§ 4801. Short Title.

This Act may be cited as the Uniform Limited Liability Company Act.

Source: PL 14-11, § 3.

Commission Comment: PL 14-11 was enacted on May 28, 2004 and included findings and purpose, severability, and savings clause provisions. Pursuant to its authority by 1 CMC § 3806, the Commission made numerous conforming changes in the codification of PL 14-11, including but not limited to, changing numbering and references from "article" to "chapter." According to PL 14-11:

> Section 1. Findings and Purpose. Borrowing from abroad, Wyoming initiated a national movement in 1977 by enacting this country's first limited liability company act. The movement started slowly as the Internal Revenue Service took more than ten years to announce finally that a Wyoming limited liability company would be taxed like a partnership. Since that time, every state has adopted or is considering its own distinct limited liability company act, many of which have already been amended one or more times.
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> The allure of the limited liability company is its unique ability to bring together in a single business organization the best features of all other business forms – properly structured, its owners obtain both a corporate-styled liability shield and the pass-through tax benefits of a partnership. General and limited partnerships do not offer their partners a corporate-styled liability shield. Corporations, including those having made a Subchapter Selection, do not offer their shareholders all the pass-through tax benefits of a partnership. All state limited liability company acts contain provisions for a liability shield and partnership tax status.
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> Despite these two common themes, state limited liability company acts display a dazzling array of diversity. Multistate activities of businesses are widespread. Recognition of out-of-state limited liability companies varies. Unfortunately, this lack of uniformity manifests itself in basic but fundamentally important questions, such as: may a company be formed and operated by only one owner; may it be formed for purposes other than to make a profit; whether owners have the power and right to withdraw from a company and receive a distribution of the fair value of their interests; who has the apparent authority to bind the company and the limits of that authority; what are the fiduciary duties of owners and managers to a company and each other; how are the rights to manage a company allocated among its owners and managers; do the owners have the right to sue a company and its other owners in their own right as well as derivatively on behalf of the company; may general and limited partnerships be converted to limited liability companies and may limited liability companies merge with other limited liability companies and other business organizations; what is the law governing foreign limited liability companies; and are any or all of these and other rules simply default rules that may be modified by agreement or are they nonwaivable.

Practitioners and entrepreneurs struggle to understand the law governing limited liability companies organized in their own State and to understand the burgeoning law of other States. Simple questions concerning where to organize are increasingly complex. Since most state limited liability company acts are in their infancy, little if any interpretative case law exists. Even when case law develops, it will have limited precedential value because of the diversity of the state acts.

Accordingly, uniform legislation in this area of the law appeared to have become urgent.

After a Study Committee appointed by the National Conference of Commissioners in late 1991 recommended that a comprehensive project be undertaken, the Conference appointed a Drafting Committee which worked on a Uniform Limited Liability Company Act (ULLCA) from early 1992 until its adoption by the Conference at its Annual Meeting in August 1994. A blue ribbon panel of national experts and other interested and affected parties and organizations assisted the Drafting Committee. Many, if not all, of those assisting the Committee brought substantial experience from drafting limited liability company legislation in their own States. Many are also authors of leading treatises and articles in the field. Those represented in the drafting process included an American Bar Association (ABA) liaison, four advisors representing the three separate ABA Sections of Business Law, Taxation, and Real Property, Trust and Probate, the United States Treasury Department, the Internal Revenue Service, and many observers representing several other organizations, including the California Bar Association, the New York City Bar Association, the American College of Real Estate Lawyers, the National Association of Certified Public Accountants, the National Association of Secretaries of State, the Chicago and Lawyers Title Companies, the American Land Title Association, and several university law and business school faculty members.

The Committee met nine times and engaged in numerous national telephonic conferences to discuss policies, review over fifteen drafts, evaluate legal developments and consider comments by our many knowledgeable advisers and observers, as well as an ABA subcommittee's earlier work on a prototype. In examining virtually every aspect of each state limited liability company act, the Committee maintained a single policy vision – to draft a flexible act with a comprehensive set of default rules designed to substitute as the essence of the bargain for small entrepreneurs and others.

This Act is flexible in the sense that the owners may modify the vast majority of its provisions in a private agreement. To simplify, those nonwaivable provisions are set forth in a single subsection. Helped thereby, sophisticated parties will negotiate their own deal with the benefit of counsel.

The Committee also recognized that small entrepreneurs without the benefit of counsel should also have access to the Act. To that end, the great bulk of the Act sets forth default rules designed to operate a limited liability company without sophisticated agreements and to recognize that members may also modify the default rules by oral agreements defined in part by their own conduct. Uniquely, the Act combines two simple

default structures that depend upon the presence of designations in the articles of organization. All default rules under the Act flow from these two designations.

First, unless the articles reflect that a limited liability company is a term company and the duration of that term, the company will be an at-will company. Generally, an at-will company dissolves more easily than a term company. Its owners may demand a payment of the fair value of their interests at any time. Owners of a term company must generally wait until the expiration of the term to obtain the value of their interests. Secondly, unless the articles reflect that managers will manage a company, its members will manage the company. This designation controls whether the members or managers have apparent agency authority, management authority, the nature of fiduciary duties in the company, and important dissolution characteristics. In January of 1995 the Executive Committee of the Conference adopted an amendment to harmonize the Act with new and important Internal Revenue Service announcements, and the National Conference at its Annual Meeting ratified the amendment in August of 1995.

The amendment modifies the Act's dissolution provision. The adoption of ULLCA will provide much needed consistency among the States, with flexible default rules, and multistate recognition of limited liability on the part of company owners. It will also promote the development of precedential case law.