

## HOUSE BILL NO. 362

INTRODUCED BY T. BERRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LIMITED LIABILITY COMPANY LAWS; AUTHORIZING THE CREATION OF SERIES OF MEMBERS WITHIN A LIMITED LIABILITY COMPANY; PROVIDING THAT EACH SERIES OF MEMBERS MAY HAVE SEPARATE MEMBERS, MANAGERS, ASSETS, LIABILITIES, AND BUSINESS PURPOSES OR INVESTMENT OBJECTIVES; AND AMENDING SECTIONS 35-8-102, 35-8-107, 35-8-108, 35-8-202, 35-8-205, 35-8-208, 35-8-304, 35-8-307, 35-8-503, 35-8-803, 35-8-804, 35-8-901, AND 35-8-902, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 35-8-102, MCA, is amended to read:

**"35-8-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Articles of organization" means articles filed pursuant to 35-8-201 and those articles as amended or restated. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed under the laws of the state or country where it is organized.

(2) "At-will company" means a limited liability company other than a term company.

(3) "Authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

(4) "Business" includes every trade, occupation, profession, or other lawful purpose, whether or not carried on for profit.

(5) "Corporation" means a corporation formed under the laws of this state or a foreign corporation.

(6) "Court" includes every court having jurisdiction in the case.

(7) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under federal, state, or foreign law governing insolvency.

(8) "Disqualified person" means any person or entity that for any reason is or becomes ineligible under this chapter to become a member in a professional limited liability company.

(9) "Distribution" means a transfer of money, property, or other benefit to a member in that member's capacity as a member of a limited liability company or to a transferee of a member's distributional interest.

(10) "Distributional interest" means all of a member's interest in the distributions of a limited liability company.

(11) "Event of dissociation" means an event that causes a person to cease to be a member.

(12) "Foreign corporation" means a corporation that is organized under the laws of a state other than Montana or under the laws of any foreign country.

(13) "Foreign limited liability company" means an entity that is:

(a) an unincorporated entity;

(b) organized under laws of a state other than Montana or under the laws of any foreign country;

(c) organized under a statute pursuant to which an entity may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) not required to be registered or organized under any statute of this state other than this chapter.

(14) "Foreign limited partnership" means a limited partnership formed under the laws of any state other than Montana or under the laws of any foreign country.

(15) "Foreign professional limited liability company" means a limited liability company organized for the purpose of rendering professional services under the laws of any state other than Montana.

(16) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(17) "Limited liability company" or "domestic limited liability company" means an organization that is formed under this chapter.

(18) "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership.

(19) "Manager" means a person who, whether or not a member of a manager-managed company, is vested with authority under 35-8-301.

(20) "Manager-managed company" means a limited liability company that is so designated in its articles of organization.

(21) "Member" means a person who has been admitted to membership in a limited liability company, as provided in 35-8-703, and who has not dissociated from the limited liability company.

(22) "Member-managed company" means a limited liability company other than a manager-managed

1 company.

2 (23) "Operating agreement" means an agreement, including amendments, as to the conduct of the  
3 business and affairs of a limited liability company and the relations among the members, managers, and the  
4 company that is binding upon all of the members.

5 (24) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign  
6 limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

7 (25) "Professional limited liability company" means a limited liability company designating itself as a  
8 professional limited liability company in its articles of organization.

9 (26) "Professional service" means a service that may lawfully be rendered only by persons licensed under  
10 a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a  
11 professional limited liability company.

12 (27) "Qualified person" means a natural person, limited liability company, general partnership, or  
13 professional corporation eligible under this chapter to own shares issued by a professional limited liability  
14 company.

15 (28) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic  
16 or other medium and is recoverable in a perceivable form.

17 (29) "Series of members" means a group or collection of members of a limited liability company who  
18 share interests and have separate rights, powers, or duties with respect to property, obligations, or profits and  
19 losses associated with property or obligations and who are specified in the articles of organization or operating  
20 agreement of the limited liability company or are specified by one or more members or managers of the limited  
21 liability company or other persons as provided in the articles of organization or operating agreement.

22 ~~(29)~~(30) "Sign" means to identify a record by means of a signature, mark, or other symbol with the intent  
23 to authenticate it.

24 ~~(30)~~(31) "State" means a state, territory, or possession of the United States, the District of Columbia, or  
25 the Commonwealth of Puerto Rico.

26 ~~(31)~~(32) "Surviving limited liability company" means the constituent entity surviving the merger, as  
27 identified in the articles of merger provided for in 35-8-1201.

28 ~~(32)~~(33) "Term company" means a limited liability company designated as a term company in its articles  
29 of organization."  
30

1           **Section 2.** Section 35-8-107, MCA, is amended to read:

2           **"35-8-107. Powers -- scope.** (1) A limited liability company may:

3           ~~(1)~~(a) sue, be sued, complain, and defend in all courts;

4           ~~(2)~~(b) transact its business, carry on its operations, and have and exercise the powers granted by this  
5 section in any state; in any territory, district, or possession of the United States; and in any foreign country;

6           ~~(3)~~(c) make contracts and guarantees, incur liabilities, and borrow money;

7           ~~(4)~~(d) sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any of its  
8 assets;

9           ~~(5)~~(e) acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal  
10 with any interest in real or personal property, wherever located;

11           ~~(6)~~(f) issue notes, bonds, and other obligations and secure any of them by mortgage, deed of trust, or  
12 security interest of any of its assets;

13           ~~(7)~~(g) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell,  
14 mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock or other interests  
15 in and obligations of domestic and foreign corporations, associations, general or limited partnerships, limited  
16 liability companies, business trusts, and individuals;

17           ~~(8)~~(h) invest its surplus funds, lend money from time to time in any manner that may be appropriate to  
18 enable it to carry on the operations or fulfill the purposes set forth in its articles of organization, and take and hold  
19 real property and personal property as security for the payment of funds loaned or invested;

20           ~~(9)~~(i) elect or appoint agents and define their duties and fix their compensation;

21           ~~(10)~~(j) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part  
22 of its property and assets;

23           ~~(11)~~(k) be a promoter, stockholder, partner, member, associate, or agent of any corporation, partnership,  
24 domestic or foreign limited liability company, joint venture, trust, or other enterprise;

25           ~~(12)~~(l) indemnify and hold harmless any member, agent, or employee from and against any claims and  
26 demands whatsoever, except in the case of action or failure to act by the member, agent, or employee that  
27 constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in  
28 the articles of organization or operating agreement;

29           ~~(13)~~(m) cease its activities and dissolve;

30           ~~(14)~~(n) pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans,

1 share option plans, and benefit or incentive plans for any of its current or former directors, officers, employees,  
2 and agents;

3 ~~(15)(o)~~ make donations for the public welfare or for charitable, religious, scientific, or educational  
4 purposes and, in time of war, make donations in aid of war activities; and

5 ~~(16)(p)~~ do every other act not inconsistent with law that is appropriate to promote and further the business  
6 and affairs of the limited liability company.

7 ~~(2) This section does not apply~~ APPLIES to a limited liability company that has one or more series of  
8 members."

9  
10 **Section 3.** Section 35-8-108, MCA, is amended to read:

11 **"35-8-108. Registered name of foreign limited liability company -- registration renewal.** (1) A  
12 foreign limited liability company may register its name or its name with any addition required by 35-8-103 if the  
13 name is distinguishable from names that are not available under 35-8-103(2).

14 (2) A foreign limited liability company shall register its name or its name with any addition required by  
15 35-8-103 by delivering to the secretary of state for filing an application:

16 (a) setting forth:

17 (i) its name or its name with any addition required by 35-8-103;

18 (ii) the state or country where it was organized;

19 (iii) the date of its organization; ~~and~~

20 (iv) a brief description of the nature of its business; and

21 (v) if applicable, a statement that it has one or more series of members and whether the debts or  
22 liabilities of a series of members are enforceable against the assets of that series of members only and not  
23 against the assets of the company generally or another series of members;

24 (b) accompanied by a certificate of existence or a similar document from the state or country where it  
25 was organized.

26 (3) The name, if accepted by the secretary of state, is registered for the applicant's exclusive use as of  
27 the date the application is filed with the secretary of state.

28 (4) A foreign limited liability company may annually renew its registration for successive years by  
29 delivering to the secretary of state a renewal application that complies with the requirements of subsection (2).  
30 The renewal application must be received by the secretary of state for filing between October 1 and December

31 of the year preceding the year for which a renewal is sought. The renewal is effective until December 31 of the following year.

(5) A foreign limited liability company has the right to use its registered name until the registration of the name is canceled as a result of it consenting to the use of the registered name by another business entity authorized to do business in this state or until the foreign limited liability company applies for and receives a certificate of authority to transact business in this state or it organizes as a domestic limited liability company in this state. A foreign limited liability company receiving a certificate of authority to transact business in this state or that organizes as a domestic limited liability company may use the canceled registered name as its business name."

**Section 4.** Section 35-8-202, MCA, is amended to read:

**"35-8-202. Articles of organization.** (1) The articles of organization must set forth:

(a) the name of the limited liability company that satisfies the requirements of 35-8-103;

(b) whether the company is a term company and, if so, the term specified;

(c) the complete business mailing address of its principal office, wherever located;

(d) the information required by 35-7-105(1);

(e) (i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and business mailing addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) if the management of a limited liability company is reserved to the members, a statement that the company is to be managed in that fashion and the names and business mailing addresses of the initial members;

(f) whether one or more members of the company are to be liable for the limited liability company's debts and obligations under 35-8-304(3);

(g) if the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; ~~and~~

(h) if the limited liability company has one or more series of members, the operating agreement of each series of members in writing;

(i) if the limited liability company has one or more series of members, a statement of whether the debts or liabilities of any series of members are to be enforceable against the assets of that series of members only and not against the assets of another series of members or the limited liability company generally;

(j) if the limited liability company has one or more series of members, a statement setting forth the relative rights, powers, and duties of each series of members or indicating that the relative rights, powers, and duties of each series of members will be set forth in the operating agreement or established as provided in the operating agreement; and

~~(h)~~(k) any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.

(3) The articles of organization may not vary the nonwaivable provisions set out in 35-8-109. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(a) the operating agreement controls as to managers, members, and a member's transferee; and

(b) the articles of organization control as to a person, other than a manager, member, and member's transferee, that reasonably relies on the articles of organization to that person's detriment.

(4) The articles of organization or operating agreement may provide that the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series of members are enforceable against the assets of that series of members only and not against the assets of the limited liability company generally or any other series of members."

**SECTION 5. SECTION 35-8-205, MCA, IS AMENDED TO READ:**

**"35-8-205. Filing with secretary of state.** (1) The articles of organization or any other document required to be filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter and that all required filing fees have been paid, the secretary of state shall:

(a) endorse on the signed document the word "filed" and the date and time of accepting the document for filing;

(b) retain the signed document in the secretary of state's files; and

(c) send a certification letter to the person who filed the document or to the person's representative.

(2) If the secretary of state is unable to make the determination required for filing by subsection (1) at the time any documents are delivered for filing, the documents are considered to have been filed at the time of delivery if the secretary of state subsequently determines that the documents as delivered conform to the filing

provisions of 35-8-201 through 35-8-211.

(3) All documents filed with the secretary of state must reflect the name of the limited liability company and all series of members within the limited liability company if the limited liability company has one or more series of members."

**Section 6.** Section 35-8-208, MCA, is amended to read:

**"35-8-208. Annual report for secretary of state.** (1) 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, an annual report that sets forth:

(a) the name of the limited liability company and the jurisdiction under whose law it is organized;

(b) the information required by 35-7-105(1);

(c) the business mailing address of its principal office, wherever located;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and business mailing addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect and the names and business mailing addresses of the members;

(e) that the management of a series of members is vested in the members associated with the series of members;

~~(e)~~(f) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to the limited liability company for correction.



(5) The annual report must be executed by at least one member of the limited liability company or by the authorized agent.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification."

**Section 7.** Section 35-8-304, MCA, is amended to read:

**"35-8-304. Liability of members, and managers, and series of members to third parties.** (1) Except as provided in 39-51-1105 and subsection (3) of this section, a person who is a member or manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

(2) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers of the limited liability company.

(3) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

(a) a provision to that effect is contained in the articles of organization; and

(b) a member named as liable has consented in writing to the adoption of the provision or to be bound by the provision.

(4) The debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series of members are enforceable against the assets of that series of members only and not against the assets of the company generally or any other series of members if:

(a) separate and distinct records are maintained for the series of members and the assets associated with the series of members are held, directly or indirectly, including through a nominee or otherwise, and

1 accounted for separately from the other assets of the company and any other series of members; and  
2 (b) unless otherwise provided in the articles of organization or operating agreement, debts, liabilities,  
3 obligations, and expenses incurred, contracted for, or otherwise existing with respect to the company generally  
4 or another series of members are not enforceable against the assets of the series of members."  
5

6 **Section 8.** Section 35-8-307, MCA, is amended to read:

7 **"35-8-307. Management and voting.** (1) Unless the articles of organization or the operating agreement  
8 provide otherwise, in a member-managed company:

9 (a) each member has equal rights in the management and conduct of the company's business; and

10 (b) except as provided in subsection (3), any matter relating to the business of the company may be  
11 decided by a majority of the members.

12 (2) Unless the articles of organization or the operating agreement provide otherwise, in a  
13 manager-managed company:

14 (a) each manager has equal rights in the management and conduct of the company's business;

15 (b) except as provided in subsection (3), any matter relating to the business of the company may be  
16 exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

17 (c) a manager:

18 (i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a  
19 majority of the members; and

20 (ii) holds office until a successor has been elected and qualified, unless the manager sooner resigns or  
21 is removed.

22 (3) Unless the articles of organization or the operating agreement provide otherwise, the only matters  
23 of a member-managed or manager-managed company's business requiring the consent of all of the members  
24 are:

25 (a) the amendment of the operating agreement under 35-8-109;

26 (b) the authorization or ratification of acts or transactions under 35-8-109(3)(b)(ii) that would otherwise  
27 violate the duty of loyalty;

28 (c) an amendment to the articles of organization under 35-8-203;

29 (d) the compromise of an obligation to make a contribution under 35-8-502;

30 (e) the compromise, as among members, of an obligation to make a contribution or return money or other

1 property paid or distributed in violation of this chapter;

2 (f) the making of interim distributions under 35-8-601, including the redemption or repurchase of an  
3 interest;

4 (g) the admission of a new member;

5 (h) the use of the company's property to redeem an interest subject to a charging order;

6 (i) the consent to dissolve the company under 35-8-901;

7 (j) a waiver of the right to have the company's business wound up and the company terminated under  
8 35-8-901;

9 (k) the consent of members to merge with another entity under 35-8-1201; and

10 (l) the sale, lease, exchange, or other disposal of all, or substantially all, of the company's property with  
11 or without goodwill.

12 (4) Unless the articles of organization or the operating agreement provide otherwise, the management  
13 of a series of members is vested in the members associated with the series in proportion to their contribution to  
14 the capital of the series as adjusted from time to time to reflect properly any additional contributions or  
15 withdrawals from the assets or income of the series by the members associated with the series.

16 ~~(4)(5)~~ Action requiring the consent of members or managers under this chapter may be taken without  
17 a meeting.

18 ~~(5)(6)~~ A member or manager may appoint a proxy to vote or otherwise act for the member or manager  
19 by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

20 (7) (a) The articles of organization or operating agreement of a limited liability company may:

21 (i) create one or more series of members; or

22 (ii) vest authority in one or more members or managers of the company or in other persons to create one  
23 or more series of members that may include, without limitation, rights, powers, and duties senior to any existing  
24 series of members.

25 (b) The articles of organization or operating agreement may provide that any member associated with  
26 a series of members has no voting rights or has voting rights that differ from other members or other series of  
27 members.

28 (c) A series of members may have separate powers, rights, or duties with respect to specified property  
29 or obligations of the company or profits and losses associated with specified property or obligations, and any  
30 series of members may have a separate business purpose or investment objective."

1

2       **Section 9.** Section 35-8-503, MCA, is amended to read:

3       **"35-8-503. Sharing of profits and losses.** (1) Unless otherwise provided in the articles of organization  
4 or a written operating agreement, each member must be repaid that member's contributions to capital and share  
5 equally in the profits, losses, and surpluses remaining after all liabilities, including those to members, are satisfied.

6       (2) A distribution of the contributions and profits of a series of members of a limited liability company may  
7 not be made if, after giving the distribution effect:

8       (a) the limited liability company would not be able to pay the debts of the series of members from assets  
9 of the series of members as debts of the series become due in the usual course of business; or

10       (b) except as otherwise specifically permitted by the articles of organization or operating agreement, the  
11 total assets of the series of members would be less than the sum of the total liabilities of the series."

12

13       **Section 10.** Section 35-8-803, MCA, is amended to read:

14       **"35-8-803. Events causing member's dissociation.** (1) A member is dissociated from a limited liability  
15 company upon the occurrence of any of the following events:

16       ~~(1)~~(a) the company's having notice of the member's express will to withdraw upon the date of notice or  
17 on a later date if specified by the member;

18       ~~(2)~~(b) an event agreed to in the operating agreement as causing the member's dissociation;

19       ~~(3)~~(c) upon transfer of all of a member's distributional interest, other than a transfer for security purposes  
20 or pursuant to a court order charging the member's distributional interest that has not been foreclosed;

21       ~~(4)~~(d) the member's expulsion pursuant to the operating agreement;

22       ~~(5)~~(e) the member's expulsion by unanimous vote of the other members if:

23       ~~(a)~~(i) it is unlawful to carry on the company's business with the member;

24       ~~(b)~~(ii) there has been a transfer of substantially all of the member's distributional interest, other than a  
25 transfer for security purposes or pursuant to a court order charging the member's distributional interest, which  
26 has not been foreclosed;

27       ~~(c)~~(iii) within 90 days after the company notifies a corporate member that it will be expelled because it  
28 has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business  
29 has been suspended by the jurisdiction of its incorporation, the member fails to obtain a revocation of the  
30 certificate of dissolution or a reinstatement of its charter or its right to conduct business; or

1           ~~(d)~~(iv) a partnership or a limited liability company that is a member has been dissolved, and its business  
2 is being wound up;

3           ~~(6)~~(f) on application by the company or another member, the member's expulsion by judicial  
4 determination because the member:

5           ~~(a)~~(i) engaged in wrongful conduct that adversely and materially affected the company's business;

6           ~~(b)~~(ii) willfully or persistently committed a material breach of the operating agreement or of a duty owed  
7 to the company or the other members under 35-8-310; or

8           ~~(c)~~(iii) engaged in conduct relating to the company's business that makes it not reasonably practicable  
9 to carry on the business with the member;

10          ~~(7)~~(g) the member's:

11          ~~(a)~~(i) becoming a debtor in bankruptcy;

12          ~~(b)~~(ii) executing an assignment for the benefit of creditors;

13          ~~(c)~~(iii) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of all  
14 or substantially all of the member's property; or

15          ~~(d)~~(iv) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a  
16 trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without  
17 the member's consent or acquiescence or failing within 90 days after the expiration of stay to have the  
18 appointment vacated;

19          ~~(8)~~(h) in the case of a member who is an individual:

20          ~~(a)~~(i) the member's death;

21          ~~(b)~~(ii) the appointment of a guardian or general conservator for the member; or

22          ~~(c)~~(iii) a judicial determination that the member has otherwise become incapable of performing the  
23 member's duties under the operating agreement;

24          ~~(9)~~(i) in the case of a member that is a trust or is acting as a member by virtue of being a trustee of a  
25 trust, distribution of the trust's entire rights to receive distributions from the company, except that this subsection  
26 does not apply to the substitution of a successor trustee;

27          ~~(10)~~(j) in the case of a member that is an estate or is acting as a member by virtue of being a personal  
28 representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but  
29 not merely the substitution of a successor personal representative; or

30          ~~(11)~~(k) termination of the existence of a member if the member is not an individual, estate, or trust other

1 than a business trust.

2 (2) (a) Unless otherwise provided in the articles of organization or operating agreement, any event  
3 described in this chapter or in the articles of organization or operating agreement that causes a manager to cease  
4 to be a manager with respect to a series of members does not, in itself, cause the manager to cease to be a  
5 manager with respect to the limited liability company or with respect to any other series of members.

6 (b) Unless otherwise provided in the articles of organization or operating agreement, any event described  
7 in this chapter or in the articles of organization or operating agreement that causes a manager to cease to be  
8 associated with a series of members does not, in itself, cause any member to cease to be associated with any  
9 other series of members, terminate the continued membership of any member in the limited liability company,  
10 or cause the termination of the series of members, regardless of whether the member was the last remaining  
11 member associated with the series."

12  
13 **Section 11.** Section 35-8-804, MCA, is amended to read:

14 **"35-8-804. Member's power to dissociate -- wrongful dissociation.** (1) Unless otherwise provided  
15 in the operating agreement, a member has the power to dissociate from a limited liability company at any time,  
16 rightfully or wrongfully, pursuant to ~~35-8-803(1)~~ 35-8-803(1)(a).

17 (2) If the operating agreement has not eliminated a member's power to dissociate, the member's  
18 dissociation from a limited liability company is wrongful only if:

19 (a) it is in breach of an express provision of the agreement; or

20 (b) before the expiration of the specified term of a term company:

21 (i) the member withdraws by express will;

22 (ii) the member is expelled by judicial determination under ~~35-8-803(6)~~ 35-8-803(1)(f);

23 (iii) the member is dissociated by becoming a debtor in bankruptcy; or

24 (iv) in the case of a member that is not an individual, trust, other than a business trust, or estate, the  
25 member is expelled or otherwise dissociated because it willfully dissolved or terminated its existence.

26 (3) A member that wrongfully dissociates from a limited liability company is liable to the company and  
27 to the other members for damages caused by the dissociation. The liability is in addition to any other obligation  
28 of the member to the company or to the other members.

29 (4) If a limited liability company does not dissolve and wind up its business as a result of a member's  
30 wrongful dissociation under subsection (2), damages sustained by the company for the wrongful dissociation must

1 be offset against distributions otherwise due the member after the dissociation."

2  
3 **Section 12.** Section 35-8-901, MCA, is amended to read:

4 **"35-8-901. Dissolution.** (1) A limited liability company is dissolved and its affairs must be wound up  
5 when one of the following occurs:

6 (a) at the time or upon the occurrence of events specified in writing in the articles of organization or  
7 operating agreement;

8 (b) consent of the number or percentage of members specified in the operating agreement;

9 (c) an event that makes it unlawful for all or substantially all of the business of the company to be  
10 continued, but any cure of illegality within 90 days after notice to the company of the event is effective  
11 retroactively to the date of the event for purposes of this section;

12 (d) the expiration of the term specified in the articles of organization; or

13 (e) entry of a decree of judicial dissolution under 35-8-902.

14 (2) Subject to subsection (3), a limited liability company continues after dissolution only for the purpose  
15 of winding up its business.

16 (3) At any time after the dissolution of a limited liability company and before the winding up of its  
17 business is completed, the members, including a dissociated member whose dissociation caused the dissolution,  
18 may unanimously waive the right to have the company's business wound up and the company terminated. In that  
19 case:

20 (a) the limited liability company resumes carrying on its business as if dissolution had never occurred,  
21 and any liability incurred by the company or a member after the dissolution and before the waiver is determined  
22 as if the dissolution had never occurred; and

23 (b) the rights of a third party accruing under the provisions of 35-8-904(1) or arising out of conduct by  
24 the third party in reliance on the dissolution before the third party knew or received a notification of the waiver are  
25 not adversely affected.

26 (4) The affairs of a series of members of a limited liability company must be wound up:

27 (a) at the time, if any, specified in the articles of organization;

28 (b) upon the occurrence of an event specified in the operating agreement;

29 (c) unless otherwise provided in the articles of organization or operating agreement, upon the affirmative  
30 vote or written agreement of all the members associated with the series of members; or

1 (d) upon entry of a decree of judicial termination of the series of members pursuant to 35-8-902.

2 (5) (a) Unless otherwise provided in the articles of organization or operating agreement, upon the  
3 occurrence of an event requiring the affairs of a series of members to be wound up, a manager of the series who  
4 has not wrongfully terminated the series or, if there is not a manager, the members associated with the series,  
5 or a person approved by all of the members of the series may wind up the affairs of the series.

6 (b) Unless otherwise provided in the articles of organization or operating agreement, the person or  
7 persons winding up the affairs of a series of members:

8 (i) may take all actions necessary or proper to wind up the affairs of the series; and

9 (ii) shall distribute the assets of the series of members to the creditors of the series and the members  
10 associated with the series."

11  
12 **Section 13.** Section 35-8-902, MCA, is amended to read:

13 **"35-8-902. Judicial dissolution.** (1) On application by or for a member or a dissociated member, a  
14 district court may order dissolution of a limited liability company, or other appropriate relief, when:

15 (a) the economic purpose of the company is likely to be unreasonably frustrated;

16 (b) another member has engaged in conduct relating to the company's business that makes it not  
17 reasonably practicable to carry on the company's business with that member remaining as a member;

18 (c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the  
19 articles of organization and the operating agreement;

20 (d) the company failed to purchase the petitioner's distributional interest as required by 35-8-805; or

21 (e) the members or managers in control of the company have acted, are acting, or will act in a manner  
22 that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner.

23 (2) On application by a transferee of a member's interest, a district court may determine that it is  
24 equitable to wind up the company's business:

25 (a) after the expiration of the specified term, if the company was for a specified term at the time that the  
26 applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the  
27 transfer; or

28 (b) at any time, if the company was at will at the time that the applicant became a transferee by member  
29 dissociation, transfer, or entry of a charging order that gave rise to the transfer.

30 (3) Whenever it is not reasonably practicable to carry on the business of a series of members in



1 conformity with the articles of organization or operating agreement and upon application by or for a member of  
2 the series of members, a district court may decree only the termination of the series of members and may not  
3 decree the dissolution of the limited liability company."

4 - END -