth:

(1) the name of the company;

(2) a statement that the certificate of organization is being surrendered in connection with the domestication of the company in a foreign jurisdiction;

(3) a statement that the domestication was approved as required by the Nebraska Uniform Limited Liability Company Act; and

(4) the jurisdiction of formation of the domesticated foreign limited liability company.

Sec. 83. (ULLCA 1014) (a) If a member of a constituent, converting, or domesticating limited liability company will have personal liability with respect to a surviving, converted, or domesticated organization, approval or amendment of a plan of merger, conversion, or domestication are ineffective without the consent of the member, unless:

(1) the company's operating agreement provides for approval of a merger, conversion, or domestication with the consent of fewer than all the members; and

(2) the member has consented to the provision of the operating agreement.

(b) A member does not give the consent required by subsection (a) of this section merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

Sec. 84. (ULLCA 1015) Sections 70 to 84 of this act do not preclude an entity from being merged, converted, or domesticated under law other than the Nebraska Uniform Limited Liability Company Act.

Sec. 85. (1) Each member, manager, professional employee, or agent of a limited liability company who renders a professional service shall hold a valid license or otherwise be duly authorized to render that professional service under the law of this state if such member, manager, professional employee, or agent renders a professional service within this state or under the law of the state or other jurisdiction in which such person renders the

professional service.

(2) Before rendering a professional service, a limited liability company shall (a) (i) deliver to the Secretary of State for filing a certificate of registration issued to the limited liability company by the regulatory body of the particular profession for which the limited liability company is organized to do business, which certificate sets forth the name and residence address of every member, manager, professional employee, and agent of the limited liability company who is required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business as of the last day of the month preceding the date of delivery of the certificate, and (ii) certify that all members, managers, professional employees, and agents of the limited liability company who are required by law to do so are duly licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business or (b) comply with and qualify under the procedures set forth in subsection (2) of section 86 of this act.

(3) The registration certificate requirements of this section and sections 86 to 88 of this act shall apply to both limited liability companies and foreign limited liability companies.

Sec. 86. (1)(a) An application for issuance of a certificate of registration shall be made by the limited liability company to the regulatory body in writing and shall contain the names of all members, managers, professional employees, and agents of the limited liability company who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business, the street address at which the applicant proposes to render a professional service, and such other information as may be required by the regulatory body. If it appears to the regulatory body that each member, manager, professional employee, and agent of the applicant required by law to be licensed is licensed or otherwise authorized to practice the profession for which the applicant is organized to do business and that each member, manager, professional employee, or agent required by law to be licensed or otherwise authorized to practice the profession for which the applicant is organized to do business is not otherwise disqualified from rendering the professional service of the applicant, such regulatory body shall issue a certificate in duplicate upon a form bearing its date of issuance and prescribed by such regulatory body certifying that the proposed or existing limited liability company complies with the provisions of the Nebraska Uniform Limited Liability Company Act and of the applicable rules and regulations of the regulatory body. Each applicant for such certificate shall pay the regulatory body a fee of twenty-five dollars for the issuance of the certificate.

(b) One copy of a certificate of registration issued pursuant to this subsection shall be prominently displayed to public view upon the premises of the principal place of business of the limited liability company, and, except as provided in subsection (2) of this section, one copy shall be delivered for filing to the Secretary of State who shall charge a fee of twenty-five dollars for filing the same. The certificate shall be delivered to the Secretary of State for filing with the certificate of organization. A certificate of registration bearing an issuance date more than twelve months old shall not be eligible for filing by the Secretary of State.

(2) When licensing records of regulatory bodies are electronically accessible to the Secretary of State, the Secretary of State shall access the records. The access of the records shall be made in lieu of a certificate of registration being prepared and issued by the regulatory body for delivery to the Secretary of State for filing. The limited liability company shall deliver to the Secretary of State for filing an application setting forth the names of all members, managers, professional employees, and agents of such limited liability company who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business as of the last day of the month preceding the date of application and shall deliver to the Secretary of State for filing an annual update thereafter. The application shall be completed on a form prescribed by the Secretary of State and shall contain such other information as the Secretary of State may require. The application shall be accompanied by a license verification fee of fifty dollars.

The Secretary of State shall verify that all members, managers, professional employees, and agents who are required by law to do so are duly licensed or otherwise legally authorized to render the professional service for which the applicant is organized to do business or ancillary service as those which the limited liability company renders through electronic accessing of the regulatory body's records. If any member, manager, professional employee, or agent who is required by law to be licensed or otherwise

authorized to render the professional service for which the limited liability company is organized to do business is not licensed or otherwise legally authorized to render the professional service for which the limited liability company is organized to do business, the limited liability company shall be suspended. The suspension shall remain in effect and a biennial report shall not be delivered to the Secretary of State for filing or filed by the Secretary of State until the limited liability company attests in writing that all members, managers, professional employees, or agents who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business are duly licensed or otherwise legally authorized to render the professional service for which the limited liability company is organized to do business and that information is verified by the Secretary of State or all unlicensed or unauthorized members, managers, professional employees, or agents are no longer members, managers, professional employees, or agents of the limited liability company.

Sec. 87. Each certificate of registration issued to a limited liability company pursuant to section 86 of this act shall expire by its own terms one year from the date of issuance and may not be renewed. Each limited liability company shall annually apply (1) to its regulatory body for a certificate in the manner provided in subsection (1) of section 86 of this act or (2) to the Secretary of State pursuant to subsection (2) of section 86 of this act if the records of the regulatory body are electronically accessible to the Secretary of State. A certificate or application shall be delivered annually to the Secretary of State for filing within thirty days before the expiration date of the last certificate or application on file in the office of the Secretary of State or the limited liability company shall be suspended. Certificates shall not be transferable or assignable.

Sec. 88. A regulatory body may, upon a form prescribed by it, suspend or revoke any certificate of registration issued to any limited liability company pursuant to subsection (1) of section 86 of this act upon the suspension or revocation of the license or other authorization to render a professional service by any member, manager, professional employee, or agent of the limited liability company who is required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business. Notice of such suspension or revocation shall be provided to the limited liability company affected by sending by certified or registered mail a certified copy of such suspension or revocation to the limited liability company at its principal place of business set forth in the certificate so suspended or revoked. At the same time, the regulatory body shall forward by regular mail a certified copy of such suspension or revocation to the Secretary of State who shall remove the suspended or revoked registration certificate from his or her files and deliver it to the regulatory body.

Sec. 89. Nothing in the Nebraska Uniform Limited Liability Company Act is intended to restrict or limit in any manner the authority and duty of any regulatory body licensing professionals within the state to license such persons rendering a professional service or to regulate the practice of any profession that is within the jurisdiction of the regulatory body licensing such professionals within the state notwithstanding that the person is a member, manager, professional employee, or agent of a limited liability company and rendering a professional service or engaging in the practice of the profession through a limited liability company.

Sec. 90. (1) A limited liability company which renders a professional service shall render only one type of professional service and such services as may be ancillary thereto and shall not render any other type of professional service or engage in any other profession. No limited liability company may render a professional service except through its members, managers, professional employees, and agents who are duly licensed or otherwise legally authorized to render such professional service within this state.

(2) This section shall not be interpreted to include in the term professional employee, as used in the Nebraska Uniform Limited Liability Company Act, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering a professional service to the public for which a license or other legal authorization is required.

Sec. 91. The provisions of the Nebraska Uniform Limited Liability Company Act shall be applicable to attorneys at law only to the extent and under such terms and conditions as the Supreme Court determines to be necessary and appropriate. Certificates of organization of limited liability companies organized to practice law shall contain such provisions as may be

appropriate to comply with applicable rules of the court.

Sec. 92. (1) The filing fee for all filings under the Nebraska Uniform Limited Liability Company Act, including amendments and name reservation, shall be ten dollars plus the recording fees set forth in subdivision (4) of section 33-101, except that the filing fee for filing a certificate of organization under section 17 of this act and for filing an application for a certificate of authority to transact business in this state as a foreign limited liability company under section 56 of this act shall be one hundred dollars plus such recording fees and ten dollars for a certificate. There shall be no recording fee collected for the filing of a biennial report required by section 25 of this act or any corrections or amendments thereto.

(2) A fee of one dollar per page plus ten dollars per certificate shall be paid for a certified copy of any document on file under the act.

(3) The fees for filings under the act shall be paid to the Secretary of State and remitted by him or her to the State Treasurer. The State Treasurer shall credit two-thirds of the fees to the General Fund and one-third of the fees to the Corporation Cash Fund.

Sec. 93. (1) Notice of organization, amendment, merger, conversion, or domestication must be published three successive weeks in some legal newspaper of general circulation near the designated office of the limited liability company. A notice of organization must show (a) the name of the limited liability company, (b) the address of the designated office, (c) the general nature of the business to be transacted, (d) the time of commencement and termination, if any, of the limited liability company, and (e) by what members or managers the affairs of the limited liability company are to be conducted. A brief resume of any amendment, merger, conversion, or domestication of the limited liability company shall be published in the same manner and for the same period of time as notice of organization is required to be published.

(2) Whenever any limited liability company is voluntarily dissolved, notice of the dissolution shall be published as required by section 50 of this act.

(3) Proof of publication of any of the notices shall be filed in the office of the Secretary of State. In the event any notice described in subsection (1) of this section and required to be given pursuant to this section is not given, but is subsequently published for the required time, and proof of the publication thereof is filed in the office of the Secretary of State, the acts of the limited liability company prior to, as well as after, such publication shall be valid.

Sec. 94. (ULLCA 1101) In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 95. (ULLCA 1102) The Nebraska Uniform Limited Liability Company Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Sec. 96. (ULLCA 1103) The Nebraska Uniform Limited Liability Company Act does not affect an action commenced, proceeding brought, or right accrued before January 1, 2011.

Sec. 97. (ULLCA 1104) (a) Before January 1, 2013, the Nebraska Uniform Limited Liability Company Act governs only:

(1) a limited liability company formed on or after January 1, 2011; and

(2) except as otherwise provided in subsection (c) of this section, a limited liability company formed before January 1, 2011, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to the act and which delivers to the Secretary of State for filing a statement of election to be subject to the act pursuant to this subdivision.

(b) Except as otherwise provided in subsection (c) of this section, on and after January 1, 2013, the act governs all limited liability companies.

(c) For the purposes of applying the act to a limited liability company formed before January 1, 2011:

(1) the company's articles of organization are deemed to be the company's certificate of organization; and

(2) for the purposes of applying subdivision (11) of section 2 of this act and subject to subsection (d) of section 12 of this act, language in the company's articles of organization designating the company's management structure operates as if that language were in the operating agreement.

Sec. 98. Section 9-614, Reissue Revised Statutes of Nebraska, is amended to read:

9-614 Lottery operator shall mean any individual, sole proprietorship, partnership, limited liability company, or corporation which operates a lottery on behalf of a county, city, or village.

A lottery operator shall be a resident of Nebraska or, if a partnership, limited liability company, or corporation, shall be organized under the laws of this state as a partnership, formed under the Limited Liability Company Act or the Nebraska Uniform Limited Liability Company Act, or incorporated under the Business Corporation Act.

Sec. 99. Section 21-2601, Revised Statutes Supplement, 2009, is amended to read:

21-2601 Sections 21-2601 to 21-2654 shall be known and may be cited as the Limited Liability Company Act. The act terminates on January 1, 2013.

Sec. 100. Section 21-2654, Revised Statutes Supplement, 2009, is amended to read:

21-2654 (1) On application to a court of competent jurisdiction by any judgment creditor of a member or transferee, the court may charge the transferable interest of the judgment debtor in the limited liability company with payment of the unsatisfied amount of the judgment with interest. To the extent of the amounts so charged, the judgment creditor has only the rights of the transferee to receive any distribution to which the judgment debtor would otherwise have been entitled with respect to the interest of the judgment debtor in the limited liability company.

(2) A charging order entered pursuant to this section constitutes a lien on the judgment debtor's transferable interest in the limited liability company.

(3) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (1) of this section, the court may (a) appoint a receiver of the distribution subject to the charging order, and the receiver shall have the power to make all inquiries the judgment debtor might have made, and (b) make all other orders necessary to give effect to the charging order.

(4) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale only obtains the transferable interest and does not become a member of the limited liability company.

(5) At any time before completion of the foreclosure sale under subsection (4) of this section, the member or transferee whose transferable interest is subject to a charging order under subsection (1) of this section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(6) At any time before completion of the foreclosure sale under subsection (4) of this section, a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

~~(3)~~ (7) This section does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's interest in the limited liability company.

(8) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

~~(4) The entry of a charging order pursuant to this section is the exclusive remedy by which a judgment creditor of a member or transferee may satisfy a judgment out of the judgment debtor's interest in the limited liability company.~~

~~(5) No creditor of a member of a limited liability company shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.~~

~~(6) A third party shall not be liable to a judgment creditor for distributions made by such third party directly to the judgment debtor that were made in good faith at the direction of the limited liability company.~~

~~(7) This section applies to all limited liability companies authorized under the Limited Liability Company Act.~~

Sec. 101. Section 67-248.02, Reissue Revised Statutes of Nebraska, is amended to read:

67-248.02 (a) One or more domestic or foreign partnerships or limited partnerships may merge or consolidate with one or more domestic or foreign partnerships or limited partnerships. Sections 67-446 to 67-453 shall govern the merger or consolidation.

(b) Pursuant to an agreement, one or more domestic or foreign limited partnerships, limited liability companies, or corporations may merge into or consolidate with one or more domestic or foreign limited partnerships, limited liability companies, or corporations. If the resulting entity is a domestic corporation, the Business Corporation Act shall govern the merger or consolidation. If the surviving or resulting entity is a corporation, the merger or consolidation shall be subject to sections 21-20,128 to 21-20,134. If the surviving or resulting entity is not a domestic corporation or a limited liability company, the board of directors of each domestic corporation party to such merger or consolidation shall, by resolution adopted by each such board, approve a plan of merger or plan of consolidation setting forth information substantially similar to that required by sections 21-20,128 to 21-20,134. If the surviving or resulting entity is a limited liability company, the Limited Liability Company Act or the Nebraska Uniform Limited Liability Company Act shall govern the merger or consolidation. Unless otherwise provided in the partnership agreement, a plan of merger or plan of consolidation shall be approved by each domestic limited partnership which is to merge or consolidate (1) by all general partners and (2) by limited partners or, if there is more than one class or group of limited partners, then by limited partners of each class or group of limited partners, in either case, who own more than fifty percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate. Notwithstanding prior approval, an agreement or plan of merger or agreement or plan of consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement or plan of merger or agreement or plan of consolidation.

(c) If the surviving or resulting entity of a merger or consolidation pursuant to subsection (b) of this section is not a domestic limited partnership, limited liability company, or corporation following a merger or consolidation of one or more domestic limited partnerships, limited liability companies, or corporations and one or more foreign limited partnerships, limited liability companies, or corporations, the surviving or resulting entity shall comply with sections 21-20,128 to 21-20,134 and, for each such domestic limited partnership, a certificate shall be executed and filed in the office of the Secretary of State by the surviving or resulting limited partnership, limited liability company, or corporation stating that the surviving or resulting limited partnership, limited liability company, or corporation agrees that it may be served with process within or outside this state in any proceeding in the courts of this state for the enforcement of any obligation of such former domestic limited partnership.

(d) A merger or consolidation pursuant to subsection (b) of this section to which a domestic corporation is a party shall become effective as provided in sections 21-20,128 to 21-20,134. A merger, ~~or consolidation,~~ or conversion to which a domestic limited liability company is a party shall become effective as provided in sections 21-2647 to 21-2653 or sections 70 to 84 of this act. Any other merger or consolidation provided for in the Nebraska Uniform Limited Partnership Act shall become effective as provided in the agreement or plan of merger or consolidation. When such merger, ~~or consolidation,~~ or conversion has become effective, the terms of sections 21-20,128 to 21-20,134 shall apply if the surviving or resulting entity is a corporation, the terms of section 21-2651 or section 74 or 78 of this act shall apply if the surviving or resulting entity is a limited liability company, and the following provisions shall apply if the surviving or resulting entity is a limited partnership:

(1) The several limited partnerships, limited liability companies, or corporations which are parties to the merger or consolidation agreement shall be a single limited partnership which, in the case of a merger, shall be that limited partnership designated in the merger agreement as the surviving limited partnership and, in the case of a consolidation, shall be the new limited partnership provided for in the consolidation agreement;

(2) The separate existence of all limited partnerships, limited liability companies, and corporations which are parties to the merger or consolidation agreement, except the surviving or new limited partnership, shall cease;

(3) If the surviving or new limited partnership is a domestic limited partnership, it shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a limited

partnership organized under the Nebraska Uniform Limited Partnership Act;

(4) The surviving or new limited partnership shall possess all the rights, privileges, immunities, and powers, of a public as well as of a private nature, of each of the merging or consolidating limited partnerships and, subject to the Nebraska Uniform Limited Partnership Act, each of the merging or consolidating corporations. All property, real, personal, and mixed, all debts due on whatever account, all other things and causes of actions, and all and every other interest belonging to or due to any of the limited partnerships, limited liability companies, and corporations as merged or consolidated shall be taken and deemed to be transferred to and vested in the surviving or new limited partnership without further act and deed and shall thereafter be the property of the surviving or new limited partnership as they were of any of such merging or consolidating entities. The title to any real property or any interest in such property vested in any of such merging or consolidating entities shall not revert or be in any way impaired by reason of such merger or consolidation;

(5) Such surviving or new limited partnership shall be responsible and liable for all the liabilities and obligations of each of the limited partnerships, limited liability companies, or corporations so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such limited partnerships, limited liability companies, or corporations may be prosecuted as if such merger or consolidation had not taken place or such surviving or new limited partnership may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such limited partnerships, limited liability companies, or corporations shall be impaired by such merger or consolidation; and

(6) The equity securities of the corporation or corporations, limited liability company or companies, and limited partnership or limited partnerships party to the merger or consolidation that are, under the terms of the merger or consolidation, to be converted or exchanged shall cease to exist, and the holders of such equity securities shall thereafter be entitled only to the cash, property, or securities into which they shall have been converted in accordance with the terms of the merger or consolidation, subject to any rights under sections 21-20,137 to 21-20,150, ~~or~~ the Limited Liability Company Act, or the Nebraska Uniform Limited Liability Company Act.

Sec. 102. Section 70-1903, Reissue Revised Statutes of Nebraska, is amended to read:

70-1903 For purposes of the Rural Community-Based Energy Development Act:

(1) C-BED project or community-based energy development project means a new wind energy project that:

(a) Has an ownership structure as follows:

(i) For a C-BED project that consists of more than two turbines, has one or more qualified owners with no single individual qualified owner owning directly or indirectly more than fifteen percent of the project and with at least thirty-three percent of the gross power purchase agreement payments flowing to the qualified owner or owners or local community; or

(ii) For a C-BED project that consists of one or two turbines, has one or more qualified owners with at least thirty-three percent of the gross power purchase agreement payments flowing to a qualified owner or owners or local community; and

(b) Has a resolution of support adopted:

(i) By the county board of each county in which the C-BED project is to be located; or

(ii) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(2) Debt financing payments means principal, interest, and other typical financing costs paid by the C-BED project company to one or more third-party financial institutions for the financing or refinancing of the construction of the C-BED project. Debt financing payments does not include the repayment of principal at the time of a refinancing;

(3) Electric utility means an electric supplier that:

(a) Owns more than one hundred miles of one-hundred-fifteen-kilovolt or larger transmission lines in the State of Nebraska;

(b) Owns more than two hundred megawatts of electric generating facilities; and

(c) Has the obligation to directly serve more than two hundred megawatts of wholesale or retail electric load in the State of Nebraska;

(4) Gross power purchase agreement payments means the total amount of payments during the life of the agreement. For power purchase agreements entered into on or before December 31, 2011, if the qualified owners have a combined total of at least thirty-three percent of the equity ownership in the

C-BED project, gross power purchase agreement payments shall be reduced by the debt financing payments; and

(5) Qualified owner means:

(a) A Nebraska resident;

(b) A limited liability company that is organized under the Limited Liability Company Act or the Nebraska Uniform Limited Liability Company Act and that is made up of members who are Nebraska residents;

(c) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

(d) An electric supplier as defined in section 70-1001.01, except that ownership in a single C-BED project is limited to no more than:

(i) Fifteen percent either directly or indirectly by a single electric supplier; and

(ii) A combined total of twenty-five percent ownership either directly or indirectly by multiple electric suppliers; or

(e) A tribal council.

Sec. 103. Section 77-2704.57, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.57 (1) Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of personal property for use in a C-BED project or community-based energy development project. This exemption shall be conditioned upon filing requirements for the exemption as imposed by the Tax Commissioner. The requirements imposed by the Tax Commissioner shall be related to ensuring that the property purchased qualifies for the exemption. The Tax Commissioner may require the filing of the documents showing compliance with section 70-1907, the organization of the project, the distribution of the payments, the power purchase agreements, the project pro forma, articles of incorporation, operating agreements, and any amendments or changes to these documents during the life of the power purchase agreement.

(2) The Tax Commissioner shall notify an electric utility that has a power purchase agreement with a C-BED project if there is a change in project ownership which makes the project no longer eligible as a C-BED project. Purchase of a C-BED project by an electric utility prior to the end of the power purchase agreement disqualifies the C-BED project for the exemption, but the Department of Revenue may not recover the amount of the sales and use tax that was not paid by the project prior to the purchase.

(3) For purposes of this section:

(a) C-BED project or community-based energy development project means a new wind energy project that:

(i) Has an ownership structure as follows:

(A) For a C-BED project that consists of more than two turbines, has one or more qualified owners with no single individual qualified owner owning directly or indirectly more than fifteen percent of the project and with at least thirty-three percent of the gross power purchase agreement payments flowing to the qualified owner or owners or local community; or

(B) For a C-BED project that consists of one or two turbines, has one or more qualified owners with at least thirty-three percent of the gross power purchase agreement payments flowing to a qualified owner or owners or local community; and

(ii) Has a resolution of support adopted:

(A) By the county board of each county in which the C-BED project is to be located; or

(B) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(b) Debt financing payments means principal, interest, and other typical financing costs paid by the C-BED project company to one or more third-party financial institutions for the financing or refinancing of the construction of the C-BED project. Debt financing payments does not include the repayment of principal at the time of a refinancing;

(c) New wind energy project means any tangible personal property incorporated into the manufacture, installation, construction, repair, or replacement of a device, such as a wind charger, windmill, or wind turbine, which is used to convert wind energy to electrical energy or for the transmission of electricity to the purchaser; and

(d) Qualified owner means:

(i) A Nebraska resident;

(ii) A limited liability company that is organized under the Limited Liability Company Act or the Nebraska Uniform Limited Liability Company Act and that is entirely made up of members who are Nebraska residents;

(iii) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

(iv) An electric supplier as defined in section 70-1001.01, except

that ownership in a single C-BED project is limited to no more than:

(A) Fifteen percent either directly or indirectly by a single electric supplier; and

(B) A combined total of twenty-five percent ownership either directly or indirectly by multiple electric suppliers; or

(v) A tribal council.

(4) Gross power purchase agreement payments are the total amount of payments during the life of the agreement. For power purchase agreements entered into on or before December 31, 2011, if the qualified owners have a combined total of at least thirty-three percent of the equity ownership in the C-BED project, gross power purchase agreement payments shall be reduced by the debt financing payments. For the purpose of determining eligibility of the project, an estimate of the payments and their recipients shall be used.

(5) Payments to the local community include, but are not limited to, lease payments to property owners on whose property a turbine is located, wind energy easement payments, and real and personal property tax receipts from the C-BED project.

(6) The Department of Revenue may examine the actual payments and the distribution of the payments to determine if the projected distributions were met. If the payment distributions to qualified owners do not meet the requirements of this section, the department may recover the amount of the sales or use tax that was not paid by the project at any time up until the end of three years after the end of the power purchase agreement.

(7) At any time prior to the end of the power purchase agreements, the project may voluntarily surrender the exemption granted by the Tax Commissioner and pay the amount of sales and use tax that would have otherwise been due.

(8) The amount of the tax due under either subsection (6) or (7) of this section shall be increased by interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date the tax would have been due if no exemption was granted until the date paid.

Sec. 104. Section 77-2716, Reissue Revised Statutes of Nebraska, is amended to read:

77-2716 (1) The following adjustments to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be made for interest or dividends received:

(a) There shall be subtracted interest or dividends received by the owner of obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(b) There shall be subtracted that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (a) of this subsection as reported to the recipient by the regulated investment company;

(c) There shall be added interest or dividends received by the owner of obligations of the District of Columbia, other states of the United States, or their political subdivisions, authorities, commissions, or instrumentalities to the extent excluded in the computation of gross income for federal income tax purposes except that such interest or dividends shall not be added if received by a corporation which is a regulated investment company;

(d) There shall be added that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (c) of this subsection and excluded for federal income tax purposes as reported to the recipient by the regulated investment company; and

(e) (i) Any amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection or the investment in the regulated investment company and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(ii) Any amount added under this subsection shall be reduced by any expenses incurred in the production of such income to the extent disallowed in the computation of federal taxable income.

(2) There shall be allowed a net operating loss derived from or connected with Nebraska sources computed under rules and regulations adopted and promulgated by the Tax Commissioner consistent, to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States. For a resident individual, estate, or trust, the net operating loss computed

on the federal income tax return shall be adjusted by the modifications contained in this section. For a nonresident individual, estate, or trust or for a partial-year resident individual, the net operating loss computed on the federal return shall be adjusted by the modifications contained in this section and any carryovers or carrybacks shall be limited to the portion of the loss derived from or connected with Nebraska sources.

(3) There shall be subtracted from federal adjusted gross income for all taxable years beginning on or after January 1, 1987, the amount of any state income tax refund to the extent such refund was deducted under the Internal Revenue Code, was not allowed in the computation of the tax due under the Nebraska Revenue Act of 1967, and is included in federal adjusted gross income.

(4) Federal adjusted gross income, or, for a fiduciary, federal taxable income shall be modified to exclude the portion of the income or loss received from a small business corporation with an election in effect under subchapter S of the Internal Revenue Code or from a limited liability company organized pursuant to the Limited Liability Company Act or the Nebraska Uniform Limited Liability Company Act that is not derived from or connected with Nebraska sources as determined in section 77-2734.01.

(5) There shall be subtracted from federal adjusted gross income or, for corporations and fiduciaries, federal taxable income dividends received or deemed to be received from corporations which are not subject to the Internal Revenue Code.

(6) There shall be subtracted from federal taxable income a portion of the income earned by a corporation subject to the Internal Revenue Code of 1986 that is actually taxed by a foreign country or one of its political subdivisions at a rate in excess of the maximum federal tax rate for corporations. The taxpayer may make the computation for each foreign country or for groups of foreign countries. The portion of the taxes that may be deducted shall be computed in the following manner:

(a) The amount of federal taxable income from operations within a foreign taxing jurisdiction shall be reduced by the amount of taxes actually paid to the foreign jurisdiction that are not deductible solely because the foreign tax credit was elected on the federal income tax return;

(b) The amount of after-tax income shall be divided by one minus the maximum tax rate for corporations in the Internal Revenue Code; and

(c) The result of the calculation in subdivision (b) of this subsection shall be subtracted from the amount of federal taxable income used in subdivision (a) of this subsection. The result of such calculation, if greater than zero, shall be subtracted from federal taxable income.

(7) Federal adjusted gross income shall be modified to exclude any amount repaid by the taxpayer for which a reduction in federal tax is allowed under section 1341(a)(5) of the Internal Revenue Code.

(8)(a) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent included, by income from interest, earnings, and state contributions received from the Nebraska educational savings plan trust created in sections 85-1801 to 85-1814.

(b) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent not deducted for federal income tax purposes, by the amount of any gift, grant, or donation made to the Nebraska educational savings plan trust for deposit in the endowment fund of the trust.

(c) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced by any contributions as a participant in the Nebraska educational savings plan trust, to the extent not deducted for federal income tax purposes, but not to exceed two thousand five hundred dollars per married filing separate return or five thousand dollars for any other return.

(d) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Nebraska educational savings plan trust to the extent previously deducted as a contribution to the trust.

(9)(a) For income tax returns filed after September 10, 2001, for taxable years beginning or deemed to begin before January 1, 2006, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by eighty-five percent of any amount of any federal bonus depreciation received under the federal Job Creation and Worker Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003, under section 168(k) or section 1400L of the Internal Revenue Code of 1986, as amended, for assets placed in service

after September 10, 2001, and before December 31, 2005.

(b) For a partnership, limited liability company, cooperative, including any cooperative exempt from income taxes under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, subchapter S corporation, or joint venture, the increase shall be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities.

(c) For a corporation with a unitary business having activity both inside and outside the state, the increase shall be apportioned to Nebraska in the same manner as income is apportioned to the state by section 77-2734.05.

(d) The amount of bonus depreciation added to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income by this subsection shall be subtracted in a later taxable year. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin before January 1, 2003, under the Internal Revenue Code of 1986, as amended, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years.

(10) For taxable years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2006, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount of any capital investment that is expensed under section 179 of the Internal Revenue Code of 1986, as amended, that is in excess of twenty-five thousand dollars that is allowed under the federal Jobs and Growth Tax Act of 2003. Twenty percent of the total amount of expensing added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following tax years.

(11)(a) Federal adjusted gross income shall be reduced by contributions, up to two thousand dollars per married filing jointly return or one thousand dollars for any other return, and any investment earnings made as a participant in the Nebraska long-term care savings plan under the Long-Term Care Savings Plan Act, to the extent not deducted for federal income tax purposes.

(b) Federal adjusted gross income shall be increased by the withdrawals made as a participant in the Nebraska long-term care savings plan under the act by a person who is not a qualified individual or for any reason other than transfer of funds to a spouse, long-term care expenses, long-term care insurance premiums, or death of the participant, including withdrawals made by reason of cancellation of the participation agreement or termination of the plan, to the extent previously deducted as a contribution or as investment earnings.

(12) There shall be added to federal adjusted gross income for individuals, estates, and trusts any amount taken as a credit for franchise tax paid by a financial institution under sections 77-3801 to 77-3807 as allowed by subsection (5) of section 77-2715.07.

Sec. 105. Section 77-2734.01, Reissue Revised Statutes of Nebraska, is amended to read:

77-2734.01 (1) Residents of Nebraska who are shareholders of a small business corporation having an election in effect under subchapter S of the Internal Revenue Code or who are members of a limited liability company organized pursuant to the Limited Liability Company Act or the Nebraska Uniform Limited Liability Company Act shall include in their Nebraska taxable income, to the extent includable in federal gross income, their proportionate share of such corporation's or limited liability company's federal income adjusted pursuant to this section. Income or loss from such corporation or limited liability company conducting a business, trade, profession, or occupation shall be included in the Nebraska taxable income of a shareholder or member who is a resident of this state to the extent of such shareholder's or member's proportionate share of the net income or loss from the conduct of such business, trade, profession, or occupation within this state, determined under subsection (2) of this section. A resident of Nebraska shall include in Nebraska taxable income fair compensation for services rendered to such corporation or limited liability company. Compensation actually paid shall be

presumed to be fair unless it is apparent to the Tax Commissioner that such compensation is materially different from fair value for the services rendered or has been manipulated for tax avoidance purposes.

(2) The income of any small business corporation having an election in effect under subchapter S of the Internal Revenue Code or limited liability company organized pursuant to the Limited Liability Company Act or the Nebraska Uniform Limited Liability Company Act that is derived from or connected with Nebraska sources shall be determined in the following manner:

(a) If the small business corporation is a member of a unitary group, the small business corporation shall be deemed to be doing business within this state if any part of its income is derived from transactions with other members of the unitary group doing business within this state, and such corporation shall apportion its income by using the apportionment factor determined for the entire unitary group, including the small business corporation, under sections 77-2734.05 to 77-2734.15;

(b) If the small business corporation or limited liability company is not a member of a unitary group and is subject to tax in another state, it shall apportion its income under sections 77-2734.05 to 77-2734.15; and

(c) If the small business corporation or limited liability company is not subject to tax in another state, all of its income is derived from or connected with Nebraska sources.

(3) Nonresidents of Nebraska who are shareholders of such corporations or members of such limited liability companies shall file a Nebraska income tax return and shall include in Nebraska adjusted gross income their proportionate share of the corporation's or limited liability company's Nebraska income as determined under subsection (2) of this section.

(4) The nonresident shareholder or member shall execute and forward to the corporation or limited liability company before the filing of the corporation's or limited liability company's return an agreement which states he or she will file a Nebraska income tax return and pay the tax on the income derived from or connected with sources in this state, and such agreement shall be attached to the corporation's or limited liability company's Nebraska return for such taxable year.

(5) In the absence of the nonresident shareholder's or member's executed agreement being attached to the Nebraska return, the corporation or limited liability company shall remit with the return an amount equal to the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident shareholder's or member's share of the corporation's or limited liability company's income which was derived from or attributable to this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the shareholder or member.

(6) The Tax Commissioner may allow a nonresident individual shareholder or member to not file a Nebraska income tax return if the nonresident individual shareholder's or member's only source of Nebraska income was his or her share of the small business corporation's or limited liability company's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the small business corporation or limited liability company has remitted the amount required by subsection (5) of this section on behalf of such nonresident individual shareholder or member. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual shareholder or member.

(7) A small business corporation or limited liability company return shall be filed only if one or more of the shareholders of the corporation or members of the limited liability company are not residents of the State of Nebraska or if such corporation or limited liability company has income derived from sources outside this state.

(8) For purposes of this section, any shareholder or member of the corporation or limited liability company that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the shareholder or member.

Sec. 106. This act becomes operative on January 1, 2011.

Sec. 107. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 108. Original sections 9-614, 67-248.02, 70-1903, 77-2704.57, 77-2716, and 77-2734.01, Reissue Revised Statutes of Nebraska, and sections 21-2601 and 21-2654, Revised Statutes Supplement, 2009, are repealed.