

Topic: Amendment to Articles Question
 Question by: Regina Goff
 Jurisdiction: Kansas
 Date: June 24, 2013

Jurisdiction	Question(s)
	Please describe how your state would handle an amendment that attempted to modify the original articles of organization AND added information or provisions that were not part of the original articles filing. For example, if an entity filed an amendment which removed a member or manager referred to in the original articles, and went further to provide that the former member or manager would not be held liable for any claims, demands, suits, or accompanying attorney, criminal, civil, administrative, or investigative fees, would your office question or reject the filing?
Manitoba	
Corporations Canada	
Alabama	
Alaska	
Arizona	<p>The law in Arizona includes your subparagraph (b) below, and much more. On permissive amendments, our law states, in part:</p> <p>C. A limited liability company may amend its articles of organization if its articles of organization as amended contain only provisions that may be lawfully contained in the articles of organization at the time of making the amendment.</p> <p>Our articles statute requires that "other" provisions be "consistent with law."</p> <p>We would not and do not, as a matter of course, undergo a legal analysis of the content of the amendment. Unless a provision caught our attention somehow as being completely illegal, we would ignore amendments that merely add to the original articles. If any such provision is called into question, say from a complaint submitted, then it might be analyzed for whether it is "consistent with law," and it could then be rejected on the basis that it is not consistent.</p> <p>We also have not had the "manifesto" problem, but I think we would handle that the same way.</p>
Arkansas	
California	
Colorado	

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Connecticut	
Delaware	
District of Columbia	<p>In the District of Columbia we would use our discretion to reject any amendment filing if amendment is not related to filing requirements. For instance, amendment would be rejected if customer is trying to change registered agent or remove/replace initial organizers or remove the remaining sole member of the llc (since LLC cannot function with having at least one member), etc.</p> <p>We have broad authority to administer the statute but generally rejections are pretty rare since most amendments are legitimate and filing related.</p>
Florida	
Georgia	

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<p>Hawaii</p>	<p>We would suggest filing an annual report, a Correction form, if the original Articles of Incorporation had an incorrect statement or file a letter regarding a member or manager change. We would allow an amendment that stated former member or manager would not be held liable for any claims, demands, suits, or accompanying attorney, criminal, civil, administrative, or investigative fees, we would not question it.</p> <p>§428-204 Articles of amendment. A limited liability company may amend its articles of organization from time to time, in any and in as many respects as may be desired, so long as its articles of organization as amended contain only those provisions which may be lawfully contained in original articles of organization at the time of making the amendment. The articles of amendment shall be delivered to the director for filing and shall set forth:</p> <ul style="list-style-type: none"> (1) The name of the limited liability company; and (2) The amendment to the articles of organization, referencing specifically the provisions being amended. [L 1996, c 92, pt of §1; am L 2000, c 219, §71] <p>§428-206 Filing in office of director; effective time and date.</p> <ul style="list-style-type: none"> (f) A record filed with the director may contain information in addition to that required by this chapter. (g) If the director has prescribed a mandatory form for a record to be filed, the record must be in or on the prescribed form. (h) The duty of the director to file records under this chapter is ministerial. The filing or refusal to file a document does not: <ul style="list-style-type: none"> (1) Affect or create a presumption as to the validity or invalidity of the record in whole or in part; or (2) Relate to or create a presumption as to the correctness or incorrectness of information contained in the record. [L 1996, c 92, pt of §1; am L 2003, c 124, §73]
<p>Idaho</p>	
<p>Illinois</p>	
<p>Indiana</p>	
<p>Iowa</p>	
<p>Kansas</p>	
<p>Kentucky</p>	
<p>Louisiana</p>	<p>Louisiana is also like Nevada.</p>
<p>Maine</p>	

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Maryland	
Massachusetts	
Michigan	
Minnesota	
Mississippi	
Missouri	
Montana	
Nebraska	

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<p>Nevada</p>	<p>In Nevada, the Secretary of State does not perform a legal review of amendments or other documents. State law allows for pretty much anything if it is lawful.</p> <p>NRS 78.385 Scope of amendments.</p> <ol style="list-style-type: none"> 1. Any corporation may amend its articles of incorporation in any of the following respects: <ol style="list-style-type: none"> (a) By addition to its corporate powers and purposes, or diminution thereof, or both. (b) By substitution of other powers and purposes, in whole or in part, for those prescribed by its articles of incorporation. (c) By increasing, decreasing or reclassifying its authorized stock, by changing the number, par value, preferences, or relative, participating, optional or other rights, or the qualifications, limitations or restrictions of such rights, of its shares, or of any class or series of any class thereof whether or not the shares are outstanding at the time of the amendment, or by changing shares with par value, whether or not the shares are outstanding at the time of the amendment, into shares without par value or by changing shares without par value, whether or not the shares are outstanding at the time of the amendment, into shares with par value, either with or without increasing or decreasing the number of shares, and upon such basis as may be set forth in the certificate of amendment. (d) By changing the name of the corporation. (e) By making any other change or alteration in its articles of incorporation that may be desired. 2. All such changes or alterations may be effected by one certificate of amendment, but any articles of incorporation so amended, changed or altered may contain only such provisions as it would be lawful and proper to insert in original articles of incorporation pursuant to NRS 78.035 and 78.037, if the original articles were signed and filed at the time of making the amendment.

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New Hampshire	<p>Below is the amendment section of the New Hampshire LLC statute;</p> <p style="padding-left: 40px;">304-C:34 Amendments to Certificates of Formation. –</p> <p style="padding-left: 40px;">I. A certificate of formation is amended by filing a certificate of amendment with the secretary of state. The certificate of amendment shall set forth:</p> <p style="padding-left: 80px;">(a) The name of the limited liability company; and</p> <p style="padding-left: 80px;">(b) The amendment to the certificate of formation.</p> <p style="padding-left: 40px;">II. A certificate of formation may be amended at any time in any respect so long as the certificate of formation as amended contains only provisions that lawfully may be contained in the certificate of formation at the time of making the amendment.</p>
New Jersey	
New Mexico	
New York	
North Carolina	<p>Last year we began getting a lot of filings removing officers, members, etc., then those removed came to us and said the original filer didn't have authority to file the document and filed Articles of Correction.</p> <p>What we started doing, but it not required by statute, is to request a statement from the person being removed that they are in agreement with the filing.</p> <p>So, to answer your question, as long as the person being removed signs a statement that he/she is aware they are being removed as an officer/member, we would file the document. We also let them know that they can change officer/manager information on the annual report filing.</p> <p>The entity could also file Articles of Restatement including amendments.</p>
North Dakota	
Ohio	<p>Ohio would accept an unrelated amendment.</p>
Oklahoma	

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Oregon	<p>We don't peruse the articles that closely. We would take those provisions to be instructions to the filer, not to the filing office, because in general the proper judge of content of articles of incorporation (and amendments thereto) is legal counsel and ultimately the courts.</p> <p>Statute does indicate what must be in the articles of amendment in order to be filed, however, and that includes things like adoption date and member action, if any. Those we make sure are provided - still not going to judge their content, though.</p> <p>FWIW, our statute is quite different from yours, but I think it gets to the same idea as "other proper purpose". Ours says that amendments may contain only that which is "required or permitted" in the original articles. That means they can add or delete stuff that could have/should have been in the originals, and they often do, especially indemnity provisions.</p>
Pennsylvania	
Rhode Island	Rhode Island is like Utah and Nevada!
South Carolina	
South Dakota	
Tennessee	
Texas	<p>Texas does not make a determination whether supplementary statements in an amendment or the original certificate of formation are unrelated to filing requirements. Frequently entities chose to include supplementary information in the certificates of formation. In fact, our forms include space to set forth any additional information the entity choses.</p> <p>Texas law is similar to New Hampshire. We would allow them to amend to add anything that could have been included in the original certificate of formation and delete anything that was not necessary so long as the documents with the deletion set forth the minimum requirements.</p>
Utah	Utah is like Nevada
Vermont	
Virginia	See additional comments below

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Washington	For LLC's yes we would file it. Our LLC laws have similar language "a certificate of formation may be amended at any time for any other purpose" We do not review for purpose.
West Virginia	
Wisconsin	
Wyoming	

Additional comments:

VIRGINIA:

Virginia's LLC amendment statute provides that "A limited liability company may amend its articles of organization at any time to add or change a provision that is required or permitted in the articles, or to delete a provision not required in the articles." Our articles of organization statute says the articles can include any matter permitted to be set forth in an operating agreement.

What you have in your subsection (b) is from the limited partnership act, under which a filing is usually a notice-filing (i.e., after the fact).

"Proper purposes" would seem to include any matter that could be in the operating agreement. We also see standard mortgagee provisions added when required by a lender as a condition for receiving a loan.

In Virginia, our practice has been to reject an amendment that sets forth the name of one or more members, advising the customer that this is properly a part of the operating agreement, that ownership information is not required to be disclosed publically, and that the filing would require an additional amendment (\$25) whenever the members are subsequently changed. If the customer persists, however, we will file it.

As to the non-liability provision, I think it speaks vis-à-vis the former member/manager and the LLC. So I don't see what purpose it serves in the articles. As it is a provision that could be in the operating agreement, it would be acceptable. But we might reject it, like we do the member-naming provisions, to see if we get any push-back. It is somewhat misleading in the articles, however, in that the public might be led to believe that there is no recourse against a former member/manager when, in fact, there is.

Full text of email:

The Kansas Secretary of State's office is attempting to formulate a defined policy on amendment filings. The Kansas LLC amendment statute provides that any [member or manager]:

(b) "Who becomes aware that any statement in the articles of organization was false when made, or that any matter described has changed making the articles of organization false in any material respect, shall promptly amend the articles of organization.

(c) Articles of organization may be amended at any time for any other proper purpose." (Emphasis added).

The policy question relates to the statutory language "for any other proper purpose." Please describe how your state would handle an amendment that attempted to modify the original articles of organization AND added information or provisions that were not part of the original articles filing. For example, if an entity filed an amendment which removed a member or manager referred to in the original articles, and went further to provide that the former member or manager would not be held liable for any claims, demands, suits, or accompanying attorney, criminal, civil, administrative, or investigative fees, would your office question or reject the filing?

Thanks!

REGINA GOFF | Staff Attorney and Business Process Analyst

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