

Amendment to SB 405

1 Amend the bill by inserting after section 9 the following and renumbering the original section 10 to
2 read as 12:

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4 10 Document Filing; Signature. Amend RSA 304-C:28, V(c) to read as follows:

5 (c) If the limited liability company is in the hands of a receiver, executor, or other court
6 appointed fiduciary, trustee, or other fiduciary, by that fiduciary; **or**

7 ***(d) Unless the operating agreement provides otherwise, by any authorized***
8 ***person, including an attorney-in-fact. An authorization, including a power of attorney,***
9 ***need not be in writing, need not be sworn to, verified, or acknowledged, and need not be***
10 ***filed in the office of the secretary of state, but if in writing, must be retained by the limited***
11 ***liability company or authorized person.***

12 11 New Subdivision; Domestications. Amend RSA 304-C by inserting after section 204 the
13 following new subdivision:

14 Domestications

15 304-C:205 Domestication.

16 I. A foreign limited liability company may become a domestic limited liability company only
17 if the domestication is permitted by the organic law of the foreign limited liability company. The
18 laws of New Hampshire shall govern the effect of domesticating in New Hampshire pursuant to
19 RSA 304-C:205 through RSA 304-C:210.

20 II. A domestic limited liability company may become a foreign limited liability company if
21 the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the
22 laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication
23 shall be approved by the adoption by the domestic limited liability company of a plan of
24 domestication in the manner provided in this subdivision. The laws of the foreign jurisdiction shall
25 govern the effect of domesticating in that jurisdiction.

26 III. The plan of domestication adopted by a domestic limited liability company shall include:

27 (a) A statement of the jurisdiction in which the limited liability company is to be
28 domesticated;

29 (b) The terms and conditions of the domestication;

30 (c) The manner and basis of reclassifying the membership rights of the limited liability
31 company following its domestication into membership rights or other securities, obligations, rights
32 to acquire membership rights or other securities, cash, other property, or any combination of the

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1 foregoing; and

2 (d) Any desired amendments to the certificate of formation or equivalent foreign
3 statutory document (for purposes of this subdivision, the “certificate of formation”) of the limited
4 liability company following its domestication. The plan of domestication may include any other
5 provision relating to the domestication that may be desired.

6 IV. The plan of domestication may include a provision that the plan may be amended prior
7 to filing the document required by the laws of this state or the other jurisdiction to consummate the
8 domestication, except that subsequent to approval of the plan by the members, the plan may not be
9 amended to change:

10 (a) The amount or kind of membership rights or other securities, obligations, rights to
11 acquire membership rights or other securities, cash, or other property to be received by the
12 members under the plan;

13 (b) The certificate of formation or operating agreement, as they will be in effect
14 immediately following the domestication, except for changes permitted by RSA 304-C:35, II or by
15 comparable provisions of the laws of the other jurisdiction; or

16 (c) Any of the other terms or conditions of the plan if the change would adversely affect
17 any of the membership rights in any material respect.

18 V. Terms of a plan of domestication may be made dependent upon facts objectively
19 ascertainable outside the plan in accordance with the principles set forth in RSA 293-A:1.20(j).

20 VI. If any debt security, note, or similar evidence of indebtedness for money borrowed,
21 whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a domestic
22 limited liability company contains a provision applying to a merger of the limited liability company
23 and the document does not refer to a domestication of the limited liability company, then the
24 provision shall be deemed to apply to a domestication of the limited liability company until such
25 time as the provision is amended subsequent to that date.

26 VII. An operating agreement of a domestic limited liability company may provide that
27 decisions by the members relating to the limited liability company’s domestications are reserved to
28 specified members or managers.

29 304-C:206 Action on a Plan of Domestication.

30 I. In the case of a domestication of a domestic limited liability company in a foreign
31 jurisdiction:

32 (a) If the approval of the members is to be given at a meeting, the limited liability
33 company must notify each member, whether or not entitled to vote, of the meeting of members at
34 which the plan of domestication is to be submitted for approval. The notice must state that the
35 purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be
36 accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a
37 copy of the limited liability company’s certificate of formation and operating agreement as they will

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1 be in effect immediately after the domestication.

2 (b) Unless the operating agreement of the limited liability company requires a greater
3 vote or a greater number of votes to be present, approval of the plan of domestication requires the
4 approval of each voting group entitled to vote separately on the plan by a majority of all the votes
5 entitled to be cast on the plan by that voting group.

6 (c) Separate voting by voting groups is required by each class or series of membership
7 rights that:

8 (1) Are to be reclassified under the plan of domestication into other securities,
9 obligations, rights to acquire membership rights or other securities, cash, other property, or any
10 combination of the foregoing;

11 (2) Would be entitled to vote as a separate group on a provision of the plan that, if
12 contained in a proposed amendment to the certificate of formation or operating agreement, would
13 require action by separate voting groups; or

14 (3) Is entitled under the certificate of formation or operating agreement to vote as a
15 voting group to approve an amendment of the certificate of formation or operating agreement.

16 II. If any provision of the certificate of formation or operating agreement adopted or entered
17 into applies to a merger of the limited liability company and that document does not refer to a
18 domestication of the limited liability company, the provision shall be deemed to apply to a
19 domestication of the limited liability company until such time as the provision is amended
20 subsequent to that date.

21 304-C:207 Articles of Domestication.

22 I. After the domestication of a foreign limited liability company has been authorized as
23 required by the laws of the foreign jurisdiction, articles of domestication shall be signed by any
24 member or other duly authorized representative of the limited liability company. The articles shall
25 set forth:

26 (a) The name of the limited liability company immediately before the filing of the
27 articles of domestication and, if that name is unavailable for use in this state or if the limited
28 liability company desires to change its name in connection with the domestication, a name that
29 satisfies the requirements of RSA 304-C:32;

30 (b) The jurisdiction of formation of the limited liability company immediately before the
31 filing of the articles of domestication and the date the limited liability company was formed in that
32 jurisdiction; and

33 (c) A statement that the domestication of the limited liability company in this state was
34 duly authorized as required by the laws of the jurisdiction in which the limited liability company
35 was formed immediately before its domestication in this state.

36 II. The articles of domestication shall have an attached certificate of formation.

37 III. The articles of domestication with the certificate of formation shall be delivered to the

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1 secretary of state for filing, and shall take effect at the effective time provided in RSA 304-C:29.

2 IV. If the foreign limited liability company was authorized to transact business in this state
3 under RSA 304-C:174 and RSA 304-C:175, then its certificate of authority shall be canceled
4 automatically on the effective date of its domestication in the foreign state.

5 304-C:208 Surrender of Charter Upon Domestication.

6 I. Whenever a domestic limited liability company has adopted and approved, in the manner
7 required by this subdivision, a plan of domestication providing for the limited liability company to
8 be domesticated in a foreign jurisdiction, articles of charter surrender shall be signed on behalf of
9 the limited liability company by any member or other duly authorized representative. The articles
10 of charter surrender shall set forth:

11 (a) The name of the limited liability company;

12 (b) A statement that the articles of charter surrender are being filed in connection with
13 the domestication of the limited liability company in a foreign jurisdiction;

14 (c) A statement that the domestication was duly approved by the members and, if voting
15 by any separate voting group was required, by each such separate voting group, in the manner
16 required by this chapter and by the certificate of formation and operating agreement; and

17 (d) The limited liability company's new jurisdiction of formation.

18 II. The articles of charter surrender shall be delivered by the limited liability company to
19 the secretary of state for filing. The articles of charter surrender shall take effect on the effective
20 time provided in RSA 304-C:29.

21 304-C:209 Effect of Domestication.

22 I. When a domestication of a foreign limited liability company in New Hampshire becomes
23 effective:

24 (a) The title to all real and personal property, both tangible and intangible, of the
25 limited liability company remains in the limited liability company without reversion or impairment
26 and the domestication shall not be deemed to give rise to any transfer of real or personal property;

27 (b) The liabilities of the limited liability company remain the liabilities of the limited
28 liability company;

29 (c) An action or proceeding pending against the limited liability company continues
30 against the limited liability company as if the domestication had not occurred;

31 (d) The articles of domestication, or the certificate of formation and operating
32 agreement attached to the articles of domestication, constitute the certificate of formation and
33 operating agreement of a foreign limited liability company domesticating in this state;

34 (e) The membership rights of the limited liability company are reclassified into other
35 membership rights, other securities, obligations, rights to acquire membership rights, or other
36 securities of the limited liability company, or into cash or other property in accordance with the
37 terms of the domestication as approved under the laws of the foreign jurisdiction, and the members

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are entitled only to the rights provided by those terms and under those laws; and

(f) The limited liability company is deemed to:

(1) Be formed under and subject to the organic law of this state for all purposes;

(2) Be the same limited liability company without interruption as the limited liability company that existed under the laws of the foreign jurisdiction; and

(3) Have been formed on the date it was originally formed in the foreign jurisdiction.

II. When a domestication of a domestic limited liability company in a foreign jurisdiction becomes effective, the foreign limited liability company is deemed to:

(a) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of members who exercise appraisal rights in connection with the domestication; and

(b) Agree that it will promptly pay the amount, if any, to which such members are entitled under RSA 304-C:160 through RSA 304-C:172.

III. The domestication of a domestic limited liability company as a foreign limited liability company shall not be deemed to give rise to any transfer of real or personal property.

IV. The owner liability of a member in a foreign limited liability company that is domesticated in this state shall be as follows:

(a) The domestication does not discharge any owner liability under the laws of the foreign jurisdiction to the extent any such owner liability arose before the effective time of the articles of domestication.

(b) The member shall not have owner liability under the laws of the foreign jurisdiction for any debt, obligation, or liability of the limited liability company that arises after the effective time of the articles of domestication.

(c) The provisions of the laws of the foreign jurisdiction shall continue to apply to the collection or discharge of any owner liability preserved by subparagraph (a), as if the domestication had not occurred.

(d) The member shall have whatever rights of contribution from other members as are provided by the laws of the foreign jurisdiction with respect to any owner liability preserved by subparagraph (a), as if the domestication had not occurred.

304-C:210 Abandonment of a Domestication.

I. Unless otherwise provided in a plan of domestication of a domestic limited liability company, after the plan has been adopted and approved as required by this subdivision, and at any time before the domestication has become effective, it may be abandoned by the members.

II. If a domestication is abandoned under paragraph I after articles of charter surrender have been filed with the secretary of state but before the domestication has become effective, a statement that the domestication has been abandoned in accordance with this section, signed by a

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1 member or other duly authorized representative, shall be delivered to the secretary of state for
2 filing prior to the effective date of the domestication with the fee, if any, required under RSA 304-
3 C:191. The statement shall take effect upon filing and the domestication shall be deemed
4 abandoned and shall not become effective.

5 III. If the domestication of a foreign limited liability company in this state is abandoned in
6 accordance with the laws of the foreign jurisdiction after articles of domestication have been filed
7 with the secretary of state, a statement that the domestication has been abandoned, signed by a
8 member or other duly authorized representative, shall be delivered to the secretary of state for
9 filing. The statement shall take effect upon filing and the domestication shall be deemed abandoned
10 and shall not become effective.