HOUSE BILL No. 1394

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-1-18-1; IC 23-4-1-45; IC 23-16-3-5; IC 23-17-29-1; IC 23-18.

Synopsis: Various business law matters. Makes various changes to provisions concerning: (1) corporations; (2) partnerships; (3) limited partnerships; (4) nonprofit corporations; and (5) limited liability companies.

Effective: July 1, 2013.

Steuerwald

January 22, 2013, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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HOUSE BILL No. 1394

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 23-1-18-1, AS AMENDED BY P.L.133-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

(b) This article must require or permit filing the document in the office of the secretary of state.

(c) The document must contain the information required by this article. It may contain other information as well.

(d) The document must be legible, typewritten or printed or, if electronically transmitted, in a format that can be retrieved in a reproduced or typewritten form, and otherwise suitable for processing.

(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be ~~signed.~~ **executed:**

(1) by the chairman of the board of directors of the domestic or foreign corporation or by any of its officers;

(2) if directors have not been selected or the corporation has not been formed, by an incorporator;

(3) if the corporation is in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary; or

(4) for purpose of annual or biennial reports, by:

(A) a registered agent;

(B) a certified public accountant; or

(C) an attorney;

employed **or retained** by the business entity.

(g) Except as provided in subsection (m), the person signing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the document is signed. A signature on a document authorized to be filed under this article may be:

(1) a facsimile; or

(2) made by an attorney in fact.

(h) A power of attorney relating to the signing of a document authorized to be filed under this article by an attorney in fact may but is not required to be:

(1) sworn to, verified, or acknowledged;

(2) signed in the presence of a notary public;

(3) filed with the secretary of state; or

(4) included in another written agreement.

However, the power of attorney must be retained in the records of the corporation.

(i) A document authorized to be filed under this article may but is not required to contain:

(1) the corporate seal;

(2) an attestation by the secretary or an assistant secretary; and

(3) an acknowledgment, verification, or proof.

(j) If the secretary of state has prescribed a mandatory form for the document under section 2 of this chapter, the document must be in or on the prescribed form.

(k) The document must be delivered to the office of the secretary of state for filing as described in section 1.1 of this chapter and the correct filing fee must be paid in the manner and form required by the secretary of state.

(l) The secretary of state may accept payment of the correct filing fee by credit card, debit card, charge card, or similar method. However,

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if the filing fee is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the secretary of state receives payment or credit from the institution responsible for making the payment or credit. The secretary of state may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the secretary of state or charged directly to the secretary of state's account, the secretary of state or the credit card vendor may collect from the person using the bank or credit card a fee that may not exceed the highest transaction charge or discount fee charged to the secretary of state by the bank or credit card vendor during the most recent collection period. This fee may be collected regardless of any agreement between the bank and a credit card vendor or regardless of any internal policy of the credit card vendor that may prohibit this type of fee. The fee is a permitted additional charge under IC 24-4.5-3-202.

(m) A signature on a document that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

(1) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(2) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

(n) As used in this subsection, "filed document" means a document filed with the secretary of state under any provision of this title except for IC 23-1-49 or IC 23-1-53-3. As used in this subsection, "plan" means a plan of domestication, nonprofit conversion, entity conversion, merger, or share exchange. Whenever a provision under this article permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed document:

(A) shall be set forth in the plan or filed document; and

(B) shall state the manner in which the facts shall become operative.

(2) The facts may include, but are not limited to:

(A) any of the following that is available in a nationally recognized news or information medium either in print or electronically:

(i) Statistical or market indices.

(ii) Market prices of any security or group of securities.

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(iii) Interest rates.
(iv) Currency exchange rates.
(v) Similar economic or financial data;
(B) a determination or action by any person or body, including the corporation or any other party to a plan or filed document; or
(C) the terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.
(3) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:
(A) The name and address of any person required in a filed document.
(B) The registered office of any entity required in a filed document.
(C) The registered agent of any entity required in a filed document.
(D) The number of authorized shares and designation of each class or series of shares.
(E) The effective date of a filed document.
(F) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.
(4) If a provision of a plan or filed document is made dependent on a fact ascertainable outside the plan or filed document, and that fact is not ascertainable by reference to a source described in subdivision (2)(A) or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, the corporation shall file with the secretary of state articles of amendment setting forth the fact promptly after the time the fact referred to is first ascertainable or changes. Articles of amendment under this subdivision:
(A) are considered to be authorized by the authorization of the original plan or filed document or plan to which the articles of amendment relate; and
(B) may be filed by the corporation without further action by the board of directors or the shareholders.

SECTION 2. IC 23-4-1-45, AS AMENDED BY P.L.60-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 45. (a) To qualify as a limited liability partnership, a partnership under this chapter must do the following:
(1) File a registration with the secretary of state in a form

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determined by the secretary of state that satisfies the following:

(A) Is ~~signed~~ **executed** by one (1) or more partners authorized to sign the registration. A signature on a document under this clause that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

(i) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(ii) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

(B) States the name of the limited liability partnership, which must:

(i) contain the words "Limited Liability Partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of the name; and

(ii) be distinguishable upon the records of the secretary of state from the name of a limited liability partnership or other business entity registered to transact business in Indiana.

(C) States the address of the partnership's principal office.

(D) States the name of the partnership's registered agent and the address of the partnership's registered office for service of process as required to be maintained by section 50 of this chapter.

(E) Contains a brief statement of the business in which the partnership engages.

(F) States any other matters that the partnership determines to include.

(G) States that the filing of the registration is evidence of the partnership's intention to act as a limited liability partnership.

(2) Except as provided in subdivision (3), file a ninety dollar ($90) registration fee with the registration.

(3) If the registration required under subdivision (1) is filed electronically, file a filing fee of seventy-five dollars ($75).

(b) The secretary of state shall grant limited liability partnership status to any partnership that submits a completed registration with the required fee.

(c) Registration is effective and a partnership becomes a limited liability partnership on the date a registration is filed with the secretary of state or at any later date or time specified in the registration. The registration remains effective until it is voluntarily withdrawn by filing with the secretary of state a written withdrawal notice under section

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45.2 of this chapter.

(d) The status of a partnership as a limited liability partnership and the liability of a partner of a limited liability partnership is not adversely affected by errors or subsequent changes in the information stated in a registration under subsection (a).

(e) A registration on file with the secretary of state is notice that the partnership is a limited liability partnership and is notice of all other facts set forth in the registration.

SECTION 3. IC 23-16-3-5, AS AMENDED BY P.L.130-2006, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) Each certificate required or permitted to be filed in the office of the secretary of state under this article shall be executed in the following manner:

(1) An initial certificate of limited partnership must be signed by all general partners.

(2) A certificate of amendment or restatement must be signed by at least one (1) general partner and by each other general partner designated in the certificate as a new general partner; however, if there are no general partners a certificate of amendment or restatement must be signed by each new general partner as designated in the certificate.

(3) A certificate of cancellation must be signed by all general partners; however, if there is no general partner, a certificate of cancellation must be signed by a majority in interest of the limited partners.

(b) Any person may sign a certificate, a partnership agreement, or an amendment to a certificate or partnership agreement by an attorney in fact. Powers of attorney relating to the signing of a certificate, a partnership agreement, or an amendment to a certificate or partnership agreement by an attorney in fact need not be sworn to, verified, acknowledged, or signed in the presence of a notary public, and need not be filed with the secretary of state, but must be retained among the records of the partnership. A power of attorney may be included in the partnership agreement and need not be a separate document.

(c) The execution of a certificate by any person constitutes an oath or affirmation under the penalties of perjury that to the best of the person's knowledge and belief the statements made in the certificate are true.

(d) A signature on a document under this section that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

(1) has the intent to file the document as evidenced by a

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symbol executed or adopted by a party with present intention to authenticate the filing; and

(2) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

SECTION 4. IC 23-17-29-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) To be entitled to be filed by the secretary of state under this article, a document must meet the following conditions:

(1) Be filed in the office of the secretary of state.

(2) Contain the information required by this article.

(3) Be typewritten or printed.

(4) Be legible.

(5) Be in English. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) Be executed:

(A) by the presiding officer of the board of directors of a domestic or foreign corporation, the corporation's president, or by another of the corporation's officers;

(B) if directors have not been selected or the corporation has not been formed, by an incorporator; ~~or~~

(C) if the corporation is in the hands of a receiver, trustee, or other court appointed fiduciary, by the fiduciary; **or**

(D) for purposes of annual or biennial reports, by:

(i) a registered agent;

(ii) a certified public accountant; or

(iii) an attorney;

employed or retained by the business entity.

(7) Be signed by the person executing the document and state beneath or opposite the person's signature name the capacity in which the person signs. A signature on a document authorized to be filed under this article may be a facsimile. A signature on a document under this subdivision that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

(A) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(B) enters the filing party's name on the electronic form in a

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signature box or other place indicated by the secretary of state.

(b) A document may contain the following:

(1) A corporate seal.

(2) An attestation by a secretary or an assistant secretary.

(3) An acknowledgement, a verification, or a proof.

(c) If the secretary of state has prescribed a mandatory form for a document under section 2 of this chapter, the document must be in or on the prescribed form.

(d) A document must be delivered to the office of the secretary of state for filing as described in section 1.1 of this chapter and must be accompanied by the correct filing fee. The filing fee must be paid in the manner and form required by the secretary of state.

(e) The secretary of state may accept payment of the correct filing fee by credit card, debit card, charge card, or similar method. However, if the filing fee is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the secretary of state receives payment or credit from the institution responsible for making the payment or credit. The secretary of state may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the secretary of state or charged directly to the secretary of state's account, the secretary of state or the credit card vendor may collect from the person using the bank or credit card a fee that may not exceed the highest transaction charge or discount fee charged to the secretary of state by the bank or credit card vendor during the most recent collection period. This fee may be collected regardless of any agreement between the bank and a credit card vendor or regardless of any internal policy of the credit card vendor that may prohibit this type of fee. The fee is a permitted additional charge under IC 24-4.5-3-202.

SECTION 5. IC 23-18-1-7, AS AMENDED BY P.L.130-2006, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. "Distribution" means a direct or an indirect transfer of money or other property or the incurrence or the transfer of indebtedness by a limited liability company to or for the benefit of its members in respect of their interests in the limited liability company. A distribution may be in the form of a declaration or payment of a dividend, purchase, redemption, or other acquisition of an interest, a distribution of indebtedness, or otherwise. The term does not include:

(1) amounts constituting reasonable compensation for past or present services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefit program; or

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(2) the making of or payment or performance upon a bona fide guaranty or similar arrangement by a ~~corporation~~ **limited liability company** to or for the benefit of its ~~shareholders.~~ **members.**

However, the failure of an amount to satisfy subdivision (1), or of a payment or performance to satisfy subdivision (2), is not determinative of whether the amount, payment, or performance is a distribution.

SECTION 6. IC 23-18-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) A limited liability company may:

(1) be organized under this article **for any business, personal, or nonprofit purpose;** and ~~may~~

(2) conduct business in any state for any lawful purpose;

unless a more limited purpose is set forth in its articles of organization.

(b) A limited liability company must comply with any statute that regulates the limited liability company's business.

SECTION 7. IC 23-18-3-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 2.5. If the written operating agreement of a limited liability company provides for officers as permitted by IC 23-18-4-4(a)(3), the following apply:**

(1) Each officer has only those powers and duties specified in the written operating agreement.

(2) Each officer has the status of an agent of the limited liability company for purposes of section 3 of this chapter.

(3) If an officer acts within the officer's apparent authority to carry on the business of the limited liability company in the usual way, the officer's actions bind the limited liability company to the same extent as the actions of a manager would bind a limited liability company under section 1.1(c)(2) and 1.1(d) of this chapter unless:

(A) the written operating agreement specifically provides that the officer's actions do not bind the limited liability company; or

(B) the officer's actions are outside the scope of the officer's powers or authority, as stated in the written operating agreement.

(4) Notice to an officer of a matter relating to the business or affairs of the limited liability company, or the knowledge of the officer acting in the particular matter, is notice to the limited liability company to the same extent that notice to a manager or knowledge of a manager would be treated as notice to a limited liability company under section 2(b)(1) of

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this chapter.

SECTION 8. IC 23-18-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. **(a)** A written operating agreement may do **one (1) or more of** the following:

(1) ~~Eliminate or limit the personal~~ **Modify, increase, decrease, limit, or eliminate the duties (including fiduciary duties) or the** liability of a member or manager for ~~monetary damages for~~ breach of ~~a duty provided for~~ **the duties set forth** in section 2(a) of this chapter.

(2) Provide for indemnification of a member or manager for judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which a person is a party because the person is or was a member or manager.

(3) Provide for officers of a limited liability company that is:

(A) managed by a manager or managers; or

(B) managed by a member or members;

by specifying the title, powers, duties, and term of office (either perpetual or for a specific term) for each officer and the means by which each officer is to be appointed, elected, or reelected.

(4) Provide that one (1) or more persons who are not members or managers have the right to approve or disapprove any of one (1) or more specified actions with respect to the limited liability company, including:

(A) voluntary dissolution;

(B) merger; or

(C) amending the written operating agreement.

(b) If a person who is not a member or manager is given the right to approve or disapprove specified actions as permitted by subsection (a)(4), the person does not have the general right to vote with the members or managers regarding any matters unless specifically provided otherwise in the written operating agreement.

SECTION 9. IC 23-18-4-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 13. The policy of this article is to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements of limited liability companies.**

SECTION 10. IC 23-18-6-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 2.5. (a) Unless otherwise limited or prohibited in a written operating agreement, any single member**

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interest in a limited liability company:

(1) may be designated as a transfer on death property under IC 32-17-14, with:

(A) the member as the owner of the interest; and

(B) one (1) or more transfer on death beneficiaries designated; or

(2) may be titled and held in joint tenancy with right of survivorship between two (2) individuals.

(b) The following apply upon the death of a person who is the owner of a member interest designated as a transfer on death property:

(1) Each surviving transfer on death beneficiary has the status of an assignee of a fractional or percentage portion of the entire member interest owned by the deceased owner, consistent with the transfer on death beneficiary designation, until that transfer on death beneficiary is admitted as a member of the limited liability company.

(2) The rights and obligations of the surviving transfer on death beneficiary with respect to the member interest are subject to all:

(A) transfer restrictions;

(B) redemption options; or

(C) other provisions;

that apply to the member's interest or member interests generally under a written operating agreement.

(c) The following apply upon the death of a person who is the owner of a member interest held in joint tenancy:

(1) The surviving joint tenant has the status of an assignee of the entire member interest until the surviving joint tenant is admitted as a member of the limited liability company unless the surviving joint tenant was already a member under subsection (d) before the death of the other joint tenant.

(2) The rights and obligations of the surviving joint tenant with respect to the member interest are subject to all:

(A) transfer restrictions;

(B) redemption options; or

(C) other provisions;

that apply to the member interest generally under a written operating agreement.

(d) If a single member interest in a limited liability company is originally and initially issued in joint tenancy form to two (2) individuals, each joint tenant has the voting rights of a member

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unless otherwise provided in the written operating agreement. If an individual member:

(1) receives and holds a member interest as the sole owner; and

(2) at a later date, makes a lawful transfer of the member interest to be held in joint tenancy between the member and another person;

the other person, while both joint tenants are alive, has the status of an assignee of a fractional part of the member interest until the other person is admitted as a member of the limited liability company.

SECTION 11. IC 23-18-6-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. (a) On application to a **circuit or superior** court with jurisdiction by a judgment creditor of a member, the court may charge the interest of the member in the limited liability company with the payment of the unsatisfied amount of the judgment with interest.

(b) To the extent the court charges under subsection (a), the judgment creditor has only the rights of an assignee of the member's interest in the limited liability company.

(c) This article does not deprive a member of the benefit of any exemption laws applicable to the member's interest in the limited liability company.

(d) A creditor of a member or creditor of a member's assignee does not have a right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

(e) This section provides the exclusive remedy by which a judgment creditor of a member may satisfy a judgment from a judgment debtor's member interest in a limited liability company. A judgment creditor has no right to foreclose upon the charging order or the judgment debtor's member interest.

SECTION 12. IC 23-18-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) After a plan of merger is approved, the surviving limited liability company shall deliver to the secretary of state for filing articles of merger setting forth the following:

(1) The name and jurisdiction of organization of each limited liability company that is a party to merger.

~~(2) The plan of merger.~~

~~(3)~~ **(2)** A statement that the plan of merger was approved by each limited liability company as required by the laws of the state of its

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organization.

(3) Any amendments to the articles of organization set forth in the plan of merger.

(b) Unless a delayed effective date is specified, a merger takes effect when the articles of merger are filed.

(c) The surviving limited liability company resulting from a merger may, after the merger has become effective, file for record with the county recorder of each county where the limited liability company has real property at the time of the merger, the title that will be transferred by the merger, a file-stamped copy of the articles of merger. If the plan of merger sets forth amendments to the articles of organization that change the name of the surviving limited liability company, a file-stamped copy of the articles of merger may be filed for record with the county recorder of each county where the surviving limited liability company has real property at the time the merger becomes effective. A failure to record a copy of the articles of merger under this subsection does not affect the validity of the merger or the change in the limited liability company's name.

(d) Articles of merger are articles of dissolution for each domestic limited liability company that is not the surviving limited liability company in the merger.

SECTION 13. IC 23-18-9-1.1, AS AMENDED BY P.L.130-2006, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) A limited liability company is dissolved and the limited liability company's affairs must be wound up when the first of the following occurs:

(1) At the time or on the occurrence of events specified in writing in the articles of organization or operating agreement.

~~(2) If there is one (1) class or group of members, written consent of two-thirds (2/3) in interest of the members or, if there is more than one (1) class or group of members, written consent of two-thirds (2/3) in interest of each class or group of members.~~

(2) For a limited liability company:

(A) formed under this article after June 30, 2013, the unanimous consent of the members, unless a written operating agreement provides that dissolution may be authorized by the vote of members holding fewer than all the interests in the limited liability company or holding fewer than all interests in one (1) or more classes of members; or

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(B) formed under this article after June 30, 1999, and before July 1, 2013, if there is:

(i) one (1) class or group of members, written consent of two-thirds (2/3) in interest of the members; or

(ii) more than one (1) class or group of members, written consent of two-thirds (2/3) in interest of each class or group of members.

(3) Entry of a decree of judicial dissolution under section 2 of this chapter.

(c) A limited liability company is dissolved and the limited liability company's affairs must be wound up if there are no members. However, this subsection does not apply if, under a provision in the operating agreement, not more than ninety (90) days after the occurrence of the event that caused the last remaining member to cease to be a member, either:

(1) the personal representative of the last remaining member agrees in writing:

(A) to continue the business of the limited liability company; and

(B) to the admission of the personal representative or the personal representative's nominee or designee to the limited liability company as a member; or

(2) a member is admitted to the limited liability company in the manner provided for in the operating agreement specifically for the admission of a member to the limited liability company after the last remaining member ceases to be a member;

effective as of the time of the event that caused the last remaining member to cease to be a member.

SECTION 14. IC 23-18-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) A document required or permitted under this article may be filed with the secretary of state if the document meets the requirements under this article, including the following requirements:

(1) The document must contain the information required by this article, however, it may also contain additional information.

(2) The document must be typewritten or printed.

(3) The document must be legible.

(4) The document must be in the English language. A limited liability company's name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign limited liability companies need not be in English if accompanied by a reasonably authenticated

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English translation.

(5) The document must be executed:

(A) by a member or an agent designated by the limited liability company if the articles of organization do not provide for a manager or managers;

(B) by a manager or an agent designated by the limited liability company if the articles of organization do provide for a manager or managers; ~~or~~

(C) if the limited liability company is in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary; **or**

(D) for purposes of biennial reports, by:

(i) a registered agent;

(ii) a certified public accountant; or

(iii) an attorney;

employed or retained by the business entity.

(6) The person executing the document must sign the document and state beneath or opposite the signature the person's name and the capacity in which the person signs. A signature on a document authorized to be filed under this article may be a facsimile. A signature on a document under this subdivision that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

(A) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and

(B) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

(7) If the secretary of state has prescribed a mandatory form for the document under section 2 of this chapter, the document must be in or on the prescribed form.

(8) The document must be delivered to the secretary of state for filing and must be accompanied by the correct filing fee. The filing fee must be paid in the manner and form required by the secretary of state.

(b) The secretary of state may accept payment of the correct filing fee by credit card, debit card, charge card, or similar method. However, if the filing fee is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the secretary of state receives payment or credit from the institution responsible for making the payment or credit. The secretary of state may contract with a bank or credit card vendor for acceptance of bank or credit cards. However,

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if there is a vendor transaction charge or discount fee, whether billed to the secretary of state or charged directly to the secretary of state's account, the secretary of state or the credit card vendor may collect from the person using the bank or credit card a fee that may not exceed the highest transaction charge or discount fee charged to the secretary of state by the bank or credit card vendor during the most recent collection period. This fee may be collected regardless of any agreement between the bank and a credit card vendor or regardless of any internal policy of the credit card vendor that may prohibit this type of fee. The fee is a permitted additional charge under IC 24-4.5-3-202.

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