

**IC 23-18**

**ARTICLE 18. LIMITED LIABILITY COMPANIES**

**IC 23-18-1**

Chapter 1. Definitions

**IC 23-18-1-1**

**Citation of article**

Sec. 1. This article may be cited as the "Indiana business flexibility act".

*As added by P.L.8-1993, SEC.301.*

**IC 23-18-1-2**

**Application of definitions**

Sec. 2. The definitions of this chapter apply throughout this article.

*As added by P.L.8-1993, SEC.301.*

**IC 23-18-1-3**

**"Articles of organization"**

Sec. 3. "Articles of organization" means the articles of organization described by IC 23-18-2-4 and any amended or restated articles of organization.

*As added by P.L.8-1993, SEC.301.*

**IC 23-18-1-4**

**"Business trust"**

Sec. 4. "Business trust" means a business trust or a foreign business trust (as defined in IC 23-5).

*As added by P.L.8-1993, SEC.301.*

**IC 23-18-1-5**

**"Contribution"**

Sec. 5. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services that a person transfers to a limited liability company in the capacity as a member.

*As added by P.L.8-1993, SEC.301.*

**IC 23-18-1-6**

**"Corporation"**

Sec. 6. "Corporation" means a domestic corporation or a foreign corporation (as defined in either IC 23-1 or IC 23-17).

*As added by P.L.8-1993, SEC.301.*

**IC 23-18-1-7**

**"Distribution"**

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
- (2) the making of or payment or performance upon a bona fide guaranty or similar arrangement by a corporation to or for the benefit of its shareholders.

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.

*As added by P.L.8-1993, SEC.301. Amended by P.L.130-2006, SEC.26.*

#### **IC 23-18-1-8**

##### **"Event of dissociation"**

Sec. 8. "Event of dissociation" means an event that causes a person to cease being a member of a limited liability company as provided by IC 23-18-6-5.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-1-9**

##### **"Foreign limited liability company"**

Sec. 9. "Foreign limited liability company" means an entity that is:

- (1) an unincorporated association organized under the laws of a state other than Indiana or another jurisdiction, including a foreign country;
- (2) organized under a statute that affords each member of the entity limited liability with respect to the activities and ownership of the entity; and
- (3) not required to obtain a certificate of registration as a foreign limited partnership under IC 23-16 or qualify to transact business as a foreign business trust under IC 23-5.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-1-10**

##### **"Interest"**

Sec. 10. "Interest" means a member's economic rights in the limited liability company, including the member's share of the profits and losses of the limited liability company and the right to receive distributions from the limited liability company.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-1-11**

**"Limited liability company" or "domestic limited liability company"**

Sec. 11. "Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated association organized under this article.

*As added by P.L.8-1993, SEC.301.*

**IC 23-18-1-12**

**"Limited partnership"**

Sec. 12. "Limited partnership" means an Indiana limited partnership or foreign limited partnership (as defined in IC 23-16).

*As added by P.L.8-1993, SEC.301.*

**IC 23-18-1-13**

**"Majority in interest of the members"**

Sec. 13. "Majority in interest of the members" means the members who have made more than fifty percent (50%) of the agreed value, as stated in the records of the limited liability company, of the total contributions made by all members, to the extent that the contributions have not been previously returned.

*As added by P.L.8-1993, SEC.301.*

**IC 23-18-1-14**

**"Manager"**

Sec. 14. "Manager" means, with respect to a limited liability company whose articles of organization provide for a manager, a person designated in accordance with the authority under IC 23-18-4-1(b).

*As added by P.L.8-1993, SEC.301.*

**IC 23-18-1-15**

**"Member"**

Sec. 15. "Member" means a person admitted to membership in a limited liability company under IC 23-18-6-1 and as to whom an event of dissociation has not occurred.

*As added by P.L.8-1993, SEC.301.*

**IC 23-18-1-16**

**"Operating agreement"**

Sec. 16. "Operating agreement" means any written or oral agreement of the members as to the affairs of a limited liability company and the conduct of its business that is binding upon all the members.

*As added by P.L.8-1993, SEC.301.*

**IC 23-18-1-17**

**"Person"**

Sec. 17. "Person" means an individual, a corporation, a general or limited partnership, an association, a limited liability company, a foreign limited liability company, a business trust, or another legal

or commercial entity.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-1-18**

##### **"Principal office"**

Sec. 18. "Principal office" means the office, within or outside of Indiana, so designated in the biennial report where the principal executive offices of a domestic or foreign limited liability company are located.

*As added by P.L.8-1993, SEC.301. Amended by P.L.11-1996, SEC.26.*

#### **IC 23-18-1-19**

##### **"State"**

Sec. 19. "State" refers to a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

*As added by P.L.8-1993, SEC.301.*

## **IC 23-18-2**

### **Chapter 2. Organization and Powers**

#### **IC 23-18-2-1**

##### **Organization; purpose; regulation**

Sec. 1. (a) A limited liability company may be organized under this article and may 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.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-2-2**

##### **Powers**

Sec. 2. Unless the limited liability company's articles of organization provide otherwise, every limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including the following:

- (1) Sue, be sued, complain, and defend in its name.
- (2) Make and amend operating agreements, not inconsistent with its articles of organization or with the laws of this state, for managing the business and regulating the affairs of the limited liability company.
- (3) Purchase, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located.
- (4) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.
- (5) Except as otherwise prohibited by this article:
  - (A) purchase, receive, subscribe for, or otherwise acquire;
  - (B) own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and
  - (C) deal in and with shares, interests, obligations, or other securities of;  
any corporation, partnership, association, limited liability company, foreign limited liability company, or business trust.
- (6) Make contracts and guarantees, incur liabilities, borrow money, and issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.
- (7) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.
- (8) Be a promoter, a stockholder, a partner, a member, a manager, an associate, or an agent of any corporation, partnership, limited liability company, foreign limited liability company, joint venture, trust, or other enterprise.
- (9) Conduct its business, locate offices, and exercise the powers

granted by this article within or outside Indiana.

(10) Elect or appoint managers, agents, and employees, define their duties, fix their compensation, and lend them money and credit.

(11) Pay pensions and establish and administer pension plans, pension trusts, profit-sharing plans, welfare plans, qualified and nonqualified retirement plans, and benefit or incentive plans for any or all of its current or former managers, employees, and agents.

(12) Make donations for public welfare, charitable, scientific, or educational purposes.

(13) Transact any lawful business that will aid governmental policy.

(14) Indemnify and hold harmless any member, manager, agent, or employee from and against any and all claims and demands, except in the case of action or failure to act by the member, agent, or employee which constitutes willful misconduct or recklessness and subject to any standards and restrictions set forth in a written operating agreement.

(15) To the extent authorized by the licensing authority (as defined in IC 23-1.5-1-9) provide professional services (as defined in IC 23-1.5-1-11).

(16) Make payments or donations or do any other act that furthers the business and affairs of the limited liability company.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-2-3**

#### **Professional licensing or regulatory authorities; powers**

Sec. 3. Except for the prohibitions in this article concerning the personal liability of members, managers, employees, and agents of a limited liability company organized under this article, nothing in this article is intended to restrict or limit in any manner the authority and duty of any licensing authority (as defined in IC 23-1.5-1-9) or to regulate the provision of professional services (as defined in IC 23-1.5-1-11) within Indiana, notwithstanding that the member, manager, or employee of a limited liability company is providing professional services or engaging in the practice of a profession through the limited liability company.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-2-4**

#### **Formation; articles of organization; contents**

Sec. 4. (a) At least one (1) person may form a limited liability company by causing articles of organization to be executed and filed for record with the office of the secretary of state. A person does not need to be a member of the limited liability company at the time of formation or after formation has occurred.

(b) Articles of organization shall contain the following:

(1) The name of the limited liability company.

(2) The street address of the limited liability company's registered office in Indiana and the name of the limited liability company's registered agent at that office.

(3) The latest date upon which the limited liability company is to dissolve, or a statement that the duration of the limited liability company is perpetual until dissolution in accordance with this article.

(4) If the articles of organization provide for a manager or managers, a statement to that effect.

(5) Any other matters not inconsistent with this article that the members agree to include, including any matters that are required to be or may be included in an operating agreement under this article.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-2-5**

#### **Amendment of articles of organization**

Sec. 5. (a) Articles of organization of a limited liability company may be amended by filing articles of amendment of the articles of organization in the office of the secretary of state. The articles of amendment must contain the following:

- (1) The name of the limited liability company.
- (2) The date the articles of organization were filed.
- (3) The amendment to the articles of organization.

(b) Articles of organization of a limited liability company may be amended at any time that the members determine provided that the articles of organization as amended contain only provisions that may be lawfully contained in articles of organization at the time the amendment is made.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-2-6**

#### **Restated articles of organization**

Sec. 6. (a) Articles of organization may be restated at any time. Restated articles of organization must:

- (1) be filed with the secretary of state;
- (2) be specifically designated as "restated articles of organization"; and
- (3) state in the heading or in a separate paragraph the limited liability company's present name, and if the name has been changed, all of its former names and the date of filing of its original articles of organization.

(b) A restated articles of organization may include one (1) or more amendments to the articles of organization. If the restated articles of organization include an amendment, the amendment must be adopted as provided in section 5 of this chapter.

*As added by P.L.8-1993, SEC.301. Amended by P.L.121-1994, SEC.2.*

### **IC 23-18-2-7**

**Filing articles with secretary of state; notice**

Sec. 7. The fact that articles of organization of a limited liability company are on file in the office of the secretary of state is notice that the limited liability company has been organized and is notice of all other facts that are required to be set forth in the articles of organization under section 4 of this chapter and that are set forth in the articles of organization.

*As added by P.L.8-1993, SEC.301.*

**IC 23-18-2-8****Name**

Sec. 8. (a) The name of each limited liability company as set forth in its articles of organization:

(1) must contain the words "limited liability company" or either of the following abbreviations:

(A) "L.L.C."; or

(B) "LLC";

(2) may contain the name of a member or manager; and

(3) except as provided in subsection (b), must be such as to distinguish the name upon the records of the office of the secretary of state from the name of any limited liability company or other business entity reserved, registered, or organized under the laws of Indiana or qualified to transact business as a foreign limited liability company in Indiana.

(b) A limited liability company may apply to the secretary of state to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (a). The secretary of state shall authorize the use of the name applied for if:

(1) the other domestic or foreign limited liability company or other business entity files its written consent to the use of its name; or

(2) the applicant delivers to the secretary of state a certified copy of a final court judgment from a circuit or superior court in the state of Indiana establishing the applicant's right to use the name applied for in Indiana.

*As added by P.L.8-1993, SEC.301. Amended by P.L.178-2002, SEC.105.*

**IC 23-18-2-9****Reservation of name**

Sec. 9. (a) A person may reserve the exclusive right to the use of a name, including a fictitious name by a foreign limited liability company whose name is not available, by delivering an application to the secretary of state. The application must set forth the name and address of the applicant and the name to be reserved. If the secretary of state finds that the name is available, the secretary of state shall reserve the name for the exclusive use of the applicant for renewable one hundred twenty (120) day periods.

(b) The owner of a reserved name may transfer the reservation to



another person by delivering to the office of the secretary of state a signed notice of the transfer that states the name and address of the transferee.

*As added by P.L.8-1993, SEC.301. Amended by P.L.277-2001, SEC.22.*

### **IC 23-18-2-9.5**

#### **Foreign limited liability companies; registration of name**

Sec. 9.5. (a) A foreign limited liability company may register its name, or its name with any addition required by IC 23-18-2-8, if the name is distinguishable upon the records of the secretary of state as provided in section 8 of this chapter.

(b) A foreign limited liability company registers its name, or its name with any addition required by IC 23-18-2-8, by delivering to the secretary of state for filing an application setting forth:

- (1) its name, or its name with any addition required by IC 23-18-2-8; and
- (2) the state or country and date of its formation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign limited liability company whose registration is effective may renew the registration for successive years by delivering to the secretary of state for filing a renewal application that complies with subsection (b). The renewal application must be filed between October 1 and December 31 of the preceding year. The filing of the renewal application renews the registration for the following calendar year.

(e) A foreign limited liability company whose registration is effective may thereafter qualify as a foreign limited liability company under that name or consent in writing to the use of that name by a limited liability company thereafter organized under this article or by another foreign limited liability company thereafter authorized to transact business in Indiana. The registration terminates when the domestic limited liability company is organized or the foreign limited liability company qualifies or consents to the qualification of another foreign limited liability company under the registered name.

*As added by P.L.277-2001, SEC.23.*

### **IC 23-18-2-10**

#### **Registered office; registered agent**

Sec. 10. A limited liability company must continuously maintain in Indiana the following:

- (1) A registered office.
- (2) A registered agent, who must be one (1) of the following:
  - (A) An individual who resides in Indiana and whose business office is identical with the registered office.
  - (B) A domestic limited liability company, domestic corporation, or nonprofit domestic corporation whose business office is identical with the registered office.

(C) A foreign limited liability company, foreign corporation, or nonprofit foreign corporation authorized to transact business in Indiana whose business office is identical with the registered office.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-2-11**

##### **Change of registered office or agent**

Sec. 11. (a) A limited liability company may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth the following:

- (1) The name of the limited liability company.
- (2) The street address of its current registered office.
- (3) If the current registered office is to be changed, the street address of the new registered office.
- (4) The name of its current registered agent.
- (5) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent or a representation that the new registered agent has consented either on the statement or attached to the statement to the appointment.
- (6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any limited liability company that the registered agent serves by notifying the limited liability company in writing of the change and signing either manually or in facsimile and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (a) and states that the limited liability company has been notified of the change.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-2-12**

##### **Resignation of agency; discontinuance of office**

Sec. 12. (a) A registered agent may resign the agency appointment by signing and delivering to the secretary of state for filing as described in IC 23-18-12 a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) After filing the statement, the secretary of state shall mail one (1) copy to the limited liability company at the limited liability company's principal office and one (1) copy to the registered office, if not discontinued.

(c) The agency appointment is terminated and the registered office discontinued, if discontinued under the statement, thirty-one (31) days after the statement was filed.

*As added by P.L.8-1993, SEC.301. Amended by P.L.228-1995,*

*SEC.26.*

**IC 23-18-2-13**

**Service of process; perfection; nonexclusive means**

Sec. 13. (a) A limited liability company's registered agent is the limited liability company's agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company.

(b) If a limited liability company does not have a registered agent or the agent cannot with reasonable diligence be served, the limited liability company may be served by registered or certified mail, return receipt requested, addressed to the limited liability company at the limited liability company's principal office. Service is perfected under this subsection at the earliest of the following:

- (1) The date the limited liability company receives the mail.
- (2) The date shown on the return receipt, if signed on behalf of the limited liability company.
- (3) Five (5) days after the deposit of the service in the United States mail, if mailed postpaid and correctly addressed.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a limited liability company.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-3**

#### **Chapter 3. Relations of Members and Managers to Persons Dealing With a Limited Liability Company**

### **IC 23-18-3-1**

#### **Members and managers as agents; companies existing on or before June 30, 1999**

Sec. 1. (a) Unless otherwise provided in a written operating agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) Except as provided in subsection (c), each member is an agent of the limited liability company for the purpose of the limited liability company's business or affairs, and the act of any member, including the execution in the name of the limited liability company of an instrument for apparently carrying on in the usual way the business or affairs of the limited liability company, binds the limited liability company, unless:

- (1) the acting member does not have authority to act for the limited liability company in the particular matter; and
- (2) the person with whom the member is dealing has knowledge of the fact that the member does not have the authority to act.

(c) If the articles of organization provide for a manager or managers, and except to the extent provided in the articles of organization:

- (1) a member acting solely in the capacity as a member is not an agent of the limited liability company; and
- (2) each manager is an agent of the limited liability company for the purpose of its business or affairs, and the act of any manager, including the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager so acting does not have authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge of the fact that the manager does not have the authority to act.

(d) An act of a manager or a member that is not apparently for the carrying on in the usual way the business of the limited liability company does not bind the limited liability company unless authorized in accordance with a written operating agreement or by the unanimous consent of all members at any time.

*As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.1.*

### **IC 23-18-3-1.1**

#### **Members and managers as agents; companies formed after June 30, 1999**

Sec. 1.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) Except as provided in subsection (c) or the articles of

organization, each member is an agent of the limited liability company for the purpose of the limited liability company's business or affairs, and the act of any member, including the execution in the name of the limited liability company of an instrument for apparently carrying on in the usual way the business or affairs of the limited liability company, binds the limited liability company, unless:

(1) the acting member does not have authority to act for the limited liability company in the particular matter; and

(2) the person with whom the member is dealing has knowledge of the fact that the member does not have the authority to act.

(c) If the articles of organization provide for a manager or managers, and except to the extent provided in the articles of organization:

(1) a member acting solely in the capacity as a member is not an agent of the limited liability company; and

(2) each manager is an agent of the limited liability company for the purpose of its business or affairs, and the act of any manager, including the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager does not have authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge of the fact that the manager does not have the authority to act.

(d) An act of a manager or member that is not apparently for the carrying on in the usual way the business of the limited liability company does not bind the limited liability company unless authorized in accordance with a written operating agreement or by the unanimous consent of all members at any time.

*As added by P.L.269-1999, SEC.2.*

### **IC 23-18-3-2**

#### **Notice to member or manager imputed to company; exceptions**

Sec. 2. (a) Except as provided in subsection (b), notice to a member of a matter relating to the business or affairs of the limited liability company and the knowledge of the member acting in the particular matter acquired while a member or of which the person had knowledge at the time of becoming a member, and the knowledge of any other member who reasonably could and should have communicated the knowledge to the acting member, is notice to the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that member.

(b) If the articles of organization provide for a manager or managers:

(1) notice to a manager of a matter relating to the business or affairs of the limited liability company, and the knowledge of the manager acting in the particular matter, acquired while a manager or of which the person had knowledge at the time of

becoming a manager, and the knowledge of any other manager who reasonably could and should have communicated the knowledge to the acting manager, is notice to the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that manager; and

(2) notice to or knowledge of any member of a limited liability company while the member is acting solely in the capacity of a member is not notice to or knowledge of the limited liability company.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-3-3**

#### **Personal liability of members, managers, agents, or employees**

Sec. 3. (a) A member, a manager, an agent, or an employee of a limited liability company is not personally liable for the debts, obligations, or liabilities 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. A member, a manager, an agent, or an employee of a limited liability company may be personally liable for the person's own acts or omissions.

(b) This article and Indiana law exclusively govern any conflict between Indiana law and the laws of another state with regard to the liability of a member, a manager, an agent, or an employee of a limited liability company organized and existing under this article for the debts, obligations, or liabilities of the limited liability company, or for the acts or omissions of other members, managers, agents, or employees of the limited liability company.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-3-4**

#### **Professional services; liability**

Sec. 4. (a) This article does not alter any law applicable to the relationship between a person rendering professional services and a person receiving professional services, including liability arising out of the professional services.

(b) A person rendering professional services as a member, a manager, an employee, or an agent of a limited liability company is personally liable for the consequences of the person's acts or omissions to the extent provided by Indiana law or the laws of another state where the person is considered responsible.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-3-5**

#### **Member as party to proceeding**

Sec. 5. A member of a limited liability company may not be made a party to a proceeding by or against a limited liability company solely by reason of being a member of the limited liability company, except:

- (1) when the object of the proceeding is to enforce a member's right against or liability to the limited liability company; or
- (2) in an action brought under IC 23-18-8-1.

*As added by P.L.8-1993, SEC.301.*

## **IC 23-18-4**

### **Chapter 4. Rights and Duties of Members and Managers**

#### **IC 23-18-4-1**

##### **Authority of members or managers**

Sec. 1. (a) Unless the articles of organization provide for a manager or managers, management of the business or affairs of the limited liability company is vested in the members. Subject to any provisions in the operating agreement or this article restricting or enlarging the management rights and duties of any person or group or class of persons, the members have the right and authority to manage the affairs and make all decisions of the limited liability company.

(b) If the articles of organization provide for a manager or managers, except to the extent that the operating agreement reserves the authority to any members or class or group of members, the manager or managers have the authority to manage the business or affairs of the limited liability company. Unless otherwise provided in a written operating agreement, a manager or managers:

- (1) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority in interest of the members;
- (2) do not need to be members of the limited liability company or natural persons; and
- (3) unless they have been earlier removed or have earlier resigned, shall act as managers until their successors have been elected and qualified.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-4-2**

##### **Acts and omissions liability; trustee for personal benefits derived through company; duties of member in company providing for manager**

Sec. 2. (a) Unless otherwise provided in a written operating agreement, a member or manager is not liable for damages to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company, unless the act or omission constitutes willful misconduct or recklessness.

(b) Unless otherwise provided in a written operating agreement, each member and manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by the manager or member without the consent of a majority of the disinterested managers or members or other persons participating in the management of the business or affairs of the limited liability company from:

- (1) a transaction connected with the conduct or winding up of the limited liability company; or
- (2) any use by the manager or member of the limited liability company's property, including confidential or proprietary



information of the limited liability company or other matters entrusted to the manager or member because of the manager's or member's status as manager or member.

(c) Unless otherwise provided in a written operating agreement, a member of a limited liability company in which the articles of organization provide for a manager or managers and who is not a manager has no duties to the limited liability company or to the other members solely by reason of acting in the capacity as a member.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-4-3**

#### **Affirmative vote, approval, or consent; requirements**

Sec. 3. (a) Unless the articles of organization provide for a manager or managers, and except as otherwise provided in a written operating agreement or this article and subject to subsection (c), the affirmative vote, approval, or consent of a majority in interest of the members is required to decide a matter connected with the business or affairs of the limited liability company.

(b) If the articles of organization provide for more than one (1) manager and except as provided otherwise in a written operating agreement or this article, the affirmative vote, approval, or consent of a majority of the managers shall be required to decide any matter that requires the approval of the managers.

(c) Except as provided otherwise in a written operating agreement, the affirmative vote, approval, or consent of all members is required to do the following:

(1) Amend the operating agreement.

(2) Authorize a manager, a member, or another person to do an act on behalf of the limited liability company that contravenes the operating agreement, including a written provision of the operating agreement that expressly limits the purpose, business, affairs, or conduct of the limited liability company.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-4-4**

#### **Written operating agreement**

Sec. 4. A written operating agreement may do the following:

(1) Eliminate or limit the personal liability of a member or manager for monetary damages for breach of a duty provided for 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.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-4-5**

#### **Operating agreements; objectives**

Sec. 5. Members may enter into an operating agreement to regulate or establish any aspect of the affairs of the limited liability

company or the relations of the members and managers, if any, including provisions establishing the following:

- (1) The manner in which the business and affairs of the limited liability company shall be managed, controlled, and operated, which may include the granting of exclusive authority to manage, control, and operate the limited liability company to managers who are not members.
- (2) The manner in which the members will share in distributions of the assets and the profits or losses of the limited liability company.
- (3) The rights of members to assign all or a portion of their interests in the limited liability company.
- (4) Classes or groups of at least one (1) member having certain relative rights, powers, and duties, including voting rights, and may provide for the future creation, in the manner provided in the operating agreement, of additional classes or groups of members having certain relative rights, powers, or duties, including voting rights, expressed either in the operating agreement or at the time the classes or groups are created, including rights, powers, or duties senior to those of at least one (1) existing class or group of members.
- (5) Classes or groups of at least one (1) manager having certain relative rights, powers, and duties, including voting rights, and may provide for the future creation, in the manner provided in the operating agreement, of additional classes or groups of managers having certain relative rights, powers, or duties, including voting rights, expressed either in the operating agreement or at the time the classes or groups are created, including rights, powers, or duties senior to those of at least one (1) existing class or group of managers.
- (6) The circumstances in which an assignee of a member's interest may be admitted as a member of the limited liability company.
- (7) The procedure for the following:
  - (A) The right to have a member's interest in the limited liability company evidenced by a certificate issued by the limited liability company.
  - (B) Assignment, pledge, or transfer of an interest represented by the certificate.
  - (C) Any other provisions dealing with the certificate.
- (8) The method by which the operating agreement may be amended.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-4-6**

##### **Initial operating agreement; amendments; power of attorney**

Sec. 6. (a) The initial operating agreement must be agreed to by all persons who are members at the time the initial agreement is accepted.

(b) An amendment to an oral operating agreement must be

approved by the unanimous consent of all members.

(c) An amendment to a written operating agreement must be in writing and must, unless otherwise provided in the operating agreement before the amendment, be approved by the unanimous consent of all members.

(d) A copy of any written amendment to an operating agreement must be delivered to each member who did not consent to the amendment and to each assignee who has not been admitted as a member.

(e) A person may sign articles of organization, an operating agreement, or an amendment to articles of organization or an operating agreement as an attorney in fact. A power of attorney relating to the signing of a document under this subsection 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 limited liability company.

*As added by P.L.8-1993, SEC.301. Amended by P.L.130-2006, SEC.27.*

#### **IC 23-18-4-7**

##### **Enforcement of operating agreement; injunctive or other relief**

Sec. 7. (a) A court may enforce an operating agreement by injunction or by granting other relief that the court in its discretion determines to be fair and appropriate in the circumstances.

(b) As an alternative to injunctive or other equitable relief, when the provisions under IC 23-18-9-2 are applicable, the court may order dissolution of the limited liability company.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-4-8**

##### **Records; inspection; full disclosure; omissions**

Sec. 8. (a) A limited liability company must keep at its principal office the following records and information:

- (1) A list with the full name and last known mailing address of each member and manager, if any, of the limited liability company from the date of organization.
- (2) A copy of the articles of organization and all amendments.
- (3) Copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the three (3) most recent years, or if the returns and statements were not prepared, copies of the information and statements provided to or that should have been provided to the members to enable them to prepare their federal, state, and local tax returns for the same period.
- (4) Copies of any written operating agreements and all amendments and copies of any written operating agreements no

longer in effect.

(5) Unless otherwise set forth in a written operating agreement, a writing setting out the following:

(A) The amount of cash, if any, and a statement of the agreed value of other property or services contributed by each member and the times at which or events upon the happening of which any additional contributions agreed to be made by each member are to be made.

(B) The events, if any, upon the happening of which the limited liability company is to be dissolved and its affairs wound up.

(C) Other writings, if any, required by the operating agreement.

(b) A member may, at the member's own expense, inspect and copy the limited liability company records described in subsection (a) where the records are located during ordinary business hours if the member gives the limited liability company written notice of the member's request at least five (5) business days before the date on which the member wishes to inspect and copy the records.

(c) Unless greater rights of access to records or other information are provided in a written operating agreement, members or managers, if any, shall give to the extent the circumstances allow just, reasonable, true, and full information of all things affecting the members to any member or to the legal representative of any deceased member or of any member under legal disability upon reasonable demand for any purpose reasonably related to a member's interest as a member of the limited liability company.

(d) If a limited liability company is managed by one (1) or more managers, a member or the legal representative of a deceased member or a member under a legal disability may obtain information under subsection (c) only if:

(1) the member makes the request at least five (5) business days before the date on which the member wishes to obtain the information;

(2) the member makes the request in good faith and for a proper purpose;

(3) the member describes with reasonable particularity the member's purpose and the information that the member wishes to obtain; and

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

(e) Failure of the limited liability company to keep or maintain the records or information required by this section is not grounds for imposing liability on any member for the debts and obligations of the limited liability company.

*As added by P.L.8-1993, SEC.301. Amended by P.L.130-2006, SEC.28; P.L.1-2007, SEC.163.*

#### **IC 23-18-4-9**

#### **Managerial omissions; penalties or consequences**

Sec. 9. If set forth in writing, an operating agreement may provide that:

- (1) a manager who fails to perform and comply with the terms and conditions of the operating agreement is subject to penalties or consequences specified in the operating agreement; and
- (2) at the time or upon the happening of events specified in the operating agreement, a manager is subject to penalties or consequences specified in the operating agreement.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-4-10**

##### **Good faith reliance on records by members or managers; liability**

Sec. 10. A member or manager of a limited liability company is not liable when relying in good faith upon the records of the limited liability company and on the information, opinions, reports, or statements presented to the limited liability company by its other managers, members, agents, or employees, or by any other person, concerning matters the member or manager reasonably believes are within the other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports, or statements concerning the value and amount of the assets, liabilities, profits, or losses of the limited liability company or other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-4-11**

##### **Resignation of manager**

Sec. 11. (a) A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in an operating agreement and in accordance with the operating agreement.

(b) A written operating agreement may provide that a manager does not have the right to resign as a manager of a limited liability company. Notwithstanding any provision in an operating agreement to the contrary, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates the operating agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the operating agreement and offset the damages against the amount payable to the resigning manager.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-4-12**

##### **Business between company and member or manager**

Sec. 12. Except when prohibited in a written operating agreement, a member or manager may lend money to and transact other business

with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect to the transaction as a person who is not a member or manager.

*As added by P.L.8-1993, SEC.301.*

## **IC 23-18-5**

### **Chapter 5. Finance**

#### **IC 23-18-5-1**

##### **Promises to contribute property or services; enforceability**

Sec. 1. (a) A promise by a member to make a contribution to the limited liability company is not enforceable unless the promise is written and signed by the member.

(b) Except as otherwise provided in a written operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform for any reason, including death and disability.

(c) If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to the value of that portion of the contribution that has not been made. This option is in addition to and not in lieu of any other rights, including the right to specific performance, that the limited liability company may have against the member under the operating agreement or applicable law. *As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-5-2**

##### **Obligation to make capital contribution or other payment; compromise; effect; remedies or consequences of nonpayment**

Sec. 2. (a) The obligation of a member to make a capital contribution or return money or other property paid or distributed in violation of this article may be compromised only:

- (1) in compliance with a written operating agreement; or
- (2) if a written operating agreement does not so provide, with the unanimous consent of the members.

(b) Any compromise does not affect the rights, if any, of any creditor of a limited liability company who, before the compromise, extends credit or acts in reliance on the obligation after the member signs a writing that reflects the obligation.

(c) An operating agreement may provide that a member who fails to make a capital contribution or other payment that the member is required to make is subject to specified remedies for or specified consequences of the failure. The remedy or consequence may include the following form:

- (1) Reducing the defaulting member's interest in the limited liability company.
- (2) Subordinating the defaulting member's interest in the limited liability company to that of nondefaulting members.
- (3) A forced sale of the defaulting member's interest in the limited liability company.
- (4) Forfeiture of the defaulting member's interest in the limited liability company.
- (5) A loan by the nondefaulting members of the amount necessary to meet the commitment.

(6) A determination of the value of the member's interest in the limited liability company by appraisal or by formula and redemption and sale of the defaulting member's interest in the limited liability company at that value.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-5-3**

#### **Allocation of profits and losses**

Sec. 3. Unless otherwise provided in the operating agreement, profits and losses must be allocated on the basis of the agreed value, as stated in the records of the limited liability company, of the contributions made by each member to the extent the contributions have been received by the limited liability company and not previously returned.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-5-4**

#### **Shared distributions of cash or other assets**

Sec. 4. Except as provided in section 5 or 5.1 of this chapter and IC 23-18-9-6, distributions of cash or other assets of a limited liability company must be shared among the members and among classes of members in the manner provided in the operating agreement. If the operating agreement does not provide otherwise, distributions must be allocated on the basis of the agreed value, as stated in the records of the limited liability company, of the contributions made by each member to the extent the contributions have been received by the limited liability company and not previously returned. A member is entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the events specified in the operating agreement or at the times determined by the members or managers, if any, voting under IC 23-18-4-3.

*As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.3.*

### **IC 23-18-5-5**

#### **Dissociation; companies existing on or before June 30, 1999**

Sec. 5. (a) Unless otherwise provided in a written operating agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) Upon the occurrence of an event of dissociation under IC 23-18-6-5 that does not cause dissolution, a dissociating member is entitled to receive:

- (1) any distribution that the member is entitled to under this article or the operating agreement; and
- (2) unless otherwise provided in the operating agreement, within a reasonable time after dissociation, the fair value of the member's interest in the limited liability company as of the date of dissociation based on the member's right to share in distributions from the limited liability company, less a



distribution received under subdivision (1).  
*As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.4; P.L.130-2006, SEC.29.*

#### **IC 23-18-5-5.1**

##### **Dissociation; companies formed after June 30, 1999**

Sec. 5.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) Upon the occurrence of an event of dissociation under IC 23-18-6-5, a dissociating member is entitled to receive:

- (1) any distribution that the member is entitled to under this article or the operating agreement; and
- (2) unless otherwise provided in the operating agreement, within a reasonable time after dissociation, the fair value of the member's interest in the limited liability company as of the date of dissociation based on the member's right to share in distributions from the limited liability company, less a distribution received under subdivision (1).

*As added by P.L.269-1999, SEC.5. Amended by P.L.130-2006, SEC.30.*

#### **IC 23-18-5-6**

##### **Distributions**

Sec. 6. (a) A distribution may not be made if after giving effect to the distribution:

- (1) the limited liability company would not be able to pay its debts as the debts become due in the usual course of business; or
- (2) the limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement permits otherwise, the amount that would be needed if the affairs of the limited liability company were to be wound up at the time of the distribution to satisfy any preferential rights that are superior to the rights of members receiving the distribution.

(b) The limited liability company may base a determination that a distribution is not prohibited under subsection (a) upon one (1) of the following:

- (1) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances.
- (2) A fair valuation of assets and liabilities or other reasonable method approved by the members or managers, if any.

(c) Except as provided in subsection (e), the effect of a distribution under subsection (a) is measured as of:

- (1) the date the distribution is authorized if the payment occurs not more than one hundred twenty (120) days after the date of authorization; or
- (2) the date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

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

(e) If terms of the indebtedness provide that payment of principal and interest is to be made only if and to the extent that payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection (b).

(f) If the 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 actually made.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-5-7**

#### **Unlawful distributions; liability**

Sec. 7. (a) A member or manager who votes for or assents to a distribution in violation of the operating agreement or section 6 of this chapter is personally liable to the limited liability company for the amount of the distribution that exceeds the amount that could have been distributed without violating the operating agreement or section 6 of this chapter or if it is established that the member or manager did not act in compliance with section 6 of this chapter.

(b) Each member or manager held liable under subsection (a) for an unlawful distribution is entitled to contribution from the following:

(1) Each other member or manager who could be held liable under subsection (a) for the unlawful distribution.

(2) Each member for the amount the member received knowing that the distribution was made in violation of the operating agreement or section 6 of this chapter.

(c) A proceeding under this section is barred unless it is commenced not more than two (2) years after the date on which the effect of the distribution is measured under section 6 of this chapter.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-5-8**

#### **Distributions in kind**

Sec. 8. (a) Except as provided in the operating agreement, a member, regardless of the nature of the member's contribution, does not have a right to demand and receive a distribution from a limited liability company in a form other than cash.

(b) Except as provided in the operating agreement, a member may not be compelled to accept a distribution in kind from a limited liability company to the extent that the member's percentage interest in the assets being distributed in kind exceeds the percentage of distributions that the member is entitled to receive under section 4 of

this chapter.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-5-9**

##### **Status of member entitled to receive distribution**

Sec. 9. At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

*As added by P.L.8-1993, SEC.301.*

## **IC 23-18-6**

### **Chapter 6. Membership**

#### **IC 23-18-6-0.5**

##### **Minimum membership**

Sec. 0.5. A limited liability company formed under this article or a foreign limited liability company admitted to transact business in Indiana under IC 23-18-11 may have at least one (1) member.

*As added by P.L.34-1997, SEC.16.*

#### **IC 23-18-6-1**

##### **Acquisition of membership**

Sec. 1. (a) Subject to subsection (b), a person may become a member in a limited liability company:

- (1) in the case of a person acquiring an interest directly from the limited liability company, upon compliance with the operating agreement or if the operating agreement does not provide in writing, upon the written consent of all members; and
- (2) in the case of an assignee of an interest, as provided in section 4 or 4.1 of this chapter.

(b) The effective time of admission of a member to a limited liability company is the later of the following:

- (1) The date the limited liability company is organized.
- (2) The time provided in the operating agreement, or if no time is provided, when the person's admission is reflected in the records of the limited liability company.

*As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.6.*

#### **IC 23-18-6-2**

##### **Interest of member; nature**

Sec. 2. The interest of a member in a limited liability company is personal property.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-6-3**

##### **Assignment of interest; companies existing on or before June 30, 1999**

Sec. 3. (a) Unless otherwise provided in a written operating agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) Except as provided in a written operating agreement:

- (1) an interest is assignable in whole or in part;
- (2) an assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled;
- (3) an assignment of an interest does not of itself dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member;

(4) until the assignee of an interest becomes a member, the assignor continues to be a member and to have the power to exercise any rights of a member, subject to the other members' right to remove the assignor under section 5(a)(3)(B) of this chapter;

(5) until an assignee of an interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

(6) the assignor of an interest is not released from liability as a member solely as a result of the assignment.

(c) Unless otherwise provided in an operating agreement, the pledge of or granting of a security interest, lien, or other encumbrance in or against any or all of the interest of a member is not an assignment and does not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

*As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.7.*

#### **IC 23-18-6-3.1**

##### **Assignment of interest; companies formed after June 30, 1999**

Sec. 3.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) Except as provided in a written operating agreement:

(1) an interest is assignable in whole or in part;

(2) an assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled;

(3) an assignment of an interest does not of itself dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member;

(4) until an assignee of an interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

(5) the assignor of an interest is not released from liability as a member solely as a result of the assignment.

(c) Unless otherwise provided in an operating agreement, the pledge of or granting of a security interest, lien, or other encumbrance in or against any or all of the interest of a member is not an assignment and does not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

*As added by P.L.269-1999, SEC.8. Amended by P.L.14-2000, SEC.54.*

#### **IC 23-18-6-4**

##### **Assignee membership; companies existing on or before June 30, 1999**

Sec. 4. (a) Unless otherwise provided in a written operating

agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) Except as otherwise provided in a written operating agreement, an assignee of an interest may become a member only if the other members unanimously consent. The consent of a member may be evidenced in any manner specified in writing in an operating agreement, but in the absence of a specification, consent must be evidenced by a written instrument, dated and signed by the member.

(c) An assignee who becomes a member:

(1) has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a member under the articles of organization, any operating agreement, and this article; and

(2) is liable for any obligations of the member's assignor for unpaid contributions under IC 23-18-5-1 or for any wrongful distributions under IC 23-18-5-7.

However, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time the assignee became a member and that could not be ascertained from a written operating agreement.

(d) Whether or not an assignee of an interest becomes a member, the assignor is not released from the assignor's liability to the limited liability company for unpaid contributions under IC 23-18-5-1 or for any wrongful distributions under IC 23-18-5-7 that are solely a result of the assignment.

(e) Unless otherwise provided in a written operating agreement, a member who assigns the member's entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a member when an assignee of the member's interest becomes a member with respect to the assigned interest.

*As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.9.*

#### **IC 23-18-6-4.1**

##### **Assignee membership; companies formed after June 30, 1999**

Sec. 4.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) Except as otherwise provided in a written operating agreement, if a limited liability company has at least two (2) members, an assignee of an interest may become a member only if the other members unanimously consent. The consent of a member may be evidenced in any manner specified in writing in an operating agreement, but in the absence of a specification, consent must be evidenced by a written instrument, dated and signed by the member. If a limited liability company has one (1) member, an assignee of an interest may become a member in accordance with the terms of an agreement between the assignor and the assignee.

(c) An assignee who becomes a member:

(1) has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a member under the

articles of organization, any operating agreement, and this article; and

(2) is liable for any obligations of the member's assignor for unpaid contributions under IC 23-18-5-1 or for any wrongful distributions under IC 23-18-5-7.

However, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time the assignee became a member and that could not be ascertained from a written operating agreement.

(d) Whether or not an assignee of an interest becomes a member, the assignor is not released from the assignor's liability to the limited liability company for unpaid contributions under IC 23-18-5-1 or for any wrongful distributions under IC 23-18-5-7 that are solely a result of the assignment.

(e) Unless otherwise provided in a written operating agreement, a member who assigns the member's entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a member.

*As added by P.L.269-1999, SEC.10.*

## **IC 23-18-6-5**

### **Cessation of membership**

Sec. 5. (a) A person ceases to be a member of a limited liability company upon the occurrence of any of the following events:

(1) The person withdraws from the limited liability company as provided in section 6 of this chapter.

(2) The person ceases to be a member as provided in section 4(e) or 4.1(e) of this chapter.

(3) The person is removed as a member:

(A) in accordance with the operating agreement; or

(B) unless otherwise provided in a written operating agreement, by the affirmative vote, approval, or consent of a majority in interest of the members after the member has assigned the member's entire interest in the limited liability company.

(4) Unless otherwise provided in a written operating agreement or with the written consent of all other members, in the case of a member who is an individual, the individual's death.

(5) Unless otherwise provided in a written operating agreement or with the written consent of all other members, in the case of a member who is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee.

(6) Unless otherwise provided in a written operating agreement or with the written consent of all other members, in the case of a member that is a partnership, limited partnership, or another limited liability company, the dissolution and commencement of winding up of the partnership, limited partnership, or limited liability company.

(7) Unless otherwise provided in a written operating agreement

or with the written consent of all other members, in the case of a member that is a corporation, the dissolution of the corporation.

(8) Unless otherwise provided in a written operating agreement or with the written consent of all other members, in the case of a member that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

(b) A written operating agreement may provide for other events that result in a person ceasing to be a member of the limited liability company, including insolvency, bankruptcy, and adjudicated incompetency.

*As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.11.*

#### **IC 23-18-6-6**

##### **Withdrawal of member; companies existing on or before June 30, 1999**

Sec. 6. (a) Unless otherwise provided in a written operating agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) Unless a written operating agreement provides that a member does not have the power to withdraw by voluntary act from a limited liability company, the member may do so at any time by giving thirty (30) days written notice to the other members or other notice required under the operating agreement. If the member has the power to withdraw but the withdrawal is a breach of the operating agreement, or the withdrawal occurs as a result of otherwise wrongful conduct of the member, the limited liability company may recover from the withdrawing member damages for breach of the operating agreement, including the reasonable cost of obtaining the replacement of services that the withdrawn member was obligated to perform. The limited liability company may offset the damages against amounts otherwise distributable to the withdrawn member, in addition to pursuing any remedies provided for in the operating agreement or available under applicable law.

(c) Unless otherwise provided in a written operating agreement, in the case of a limited liability company for a definite term or particular undertaking, a withdrawal by a member before the expiration of the term is a breach of the operating agreement.

*As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.12.*

#### **IC 23-18-6-6.1**

##### **Withdrawal of member; companies formed after June 30, 1999**

Sec. 6.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) Unless otherwise provided in a written operating agreement, a member may not withdraw from a limited liability company before the dissolution and winding up of the limited liability company. A member may withdraw from a limited liability company only at the



time or upon the occurrence of events specified in the operating agreement and in accordance with the operating agreement.

*As added by P.L.269-1999, SEC.13.*

#### **IC 23-18-6-7**

##### **Judgment creditors of members; rights**

Sec. 7. (a) On application to a 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.

*As added by P.L.8-1993, SEC.301.*

## **IC 23-18-7**

### **Chapter 7. Merger**

#### **IC 23-18-7-1**

##### **Planned merger; exchange or conversion of interests**

Sec. 1. (a) Unless otherwise provided in writing by the operating agreement, a limited liability company may merge with or into another limited liability company according to a plan of merger.

(b) An interest in a limited liability company that is a party to the merger may be exchanged for or converted into an interest, obligation, or other securities of the surviving limited liability company or into cash or other property.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-7-2**

##### **Written plan of merger; contents**

Sec. 2. (a) Each constituent limited liability company shall enter into a written plan of merger that is approved under section 3 of this chapter.

(b) The plan of merger must include the following:

(1) The name of each limited liability company planning to merge and the name of the surviving limited liability company into which each other limited liability company plans to merge.

(2) The terms and conditions of the merger.

(3) The manner and basis of converting the interests of each limited liability company, in whole or in part, into interests, obligations, or other securities of the surviving limited liability company or cash or other property.

(c) The plan of merger may include the following:

(1) Amendments to the articles of organization of the surviving limited liability company.

(2) Other provisions relating to the merger.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-7-3**

##### **Approval of plan of merger; abandonment**

Sec. 3. (a) Unless otherwise provided in writing in the operating agreement, a limited liability company that is a party to a proposed merger must approve the plan of merger by the unanimous consent of the members.

(b) A party to the merger may abandon the merger under the plan of merger or this chapter.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-7-4**

##### **Articles of merger; effective date of merger; recordation; dissolution effect**

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) A statement that the plan of merger was approved by each limited liability company as required by the laws of the state of its organization.

(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.

*As added by P.L.8-1993, SEC.301.*

## **IC 23-18-7-5**

### **Effect of merger**

Sec. 5. When a merger takes effect:

(1) every other party to the merger merges into the surviving limited liability company and the separate existence of every limited liability company except the surviving limited liability company ceases;

(2) the title to all real estate and other property owned by each party to the merger is vested in the surviving limited liability company without reversion or impairment;

(3) the surviving limited liability company has all liabilities of each party to the merger;

(4) a proceeding pending against a party to the merger may be continued as if the merger did not occur or the surviving limited liability company may be substituted in the proceeding for each limited liability company whose existence ceased;

(5) the articles of organization of the surviving limited liability company are amended to the extent provided in the plan of merger; and

(6) the interests of each party to the merger that are to be converted into interests, obligations, or other securities of the surviving limited liability company or cash or other property are converted and the former holders of interests are entitled only to the rights provided in the articles of merger.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-7-6**

##### **Foreign and domestic company merger**

Sec. 6. (a) A foreign limited liability company may participate in a merger with a domestic limited liability company if the following conditions are satisfied:

(1) The merger is permitted by the laws of the jurisdiction under whose laws the foreign limited liability company is organized and the foreign limited liability company complies with the laws in effecting the merger.

(2) The foreign limited liability company complies with section 4 of this chapter if it is the surviving limited liability company of the merger.

(3) Each domestic limited liability company complies with the applicable provisions of sections 1 through 3 of this chapter and, if it is the surviving limited liability company of the merger, with section 4 of this chapter.

(b) Upon the merger taking effect, the surviving foreign limited liability company agrees to the following:

(1) That it may be served with process in Indiana in any proceeding for enforcement of any obligation of any limited liability company to the merger that was organized under Indiana law, and for enforcement of any obligation of the surviving limited liability company arising from the merger.

(2) That the surviving foreign limited liability company appoints the secretary of state as its agent for service of process in any such proceeding, and the surviving limited liability company shall specify the address to which a copy of the process shall be mailed by the secretary of state.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-7-7**

##### **Abandonment of proposed merger**

Sec. 7. (a) Unless the plan of merger precludes the right to abandon the merger, a proposed merger may be abandoned before the effective date of the articles of merger, unless provided otherwise in the operating agreement, by the affirmative vote, approval, or consent of a majority in interest of the members of each limited liability company that is party to the merger.

(b) If the articles of merger have been filed with the secretary of state, notice of the abandonment must be given promptly to the secretary of state.

(c) If the proposed merger is abandoned as provided in this section, no liability arises under the articles of merger.

(d) An abandonment does not prejudice the rights of a person under any other contract made by a limited liability company that is a party to the merger in connection with the proposed merger.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-7-8**

#### **Certificates of merger**

Sec. 8. The secretary of state shall prepare certificates of merger that specify the following:

- (1) The name of each party to the articles of merger.
- (2) The name of the successor and the location of the successor's registered office in Indiana.
- (3) The date the articles of merger are accepted for record by the secretary of state.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-7-9**

#### **Requirements for merger of domestic limited liability company with other business entity; plan of merger**

Sec. 9. (a) As used in this section, "other business entity" means a corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is formed under the requirements of applicable law and is not otherwise subject to section 1 of this chapter.

(b) As used in this section, "surviving entity" means the corporation, limited liability company, limited liability partnership, limited partnership, business trust, real estate investment trust, or any other entity that is in existence immediately after consummation of a merger under this section.

(c) One (1) or more domestic limited liability companies may merge with or into one (1) or more other business entities formed, organized, or incorporated under the laws of Indiana or any other state, the United States, a foreign country, or a foreign jurisdiction if the following requirements are met:

- (1) Each domestic limited liability company that is a party to the merger complies with the applicable provisions of this chapter.
- (2) Each domestic other business entity that is a party to the merger complies with the requirements of applicable law.
- (3) The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated, and each other business entity complies with the laws in effecting the merger.
- (4) The merging entities approve a plan of merger that sets forth the following:
  - (A) The name of each domestic limited liability company and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting domestic limited liability partnership or other business entity into which each other domestic limited liability partnership or other business entity plans to merge.
  - (B) The terms and conditions of the merger.
  - (C) The manner and basis of converting the limited liability

company that is a party to the merger and the partnership interests, shares, obligations, or other securities of each other business entity that is a party to the merger into partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire the shares of each domestic corporation that is a party to the merger and rights to acquire partnership interests, interests, shares, obligations, or other securities of each other business entity that is a party to the merger into rights to acquire partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property.

(D) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(E) If a limited liability company is to be the surviving entity and management thereof is vested in one (1) or more managers, the names and business addresses of the managers.

(F) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or incorporated.

(5) The plan of merger may set forth the following:

(A) If a domestic corporation is to be the surviving entity, any amendments to, or a restatement of, the articles of incorporation of the surviving entity, and the amendments or restatement will be effective at the effective date of the merger.

(B) Any other provisions relating to the merger.

(d) The plan of merger required by subsection (c)(4) must be adopted and approved by each domestic limited liability company that is a party to the merger in the same manner as is provided in this chapter.

(e) Notwithstanding subsection (c)(4), if the surviving entity is a partnership, a shareholder of a domestic corporation that is a party to the merger does not, as a result of the merger, become a general partner of the surviving entity and the merger does not become effective under this chapter, unless:

(1) the shareholder specifically consents in writing to become a general partner of the surviving entity; and

(2) written consent is obtained from each shareholder who, as a result of the merger, would become a general partner of the surviving entity;

A shareholder providing written consent under this subsection is considered to have voted in favor of the plan of merger for purposes of this chapter.

(f) This section, to the extent applicable, applies to the merger of one (1) or more domestic limited liability companies with or into one (1) or more other business entities.

(g) Notwithstanding any other law, a merger consisting solely of the merger of one (1) or more domestic limited liability company with or into one (1) or more foreign corporations must be consummated solely according to the requirements of this section.

*As added by P.L.178-2002, SEC.106.*

#### **IC 23-18-7-10**

##### **Entity conversion**

Sec. 10. (a) As used in this section, "other entity" has the meaning set forth in IC 23-1-38.5-1.

(b) A domestic business corporation, domestic other entity, foreign business corporation, or foreign other entity may convert to a domestic limited liability company in accordance with IC 23-1-38.5.

(c) A domestic limited liability company may convert to a domestic business corporation, domestic other entity, foreign business corporation, or foreign other entity in accordance with IC 23-1-38.5.

*As added by P.L.130-2006, SEC.31.*

## **IC 23-18-8**

### **Chapter 8. Suits By and Against a Limited Liability Company**

#### **IC 23-18-8-1**

##### **Persons entitled to bring suit in name of company**

Sec. 1. Except as otherwise provided in a written operating agreement, a suit on behalf of a limited liability company may be brought in the name of the limited liability company by the following:

(1) A member of a limited liability company, whether or not the articles of organization provide for a manager or managers, who is authorized to sue by the affirmative vote of a majority in interest of the members, unless the vote of all members is required under IC 23-18-4-3. In determining the vote, the vote of a member who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded.

(2) If the articles of organization provide for a manager or managers, a manager who is authorized to do so by the articles of organization, an operating agreement, or a vote required under IC 23-18-4-3(b). In determining the vote, the vote of a manager who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-8-2**

##### **Determination of lack of authority to sue; prohibited assertions**

Sec. 2. A determination that a member or manager does not have authority to sue on behalf of the limited liability company under section 1 of this chapter may not be asserted for the following:

(1) As a defense to an action brought by the limited liability company.

(2) As a basis for the limited liability company to bring a subsequent suit on the same cause of action.

*As added by P.L.8-1993, SEC.301.*



## **IC 23-18-9**

### **Chapter 9. Voluntary Dissolution**

#### **IC 23-18-9-1**

##### **Circumstances requiring dissolution; companies existing on or before June 30, 1999**

Sec. 1. (a) Unless otherwise provided in a written operating agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) A limited liability company is dissolved and its affairs must be wound up on the first of the following to occur:

- (1) At the time or on the occurrence of events specified in writing in the articles of organization or operating agreement.
- (2) Written consent of all the members.
- (3) An event of dissociation occurs with respect to a member, unless the business of the limited liability company is continued by the consent of all the remaining members not more than ninety (90) days after the occurrence of the event or as otherwise provided in writing in the articles of organization or operating agreement.
- (4) Entry of a decree of judicial dissolution under section 2 of this chapter.

*As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.14.*

#### **IC 23-18-9-1.1**

##### **Circumstances requiring dissolution; companies formed after June 30, 1999**

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.
- (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.  
*As added by P.L.269-1999, SEC.15. Amended by P.L.130-2006,  
SEC.32.*

### **IC 23-18-9-2**

#### **Court-decreed dissolution**

Sec. 2. On application by or for a member, the circuit or superior  
court of the county in which the limited liability company's principal  
office, or if there is none in Indiana, in which the registered office is  
located, may decree dissolution of the limited liability company  
whenever it is not reasonably practicable to carry on the business in  
conformity with the articles of organization or operating agreement.  
*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-9-3**

#### **Powers of dissolved company; effect of dissolution**

Sec. 3. (a) A dissolved limited liability company may only carry  
on business that is appropriate to wind up and liquidate its business  
and affairs, including the following:

- (1) Collecting its assets.
- (2) Disposing of properties that will not be distributed in kind  
to members.
- (3) Discharging or making provision for discharging liabilities.
- (4) Distributing the remaining property among the members.
- (5) Doing every other act necessary to wind up and liquidate its  
business and affairs.

(b) Dissolution of a limited liability company does not do the  
following:

- (1) Transfer title to the limited liability company's property.
- (2) Alter the personal liability of members under IC 23-18-3-3.
- (3) Subject members or managers to standards of conduct  
different from those prescribed under IC 23-18-4-2.
- (4) Change the:
  - (A) voting requirements for members or managers;
  - (B) provisions for appointment, resignation, or removal of  
managers, if any; or
  - (C) provisions for amending the operating agreement.
- (5) Prevent commencement of a proceeding by or against the  
limited liability company in its name.
- (6) Abate or suspend a proceeding pending by or against the

limited liability company on the effective date of dissolution.  
(7) Terminate the authority of the registered agent of the limited liability company.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-9-4**

##### **Entities entitled to wind up company's business or affairs**

Sec. 4. Unless otherwise provided in a written operating agreement, the following may wind up the business or affairs of the limited liability company:

(1) The members or managers with authority to manage the limited liability company under IC 23-18-4-1.

(2) If a member or manager has engaged in wrongful conduct or upon other cause shown, the circuit or superior court of:

(A) the county in which the limited liability company's principal office is located; or

(B) if there is none in Indiana the county in which its registered office is located;

on application by a member or the member's legal representative or assignee.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-9-5**

##### **Binding acts of members following dissolution**

Sec. 5. (a) Except as provided in subsections (c), (d), and (e), following dissolution a member may bind the limited liability company:

(1) by an act appropriate for winding up the affairs of the limited liability company or completing transactions unfinished at the time of dissolution; and

(2) in a transaction that would have been binding on the limited liability company had the limited liability company not been dissolved if each party to the transaction does not have notice of the dissolution.

(b) The filing of articles of dissolution under section 7 of this chapter constitutes notice of dissolution for purposes of subsection (a)(2).

(c) An act of a member that is not binding on the limited liability company under subsection (a) is binding if the act is authorized by the limited liability company.

(d) An act of a member that would be binding under subsection (a) or would be authorized except for a restriction on authority does not bind the limited liability company to persons having knowledge of the restriction.

(e) If the articles of organization provide for a manager or managers and the manager or managers have delegated the exclusive authority to manage the affairs of the limited liability company, then a manager has the authority of a member under subsection (a), and a member does not have authority while acting solely in the capacity of a member.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-9-6**

##### **Distribution of assets**

Sec. 6. Upon the winding up of a limited liability company, the assets must be distributed as follows:

- (1) To creditors, including members and managers who are creditors to the extent permitted by law, to satisfy the liabilities of the limited liability company whether by payment or by the establishment of adequate reserves except for liabilities for distributions to members under IC 23-18-5-4, and IC 23-18-5-5 or IC 23-18-5-5.1.
- (2) Unless otherwise provided in a written operating agreement, to members and former members to satisfy the liabilities for distributions under IC 23-18-5-4 and IC 23-18-5-5.
- (3) Unless otherwise provided in a written operating agreement, to members in proportion to the returned contribution.

*As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.16.*

#### **IC 23-18-9-7**

##### **Articles of dissolution; filing**

Sec. 7. At any time after a limited liability company dissolves, the limited liability company may deliver to the secretary of state for filing articles of dissolution setting forth the following:

- (1) The name of the limited liability company.
- (2) The date of filing of the articles of organization.
- (3) The address of the principal office of the limited liability company.
- (4) The date dissolution occurred.
- (5) Other information the members or managers filing the articles determine.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-9-7.5**

##### **Revocation of dissolution**

Sec. 7.5. (a) A limited liability company may revoke its dissolution within one hundred twenty (120) days of its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless the authorization for dissolution permitted revocation of the dissolution by action of the managers alone. If the authorization for dissolution permitted revocation of the dissolution by action of the managers alone, the managers may revoke the dissolution without member action.

(c) After the revocation of dissolution is authorized, the limited liability company may revoke the dissolution by delivering to the secretary of state for filing articles of dissolution and articles of revocation of dissolution. The articles of revocation of dissolution must set forth the following:

- (1) The name of the limited liability company.
  - (2) The effective date of the revocation of dissolution.
  - (3) The date that the revocation of dissolution was authorized.
  - (4) If applicable, a statement that the limited liability company's members or managers revoked the dissolution.
  - (5) If the limited liability company's members or managers revoked a dissolution authorized by the members or managers, a statement that the authorization permitted revocation of the dissolution by action of the members or of the managers alone.
- (d) Unless otherwise specified, a revocation of dissolution is effective when articles of revocation of dissolution are filed.
- (e) A revocation of dissolution relates back to and takes effect as of the effective date of the dissolution. A limited liability company whose dissolution is revoked resumes carrying on business as if there had been no dissolution.

*As added by P.L.130-2006, SEC.33. Amended by P.L.1-2007, SEC.164.*

## **IC 23-18-9-8**

### **Claims**

Sec. 8. (a) As used in this section, "claim" does not include a contingent liability or a claim based on an event occurring after the date of dissolution.

(b) A dissolved limited liability company may dispose of the known claims against it by following the procedure described in this section.

(c) The dissolved limited liability company shall notify known claimants in writing of the dissolution at any time after the dissolution. The written notice must contain the following:

- (1) The amount that the dissolved limited liability company believes will satisfy the claim.
- (2) A statement that the creditor has the right to dispute the amount of the claim and a description of the procedure for disputing the amount of the claim.
- (3) A mailing address where a dispute of the amount of the claim may be sent.
- (4) The deadline for receiving disputing claims. The deadline may not be less than sixty (60) days after the effective date of the written notice.
- (5) A statement that the claim will be fixed at the amount specified by the dissolved limited liability company if a dispute of the amount of the claim is not received by the deadline.

(d) If the amount of the claim is disputed, the claimant must notify the dissolved limited liability company of the dispute by the deadline. If the dissolved limited liability company rejects the disputed amount, the claimant must commence a proceeding to enforce the claim not more than ninety (90) days after the effective date of the limited liability company's rejection notice.

(e) The amount of the claim is fixed under one (1) of the following conditions:

(1) The claimant does not notify the dissolved limited liability company by the deadline.

(2) The claimant has notified the dissolved limited liability company of a dispute and has received a rejection notice and does not commence a proceeding within ninety (90) days from the effective date of the rejection notice.

(f) Regardless of a dispute in the amount of the claim, the dissolved limited liability company must tender to the claimant the amount of the claim specified in the notice of the claim given under subsection (c) not more than thirty (30) days after the earlier of the following dates:

(1) The date that the claim becomes fixed.

(2) The date that the claimant commences the proceeding to enforce the claim.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-9-9**

#### **Notice of dissolution**

Sec. 9. (a) A dissolved limited liability company may publish notice of its dissolution and request that persons with claims against the limited liability company present them in accordance with the notice.

(b) The notice must meet the following requirements:

(1) Be published one (1) time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office, or if there is none in Indiana its registered office, is or was last located.

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

(3) State that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced not more than two (2) years after the publication of the notice.

(c) If the dissolved limited liability company publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company not more than two (2) years after the publication date of the notice:

(1) A claimant who did not receive written notice under section 8 of this chapter.

(2) A claimant whose claim was timely sent to the dissolved limited liability company but not acted on.

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

(d) A claim may be enforced under this section:

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

(2) if the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of the member's pro rata share of the claim or the assets

distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.  
*As added by P.L.8-1993, SEC.301.*

**IC 23-18-9-10**

**Claimants not found or incompetent to receive assets; deposits for safekeeping; disbursement upon proof of entitlement**

Sec. 10. Assets of a dissolved limited liability company that should be transferred to a creditor, claimant, or member of the limited liability company who cannot be found or who is not competent to receive the assets must be reduced to cash and deposited with the treasurer of state or other appropriate state official for safekeeping. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited, the treasurer of state or other appropriate state official must pay to the creditor, claimant, or member or a representative of the creditor, claimant, or member that amount.

*As added by P.L.8-1993, SEC.301.*

## **IC 23-18-10**

### **Chapter 10. Administrative Dissolution**

## **IC 23-18-10-1**

### **Grounds for administrative dissolution**

Sec. 1. The secretary of state may commence a proceeding under section 2 of this chapter to administratively dissolve a limited liability company if:

- (1) the limited liability company does not deliver its biennial report to the secretary of state not more than sixty (60) days after the biennial report is due;
- (2) the limited liability company is without a registered agent or registered office in Indiana for at least sixty (60) days;
- (3) the limited liability company does not notify the secretary of state not more than sixty (60) days after its registered agent or registered office has been changed, its registered agent has resigned, or its registered office has been discontinued; or
- (4) the period of duration stated in the limited liability company's articles of organization expires.

*As added by P.L.8-1993, SEC.301. Amended by P.L.11-1996, SEC.27.*

## **IC 23-18-10-2**

### **Notice; failure to correct deficiencies; certificate of dissolution**

Sec. 2. (a) If the secretary of state determines that one (1) or more grounds exist under section 1 of this chapter for dissolving a limited liability company, the secretary of state shall serve the limited liability company with written notice of the determination under IC 23-18-2-13.

(b) If the 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 not more than sixty (60) days after service of the notice is perfected under IC 23-18-2-13, the secretary of state shall administratively dissolve the limited liability company by signing a certificate of dissolution that states the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the limited liability company under IC 23-18-2-13.

*As added by P.L.8-1993, SEC.301.*

## **IC 23-18-10-3**

### **Effect of administrative dissolution**

Sec. 3. (a) A limited liability company that is administratively dissolved continues in existence but may not carry on any business except business necessary to wind up and liquidate its business and affairs under IC 23-18-9-4 and notify claimants under IC 23-18-9-8 and IC 23-18-9-9.

(b) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.



*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-10-4**

##### **Reinstatement; application**

Sec. 4. (a) A limited liability company administratively dissolved under section 2 of this chapter may apply to the secretary of state for reinstatement. The application must:

- (1) state the name of the limited liability company and the effective date of its administrative dissolution;
- (2) state that the ground or grounds for dissolution either did not exist or have been eliminated;
- (3) state that the limited liability company's name satisfies the requirements under IC 23-18-2-9; and
- (4) contain a certificate from the department of state revenue stating that all taxes owed by the limited liability company have been paid.

(b) If the secretary of state determines that the application contains the information required by subsection (a) and that the information is correct, the secretary of state shall:

- (1) cancel the certificate of dissolution and prepare a certificate of reinstatement that states the determination and the effective date of reinstatement;
- (2) file the original of the certificate; and
- (3) serve a copy on the limited liability company.

(c) When the reinstatement is effective, the reinstatement relates back to and takes effect as of the effective date of the administrative dissolution, and the limited liability company resumes carrying on business as if the administrative dissolution had never occurred.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-10-5**

##### **Denial of reinstatement; appeal**

Sec. 5. (a) If the secretary of state denies a limited liability company's application for reinstatement following administrative dissolution, the secretary of state shall serve the limited liability company under IC 23-18-2-13 with a written notice that explains the reason or reasons for denial.

(b) The limited liability company may appeal the denial of reinstatement to the circuit or superior court of the county where the limited liability company's principal office, or if there is none in Indiana its registered office, is located not more than thirty (30) days after service of the notice of denial by doing the following:

- (1) Filing a petition with the court to set aside the dissolution.
- (2) Attaching to the petition a copy of the secretary of state's certificate of dissolution, the limited liability company's application for reinstatement, and the secretary of state's notice of denial.

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

(d) The court's final decision may be appealed as in other civil proceedings.

*As added by P.L.8-1993, SEC.301.*

## **IC 23-18-11**

### **Chapter 11. Foreign Limited Liability Companies**

#### **IC 23-18-11-1**

##### **Law governing; denial of registration; prohibited business**

Sec. 1. (a) The laws of the state or other jurisdiction under which a foreign limited liability company is organized govern its organization, internal affairs, and the liability of members.

(b) A foreign limited liability company may not be denied registration by reason of a difference between the laws of the state or other jurisdiction where it was organized and Indiana law.

(c) A foreign limited liability company may not do any kind of business in Indiana that Indiana law prohibits a domestic limited liability company from doing.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-11-2**

##### **Certificate of authority; activities not constituting transaction of business**

Sec. 2. (a) A foreign limited liability company may not transact business in Indiana until it obtains a certificate of authority from the secretary of state.

(b) Activities that do not constitute transacting business within the meaning of subsection (a) include the following:

- (1) Maintaining, defending, or settling a proceeding.
- (2) Holding meetings of the managers or members or carrying on other activities concerning internal affairs.
- (3) Maintaining bank accounts.
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the limited liability company's interests or other securities or maintaining trustees or depositaries with respect to those securities.
- (5) Selling through independent contractors.
- (6) Soliciting or obtaining orders, including those by mail or through employees or agents if the orders require acceptance outside Indiana before the orders become contracts.
- (7) Making loans or creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
- (8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
- (9) Owning real or personal property.
- (10) Conducting an isolated transaction that is completed within thirty (30) days and that is not in the course of repeated transactions of a like nature.
- (11) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) is not exhaustive.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-11-3**

##### **Transaction of business without certificate of authority; sanctions**

Sec. 3. (a) A foreign limited liability company transacting business in Indiana without a certificate of authority may not maintain a court proceeding in Indiana until it obtains a certificate of authority.

(b) The successor to a foreign limited liability company that transacted business in Indiana without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a court proceeding in Indiana based on that cause of action until the foreign limited liability company or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign limited liability company or its successor or assignee until the court determines whether the foreign limited liability company or its successor or assignee requires a certificate of authority. If the court determines that a certificate of authority is needed, the court may stay the proceeding until the foreign limited liability company or its successor or assignee obtains the certificate.

(d) A foreign limited liability company is liable for a civil penalty of not more than ten thousand dollars (\$10,000) if it transacts business in Indiana without a certificate of authority. The attorney general may collect all penalties due under this subsection.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding in Indiana.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-11-4**

##### **Application for certificate of authority; contents; certificate of existence**

Sec. 4. (a) A foreign limited liability company may apply for a certificate of authority to transact business in Indiana by delivering an application to the secretary of state for filing. The application must set forth the following:

- (1) The name of the foreign limited liability company, or if its name is unavailable for use in Indiana, a name that satisfies the requirements of section 7 of this chapter.
- (2) The name of the state or country under whose law it is organized.
- (3) The date of its organization and the latest date, if any, upon which it is to dissolve.
- (4) The street address of its principal office.
- (5) The address of its registered office in Indiana and the name of its registered agent at that office.
- (6) If the organizational documents of the foreign limited liability company provide for a manager or managers, a statement to that effect.

(b) The foreign limited liability company must deliver, with the completed application, a certificate of existence or a similar document authenticated by the secretary of state or other official

having custody of business records of the foreign limited liability company in the state or country where the foreign limited liability company was organized.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-11-5**

##### **Amended certificate of authority**

Sec. 5. (a) A foreign limited liability company authorized to transact business in Indiana must obtain an amended certificate of authority from the secretary of state if it does any of the following:

- (1) Changes its name.
- (2) Changes the latest date, if any, upon which it is to dissolve.
- (3) Changes the state or country of its organization.
- (4) Converts to a different form of entity.

(b) The requirements of section 4 of this chapter for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

*As added by P.L.8-1993, SEC.301. Amended by P.L.121-1994, SEC.3; P.L.130-2006, SEC.34.*

#### **IC 23-18-11-6**

##### **Revocation of certificate of authority; powers and duties of foreign company with valid certificate**

Sec. 6. (a) A certificate of authority authorizes the foreign limited liability company to transact business in Indiana. The state may revoke the certificate as provided in this article.

(b) Except as provided by this article, a foreign limited liability company with a valid certificate of authority has the same rights and privileges and is subject to the same duties, restrictions, penalties, and liabilities as a domestic limited liability company of like character.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-11-7**

##### **Name**

Sec. 7. (a) If the name of a foreign limited liability company does not satisfy the requirements under IC 23-18-2-8, the foreign limited liability company, to obtain or maintain a certificate of authority to transact business in Indiana:

- (1) may add the words "limited liability company" or the abbreviations "L.L.C." or "LLC" to its name for use in Indiana; or
- (2) may use a fictitious name to transact business in Indiana if the company's real name is unavailable.

(b) Except as authorized by subsections (c) and (d), the limited liability company name, including a fictitious name, of a foreign limited liability company must be distinguishable upon the records of the secretary of state from the following:

- (1) The name of a limited liability company organized or authorized to transact business in Indiana.

(2) A name reserved under IC 23-18-2-9.

(3) The fictitious name of another foreign limited liability company authorized to transact business in Indiana.

(c) A foreign limited liability company may apply to the secretary of state for authorization to use in Indiana the name of another limited liability company organized or authorized to transact business in Indiana that is not distinguishable from the name applied for. The secretary of state must authorize use of the name applied for if:

(1) the other limited liability company consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited liability company; or

(2) the applicant delivers to the secretary of state a certified copy of a final judgment of a circuit or superior court establishing the applicant's right to use the name applied for in Indiana.

(d) A foreign limited liability company may use in Indiana the name, including the fictitious name, of another domestic or foreign limited liability company that is used in Indiana if the other limited liability company is organized or authorized to transact business in Indiana and the foreign limited liability company:

(1) has merged with the other limited liability company;

(2) has been formed by reorganization of the other limited liability company; or

(3) has acquired all or substantially all of the assets, including the name, of the other limited liability company.

(e) If a foreign limited liability company authorized to transact business in Indiana changes its name to a name that does not satisfy the requirements under IC 23-18-2-8, it may not transact business in Indiana under the changed name until it adopts a name satisfying the requirements and obtains an amended certificate of authority under section 5 of this chapter.

*As added by P.L.8-1993, SEC.301.*

## **IC 23-18-11-8**

### **Registered office; registered agent**

Sec. 8. Each foreign limited liability company authorized to transact business in Indiana must continuously maintain in Indiana the following:

(1) A registered office.

(2) A registered agent, who may be:

(A) an individual who resides in Indiana and whose business office is identical with the registered office;

(B) a domestic limited liability company, domestic corporation, or nonprofit domestic corporation whose business office is identical with the registered office; or

(C) a foreign limited liability company, foreign corporation, or foreign nonprofit corporation authorized to transact

business in Indiana whose business office is identical with the registered office.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-11-9**

##### **Change of registered office or agent**

Sec. 9. (a) A foreign limited liability company authorized to transact business in Indiana may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth the following:

- (1) Its name.
- (2) The street address of its current registered office.
- (3) If the current registered office is to be changed, the street address of its new registered office.
- (4) The name of its current registered agent.
- (5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent or a representation that the new registered agent has consented to the change either on the statement or attached it to the appointment.
- (6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company that the registered agent serves by notifying the limited liability company in writing of the change and signing either manually or in facsimile and delivering to the secretary of state for filing, a statement of change that complies with the requirements of subsection (a) and states that the limited liability company has been notified of the change.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-11-10**

##### **Resigning agency appointment**

Sec. 10. (a) The registered agent of a foreign limited liability company may resign the agency appointment by signing and delivering to the secretary of state for filing as described in IC 23-18-12 a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the secretary of state shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office, if the registered office is not discontinued. The secretary of state shall mail one (1) copy to the foreign limited liability company at its principal office address shown on the records of the secretary of state.

(c) The agency appointment is terminated, and the registered office is discontinued if so provided, thirty-one (31) days after the statement is filed.

*As added by P.L.8-1993, SEC.301. Amended by P.L.228-1995, SEC.27.*

### **IC 23-18-11-11**

#### **Service of process; perfection**

Sec. 11. (a) The registered agent of a foreign limited liability company authorized to transact business in Indiana is the limited liability company's agent for service of process, notice, or demand required or permitted by law to be served on the foreign limited liability company.

(b) A foreign limited liability company may be served by registered or certified mail, return receipt requested, addressed to the foreign limited liability company at its principal office shown in its application for a certificate of authority or as shown on the records of the secretary of state if at least one (1) of the following conditions apply to the foreign limited liability company:

- (1) It does not have a registered agent or its registered agent cannot with reasonable diligence be served.
- (2) It has withdrawn from transacting business in Indiana under section 13 of this chapter.
- (3) Its certificate of authority was revoked under section 16 of this chapter.

(c) Service is perfected under subsection (b) at the earliest of the following:

- (1) The date the foreign limited liability company receives the mail.
- (2) The date shown on the return receipt if signed on behalf of the foreign limited liability company.
- (3) Five (5) days after deposit in the United States mail if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign limited liability company.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-11-12**

#### **Withdrawal from state**

Sec. 12. A foreign limited liability company authorized to transact business in Indiana may not withdraw from Indiana until it obtains a certificate of withdrawal from the secretary of state.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-11-13**

#### **Certificate of withdrawal; application**

Sec. 13. A foreign limited liability company authorized to transact business in Indiana may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth the following:

- (1) The name of the foreign limited liability company and the name of the state or country under whose law it is organized.
- (2) That it is not transacting business in Indiana and that it



surrenders its authority to transact business in Indiana.

(3) That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in Indiana.

(4) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection 3.

(5) A commitment to notify the secretary of state in the future of any change in its mailing address.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-11-14**

##### **Service of process on secretary of state; withdrawn companies**

Sec. 14. After the withdrawal of the limited liability company is effective, service of process on the secretary of state under this chapter is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign limited liability company at the mailing address set forth in its application for withdrawal.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-11-15**

##### **Revocation of certificate of authority; grounds**

Sec. 15. The secretary of state may commence a proceeding under section 16 of this chapter to revoke the certificate of authority of a foreign limited liability company authorized to transact business in Indiana if at least one (1) of the following applies:

(1) The foreign limited liability company does not deliver its biennial report to the secretary of state within sixty (60) days after the biennial report is due.

(2) The foreign limited liability company is without a registered agent or registered office in Indiana for at least sixty (60) days.

(3) The foreign limited liability company does not inform the secretary of state under section 9 or 10 of this chapter that its:

(A) registered agent or registered office has changed;

(B) registered agent has resigned; or

(C) registered office has been discontinued;

within sixty (60) days of the change, resignation, or discontinuance.

(4) A member, a manager, or an agent of the foreign limited liability company signed a document the member, manager, or agent knew was false in a material respect with the intent that the document be delivered to the secretary of state for filing.

(5) The secretary of state receives an authenticated certificate from the secretary of state or other official having custody of business entity records in the state or country under whose laws the foreign limited liability company is organized stating that it has dissolved or disappeared as the result of a merger.

*As added by P.L.8-1993, SEC.301. Amended by P.L.121-1994, SEC.4; P.L.11-1996, SEC.28.*

#### **IC 23-18-11-16**

##### **Notice of revocation; failure to cure deficiencies; consequences**

Sec. 16. (a) If the secretary of state determines that one (1) or more grounds exist under section 15 of this chapter for revocation of a certificate of authority, the secretary of state shall, under section 11 of this chapter, serve the foreign limited liability company with written notice of the determination.

(b) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist not more than sixty (60) days after service of the notice is perfected under section 11 of this chapter, the secretary of state may revoke the foreign limited liability company's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign limited liability company under section 11 of this chapter.

(c) The authority of a foreign limited liability company to transact business in Indiana ceases on the date shown on the certificate revoking the certificate of authority.

(d) The secretary of state's revocation of a foreign limited liability company's certificate of authority appoints the secretary of state the foreign limited liability company's agent for service of process in a proceeding based on a cause of action that arose during the time the foreign limited liability company was authorized to transact business in Indiana. Service of process on the secretary of state under this subsection is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign limited liability company at its principal office shown in the most recent communication received from the corporation stating the current mailing address of its principal office or, if it is not on file, in its application for a certificate of authority.

(e) Revocation of a foreign limited liability company's certificate of authority does not terminate the authority of the registered agent of the limited liability company.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-11-17**

##### **Appeal of revocation determination**

Sec. 17. (a) A foreign limited liability company may appeal the secretary of state's revocation of its certificate of authority to the circuit or superior court of the county where the foreign limited liability company's registered office is located not more than thirty (30) days after service of the certificate of revocation is perfected under section 11 of this chapter by doing the following:

- (1) Filing a petition with the court to set aside the revocation.
- (2) Attaching to the petition copies of its certificate of authority

and the secretary of state's certificate of revocation.

(b) The court may order the secretary of state to reinstate the certificate of authority or may take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-11-18**

##### **Uniform Partnership Act company**

Sec. 18. A foreign limited liability company authorized to transact business in Indiana under the Indiana Revised Uniform Partnership Act (IC 23-16-10.1) (before its repeal July 1, 1993), is subject to this article, but is not required to obtain a new certificate of authority under this article to continue to transact business in Indiana.

*As added by P.L.8-1993, SEC.301.*

## **IC 23-18-12**

### **Chapter 12. Filing Requirements, Fees, and Other Administrative Provisions**

#### **IC 23-18-12-1**

##### **Requirements for documents; filing fee**

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 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.

(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, 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.

*As added by P.L.8-1993, SEC.301. Amended by P.L.121-1994, SEC.5; P.L.228-1995, SEC.28; P.L.11-1996, SEC.29; P.L.277-2001, SEC.24.*

#### **IC 23-18-12-1.1**

##### **Copies of documents delivered for filing**

Sec. 1.1. (a) For purposes of this article, a document is delivered for filing if the document is transferred to the secretary of state by hand, mail, telecopy, facsimile, or other form of electronic transmission meeting the requirements established by the secretary of state.

(b) If a document is delivered for filing by hand or mail, the document must be accompanied by:

- (1) two (2) exact or conformed copies of a document filed under IC 23-18-2-12 or IC 23-18-11-10; or
- (2) one (1) exact or conformed copy of any other document filed under this article.

(c) The office of the secretary of state shall create any copies of a document delivered by telecopy, facsimile, or other form of electronic transmission that are required for distribution under this article.

*As added by P.L.228-1995, SEC.29.*

#### **IC 23-18-12-2**

##### **Forms**

Sec. 2. (a) The secretary of state may prescribe and furnish on request forms for the following:

- (1) Biennial report forms for domestic and foreign limited liability companies.
- (2) A foreign limited liability company's application for a certificate of authority to transact business in Indiana.
- (3) A foreign limited liability company's application for a certificate of withdrawal.

If the secretary of state requires and the form so states, use of these forms is mandatory.

(b) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this article, but their use is not mandatory.

*As added by P.L.8-1993, SEC.301. Amended by P.L.11-1996, SEC.30.*

### **IC 23-18-12-3**

#### **Fees**

Sec. 3. (a) The secretary of state shall collect the following fees when the documents described in this section are delivered for filing:

Document	Electronic Filing Fee	Filing Fee (Other than electronic filing)
(1) Articles of organization	\$75	\$90
(2) Application for use of indistinguishable name	\$10	\$20
(3) Application for reservation of name	\$10	\$20
(4) Application for renewal of reservation	\$10	\$20
(5) Notice of transfer or cancellation of reservation	\$10	\$20
(6) Application of registered name	\$20	\$30
(7) Application for renewal of registered name	\$20	\$30
(8) Certificate of change of registered agent's business address	No Fee	No Fee
(9) Certificate of resignation of agent		No Fee
(10) Articles of amendment	\$20	\$30
(11) Restatement of articles of organization	\$20	\$30
(12) Articles of dissolution	\$20	\$30
(13) Application for certificate of authority	\$75	\$90
(14) Application for amended certificate of authority	\$20	\$30
(15) Application for certificate of withdrawal	\$20	\$30
(16) Application for reinstatement following administrative dissolution	\$20	\$30
(17) Articles of correction	\$20	\$30
(18) Certificate of change of registered agent	No Fee	No Fee
(19) Application for certificate of existence or authorization	\$15	\$15
(20) Biennial report	\$20	\$30

- |  |      |       |
|--|------|-------|
| (21) Articles of merger<br>involving a domestic limited<br>liability company                 | \$75 | \$90  |
| (22) Any other document<br>required or permitted to be<br>filed under this article           | \$20 | \$30  |
| (23) Registration of intent<br>to sell sexually explicit materials,<br>products, or services |      | \$250 |

The secretary of state shall prescribe the electronic means of filing documents to which the electronic filing fees set forth in this section apply.

(b) The fee set forth in subsection (a)(20) for filing a biennial report is:

- (1) for an electronic filing, ten dollars (\$10) per year; or
- (2) for a filing other than an electronic filing, fifteen dollars (\$15) per year;

to be paid biennially.

(c) The secretary of state shall collect a fee of \$10 each time process is served on the secretary of state under this article. If the party to a proceeding causing service of process prevails in the proceeding, that party is entitled to recover this fee as costs from the nonprevailing party.

(d) The secretary of state shall collect the following fees for copying and certifying the copy of any filed documents relating to a domestic or foreign limited liability company:

- (1) One dollar (\$1) per page for copying.
- (2) Fifteen dollars (\$15) for certification stamp.

*As added by P.L.8-1993, SEC.301. Amended by P.L.11-1996, SEC.31; P.L.277-2001, SEC.25; P.L.60-2007, SEC.6; P.L.92-2008, SEC.2; P.L.106-2008, SEC.53; P.L.1-2009, SEC.132.*

#### **IC 23-18-12-4**

##### **Effective date of document**

Sec. 4. (a) Except as provided in subsection (b) and section 6(c) of this chapter, a document accepted for filing is effective:

- (1) at the time of filing on the date the document is filed, as evidenced by the secretary of state's date and time endorsement on the original document; or
- (2) at a time later than the date the document is filed as specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so, the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 12:01 a.m. on that date. A delayed effective date for a document may not be later than the ninetieth day after the date the document is filed.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-12-5**

#### **Corrected documents**

Sec. 5. (a) A domestic or foreign limited liability company may correct a document filed by the secretary of state if the document:

- (1) contains an incorrect statement; or
- (2) was defectively executed.

(b) A document is corrected:

- (1) by preparing articles of correction that:
  - (A) describe the document, including the filing date, or attach a copy of it to the articles;
  - (B) specifies the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
  - (C) corrects the incorrect statement or defective execution; and

- (2) by delivering the articles of correction to the secretary of state for filing.

(c) Articles of correction are effective on the effective date of the document being corrected except as to persons reasonably relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed or when the reliance ceases to be reasonable, whichever occurs first.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-12-6**

#### **Filing documents**

Sec. 6. (a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 1 of this chapter, the secretary of state must file the document.

(b) The secretary of state files a document by stamping or otherwise endorsing "Filed" together with the secretary of state's name and official title and the date and time of receipt on both the original and the document copy and on the receipt for the filing fee. After filing a document, except as provided under IC 23-18-2-13 and IC 23-18-11-10, the secretary of state shall deliver the document copy, with the filing fee receipt attached, or acknowledgement of receipt if no fee is required, to the domestic or foreign limited liability company or its representative.

(c) If the secretary of state refuses to file a document, the secretary of state shall return the document to the domestic or foreign limited liability company or its representative not more than ten (10) days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(d) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

- (1) affect the validity or invalidity of the document in whole or in part;
- (2) relate to the correctness or incorrectness of the information contained in the document; or



- (3) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-12-7**

##### **Refusal to file document; appeal**

Sec. 7. (a) If the secretary of state refuses to file a document delivered to the secretary of state for filing, the domestic or foreign limited liability company may appeal the refusal to the circuit or superior court of the county where the limited liability company's principal office, or if there is none in Indiana its registered office, is or will be located. The appeal is commenced by petitioning the court to compel the filing of the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

(b) The court may order the secretary of state to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-12-8**

##### **Certification as conclusive evidence of filing**

Sec. 8. A certification stamp affixed on or a certification certificate attached to a copy of a document under this chapter, bearing the secretary of state's signature, which may be in facsimile, and the seal of this state is conclusive evidence that the original document is on file with the secretary of state.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-12-9**

##### **Certificate of existence or authorization**

Sec. 9. (a) A person may request the secretary of state to furnish a certificate of existence for a domestic limited liability company or a certificate of authorization for a foreign limited liability company.

(b) A certificate of existence or authorization sets forth the following:

- (1) The domestic limited liability company's name or the foreign limited liability company's name used in Indiana.
- (2) If a domestic limited liability company:
  - (A) that the domestic limited liability company is organized under Indiana law;
  - (B) the date of its organization; and
  - (C) the latest date, if any, on which the limited liability company is to be dissolved.
- (3) If a foreign limited liability company, that the foreign limited liability company is authorized to transact business in Indiana.
- (4) That articles of dissolution have not been filed.

(5) Other facts of record in the office of the secretary of state that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign limited liability company is in existence or is authorized to transact business in Indiana.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-12-10**

##### **False document; offense**

Sec. 10. A person commits a Class A misdemeanor if the person signs a document that the person knows is false in a material respect with the intent that the document be delivered to the secretary of state for filing.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-12-11**

##### **Biennial report**

Sec. 11. (a) A domestic limited liability company and a foreign limited liability company authorized to transact business in Indiana must file with the secretary of state a biennial report that sets forth the following:

- (1) The name of the limited liability company.
- (2) The address of its registered office and the name of its registered agent at the office in Indiana.
- (3) The address of its principal office.

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

(c) The first biennial report must be delivered to the secretary of state in the second year following the calendar year in which a domestic limited liability company was organized or a foreign limited liability company was authorized to transact business. The report is due during the same month as the month in which the limited liability company was organized or authorized to transact business. Subsequent biennial reports must be delivered to the secretary of state during the same month every two (2) calendar years thereafter. The secretary of state may accept biennial reports during the two (2) months before the month the limited liability company's report is due.

*As added by P.L.8-1993, SEC.301. Amended by P.L.121-1994, SEC.6; P.L.11-1996, SEC.32; P.L.2-1997, SEC.64.*

**IC 23-18-13**

Chapter 13. Applicability of Other Provisions

**IC 23-18-13-1**

**Application of state and federal constitutions; IC 1-1**

Sec. 1. All provisions of the Constitution of the United States, the Constitution of the State of Indiana, and IC 1-1 apply to this article.  
*As added by P.L.8-1993, SEC.301.*