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"Revised Uniform Limited Liability Company Act" (RULLCA), as developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL), attached and referenced in sponsor's statement.

LAW/RWH

Title 42.
Chapter 2C.
(New)
Revised Uniform
Limited Liability
Company Act.
§§1-94 -
C.42:2C-1 to
42:2C-94
§95 - Repealer
§96 - Note

P.L.2012, CHAPTER 50, *approved September 19, 2012*
Assembly, No. 1543 (*First Reprint*)

1 **AN ACT** concerning the creation and operation of limited liability
2 companies, supplementing Title 42 of the Revised Statutes and
3 repealing various parts of the statutory law.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 **ARTICLE 1**
9 **GENERAL PROVISIONS**

10 1. Short Title. This act shall be known and may be cited as the
11 "Revised Uniform Limited Liability Company Act."

12
13 2. Definitions. As used in this act:

14 "Certificate of formation" means the certificate required by
15 section 18 of this act. The term includes the certificate as amended
16 or restated.

17 "Contribution" means any benefit provided by a person to a
18 limited liability company:

19 (1) in order to become a member upon formation of the
20 company and in accordance with an agreement between or among
21 the persons who have agreed to become the initial members of the
22 company;

23 (2) in order to become a member after formation of the company
24 and in accordance with an agreement between the person and the
25 company; or

26 (3) in the person's capacity as a member and in accordance with
27 the operating agreement or an agreement between the member and
28 the company.

29 "Debtor in bankruptcy" means a person who is the subject of:

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted March 15, 2012.

1 (1) an order for relief under Title 11 of the United States Code
2 or a successor statute of general application; or
3 (2) a comparable order under federal, state, or foreign law
4 governing insolvency.
5 “Distribution” except as otherwise provided in subsection g. of
6 section 35 of this act, means a transfer of money or other property
7 from a limited liability company to another person on account of a
8 transferable interest.
9 “Effective” with respect to a record required or permitted to be
10 delivered to the filing office for filing under this act, means
11 effective under subsection c. of section 22 of this act.
12 “Filing office” means the Division of Revenue in the Department
13 of the Treasury, or such other State office designated as such by
14 law.
15 “Foreign limited liability company” means an unincorporated
16 entity formed under the law of a jurisdiction other than this State
17 and denominated by that law as a limited liability company.
18 “Limited liability company” except in the phrase “foreign limited
19 liability company,” means an entity formed under this act.
20 “Manager” means a person that under the operating agreement of
21 a manager-managed limited liability company is responsible, alone
22 or in concert with others, for performing the management functions
23 stated in subsection c. of section 37 of this act.
24 “Manager-managed limited liability company” means a limited
25 liability company that qualifies under subsection a. of section 37 of
26 this act.
27 “Member” means a person that has become a member of a
28 limited liability company pursuant to section 31 of this act and has
29 not dissociated pursuant to section 46 of this act.
30 “Member-managed limited liability company” means a limited
31 liability company that is not a manager-managed limited liability
32 company.
33 “Operating agreement” means the agreement, whether or not
34 referred to as an operating agreement and whether oral, in a record,
35 implied, or in any combination thereof, of all the members of a
36 limited liability company, including a sole member, concerning the
37 matters described in subsection a. of section 11 of this act. The term
38 includes the agreement as amended or restated.
39 “Organizer” means a person that acts to form a limited liability
40 company pursuant to section 18 of this act.
41 “Person” means an individual, corporation, business trust, estate,
42 trust, partnership, limited liability company, association, joint
43 venture, public corporation, government or governmental
44 subdivision, agency, or instrumentality, or any other legal or
45 commercial entity.

1 “Principal office” means the principal executive office of a
2 limited liability company or foreign limited liability company,
3 whether or not the office is located in this State.

4 “Record” means information that is inscribed on a tangible
5 medium or that is stored in an electronic or other medium and is
6 retrievable in perceivable form.

7 “Registered office” means:

8 (1) the office that a limited liability company is required to
9 designate and maintain pursuant to section 14 of this act; or

10 (2) the principal office of a foreign limited liability company.

11 “Sign” means, with the present intent to authenticate or adopt a
12 record:

13 (1) to execute or adopt a tangible symbol; or

14 (2) to attach to or logically associate with the record an
15 electronic symbol, sound, or process.

16 “State” means a state of the United States, the District of
17 Columbia, Puerto Rico, the United States Virgin Islands, or any
18 territory or insular possession subject to the jurisdiction of the
19 United States.

20 “Terminated” means, with respect to a limited liability company,
21 that such company has been dissolved, that all of its affairs have
22 been wound up, and that all of its assets have been either applied to
23 discharge its obligations to creditors, including members that are
24 creditors, or distributed to its members.

25 “Transfer” includes an assignment, conveyance, deed, bill of
26 sale, lease, mortgage, security interest, encumbrance, gift, and
27 transfer by operation of law.

28 “Transferable interest” means the right, as originally associated
29 with a person’s capacity as a member, to receive distributions from
30 a limited liability company in accordance with the operating
31 agreement, whether or not the person remains a member or
32 continues to own any part of the right.

33 “Transferee” means a person to which all or part of a transferable
34 interest has been transferred, whether or not the transferor is a
35 member.

36

37 3. Knowledge; Notice.

38 a. A person knows a fact when the person:

39 (1) has actual knowledge of it; or

40 (2) is deemed to know it under paragraph (1) of subsection d. of
41 this section or law other than this act.

42 b. A person has notice of a fact when the person:

43 (1) has reason to know the fact from all of the facts known to
44 the person at the time in question; or

45 (2) is deemed to have notice of the fact under paragraph (2) of
46 subsection d. of this section;

- 1 c. A person notifies another of a fact by taking steps
2 reasonably required to inform the other person in ordinary course,
3 whether or not the other person knows the fact.
- 4 d. A person that is not a member is deemed:
- 5 (1) to know of a limitation on authority to transfer real property
6 as provided in subsection g. of section 28 of this act; and
7 (2) to have notice of a limited liability company's:
- 8 (a) dissolution, 90 days after a certificate of dissolution,
9 pursuant to subparagraph (a) of paragraph (2) of subsection b. of
10 section 49 of this act becomes effective;
- 11 (b) termination, 90 days after a statement of termination,
12 pursuant to subparagraph (f) of paragraph (2) of subsection b. of
13 section 49 of this act becomes effective; and
- 14 (c) merger, conversion, or domestication, 90 days after articles
15 of merger, conversion, or domestication under Article 10 (sections
16 73 through 87 of this act) become effective.
- 17
- 18 4. Nature, Purpose and Duration of Limited Liability Company.
- 19 a. A limited liability company is an entity distinct from its
20 members.
- 21 b. A limited liability company may have any lawful purpose,
22 regardless of whether for profit.
- 23 c. A limited liability company has perpetual duration.
- 24
- 25 5. Powers. A limited liability company has the capacity to sue
26 and be sued in its own name and the power to do all things
27 necessary or convenient to carry on its activities.
- 28
- 29 6. Governing Law. The law of this State governs:
- 30 a. The internal affairs of a limited liability company; and
31 b. The liability of a member as member and a manager as
32 manager for the debts, obligations, or other liabilities of a limited
33 liability company.
- 34
- 35 7. Supplemental Principles of Law. Unless displaced by
36 particular provisions of this act, the principles of law and equity
37 supplement this act.
- 38
- 39 8. Name.
- 40 a. The name of a limited liability company shall contain the
41 words "limited liability company" or the abbreviation "L.L.C." or
42 "LLC". "Limited" may be abbreviated as "Ltd.", and "company"
43 may be abbreviated as "Co.".
- 44 b. Unless authorized by subsection c. of this section, the name
45 of a limited liability company shall be distinguishable in the records
46 of the filing office from:

1 (1) the name of each person that is not an individual and that is
2 incorporated, organized, or authorized to transact business in this
3 State; and

4 (2) each name reserved under section 10 of this act.

5 c. Furthermore, the name of a limited liability company shall
6 not contain any word or phrase, or any abbreviation or derivative
7 thereof, the use of which is prohibited or restricted by any other
8 statute of this State, unless the limited liability company has
9 complied with the restrictions.

10 d. A limited liability company may apply to the filing office for
11 authorization to use a name that does not comply with subsection b.
12 of this section. The filing office shall authorize use of the name
13 applied for if, as to each noncomplying name:

14 (1) the present user, registrant, or owner of the noncomplying
15 name consents in a signed record to the use and submits an
16 undertaking in a form satisfactory to the filing office to change the
17 noncomplying name to a name that complies with subsection b. of
18 this section and is distinguishable in the records of the filing office
19 from the name applied for; or

20 (2) the applicant delivers to the filing office a certified copy of
21 the final judgment of a court establishing the applicant's right to use
22 in this State the name applied for.

23 e. Subject to section 61, the provisions of this act shall apply to
24 a foreign limited liability company transacting business in this State
25 which has a certificate of authority to transact business in this State
26 or which has applied for a certificate of authority.

27

28 9. Use of Name Other Than Actual Limited Liability Company
29 Name.

30 a. A domestic limited liability company or foreign limited
31 liability company which conducts activities in this State shall not
32 conduct any of those activities using an alternate name, including
33 an abbreviation of its name or an acronym, unless:

34 (1) it also uses its actual name in the transaction of any of its
35 activities in a manner that is not deceptive as to its actual identity;

36 or

37 (2) it has first registered the alternate name as provided in
38 subsection b. of this section.

39 b. Any limited liability company may adopt and use any
40 alternate name, including a name which would be unavailable as the
41 name of a domestic or foreign limited liability company because of
42 the prohibitions of subsection a. or b. of section 8 of this act, but
43 not including any name not permitted as a limited liability company
44 name by subsection c. of section 8 of this act, by filing an original
45 and a copy of a certificate of registration of alternate name with the
46 filing office executed on behalf of the limited liability company.
47 The certificate shall set forth:

- 1 (1) The name, jurisdiction and date of formation of the limited
2 liability company;
 - 3 (2) The alternate name;
 - 4 (3) A brief statement of the character or nature of the particular
5 activities to be conducted using the alternate name;
 - 6 (4) That the limited liability company intends to use the
7 alternate name in this State;
 - 8 (5) That the limited liability company has not previously used
9 the alternate name in this State in violation of this section or, if it
10 has, the month and year in which it commenced the use.
- 11 c. The registration shall be effective for five years from the
12 date of filing and may be renewed successively for additional five-
13 year periods by filing an original and a copy of the certificate of
14 renewal executed on behalf of the limited liability company any
15 time within 90 days prior to, but not later than, the date of
16 expiration of the registration. The certificate of renewal shall set
17 forth the information required in paragraphs (1) through (4) of
18 subsection b. of this section, the date of the certificate of
19 registration then in effect and that the limited liability company is
20 continuing to use the alternate name.
- 21 d. This section shall not:
- 22 (1) Grant to the registrant of an alternate name any right in the
23 name as against any prior or subsequent use of the name, regardless
24 of whether used as a trademark, trade name, business name or
25 corporate name; or
 - 26 (2) Interfere with the power of any court to enjoin the use of the
27 name on the basis of the law of unfair competition or on any other
28 basis except the identity or similarity of the alternate name to any
29 corporate, limited partnership or limited liability company name.
- 30 e. A limited liability company which has used an alternate
31 name in this State contrary to the provisions of this section shall,
32 upon filing a certificate of registration of alternate name or an
33 untimely certificate of renewal, pay to the filing office the filing fee
34 prescribed for the certificate plus an additional filing fee equal to
35 the full amount of the regular filing fee multiplied by the number of
36 years it has been using the alternate name in violation of this
37 section. For the purpose of this subsection, any part of a year shall
38 be considered a full year.
- 39 f. The failure of a limited liability company to file a certificate
40 of registration or renewal of alternate name shall not impair the
41 validity of any contract or act of the limited liability company and
42 shall not prevent the limited liability company from defending any
43 action or proceedings in any court of this State, but the limited
44 liability company shall not maintain any action or proceeding in any
45 court of this State arising out of a contract or act in which it used
46 the alternate name until it has filed the applicable certificate.

1 g. (1) A limited liability company which files a certificate of
2 registration of alternate name which contains a false statement or
3 omission regarding the date it first used an alternate name in this
4 State shall, if the false statement or omission reduces the amount of
5 the additional fee it paid or should have paid as provided in
6 subsection e. of this section, forfeit to the State a penalty of not less
7 than \$200 nor more than \$500.

8 (2) A limited liability company which should have filed a
9 certificate of registration or renewal of alternate name and fails to
10 do so within 60 days after being notified of its obligation to do so
11 by the filing office, by any other governmental officer, or by any
12 person aggrieved by its failure to do so, shall forfeit to the State a
13 penalty of not less than \$200 nor more than \$500.

14 (3) A penalty imposed under this section shall be recovered with
15 costs in an action brought by the Attorney General. The court may
16 proceed on the action in a summary manner.

17

18 10. Reservation of Name.

19 a. A person may reserve the exclusive use of the name of a
20 limited liability company, including a fictitious or assumed name
21 for a foreign limited liability company whose name is not available,
22 by delivering an application to the filing office for filing. The
23 application must state the name and address of the applicant and the
24 name proposed to be reserved. If the filing office finds that the
25 name applied for is available, it must be reserved for the applicant's
26 exclusive use for a 120-day period.

27 b. The owner of a name reserved for a limited liability
28 company may transfer the reservation to another person by
29 delivering to the filing office for filing a signed notice of the
30 transfer which states the name and address of the transferee.

31

32 11. Operating Agreement; Scope, Function, and Limitations.

33 a. Except as provided in subsections b. and c. of this section,
34 the operating agreement governs:

35 (1) relations among the members as members and between the
36 members and the limited liability company;

37 (2) the rights and duties under this act of a person in the
38 capacity of manager;

39 (3) the activities of the company and the conduct of those
40 activities; and

41 (4) the means and conditions for amending the operating
42 agreement.

43 b. To the extent the operating agreement does not otherwise
44 provide for a matter described in subsection a. of this section, this
45 act governs the matter.

46 c. An operating agreement may not:

- 1 (1) vary a limited liability company's capacity under section 5
- 2 of this act to sue and be sued in its own name;
- 3 (2) vary the law applicable under section 6 of this act;
- 4 (3) vary the power of the court under section 21 of this act;
- 5 (4) subject to subsections d. through g. of this section, eliminate
- 6 the duty of loyalty, the duty of care, or any other fiduciary duty;
- 7 (5) subject to subsections d. through g. of this section, eliminate
- 8 the contractual obligation of good faith and fair dealing under
- 9 subsection d. of section 39 of this act;
- 10 (6) unreasonably restrict the duties and rights stated in section
- 11 40 of this act;
- 12 (7) vary the power of a court to decree dissolution in the
- 13 circumstances specified in paragraphs (4) and (5) of subsection a. of
- 14 section 48 of this act;
- 15 (8) vary the requirement to wind up a limited liability
- 16 company's business as specified in subsection a. and paragraph (1)
- 17 of subsection b. of section 49 of this act;
- 18 (9) unreasonably restrict the right of a member to maintain an
- 19 action under Article 9 (sections 67 through 72 of this act);
- 20 (10) restrict the right to approve a merger, conversion, or
- 21 domestication under section 86 of this act to a member that will
- 22 have personal liability with respect to a surviving, converted, or
- 23 domesticated organization; or
- 24 (11) except as otherwise provided in subsection b. of section 13
- 25 of this act, restrict the rights under this act of a person other than a
- 26 member or manager.
- 27 d. If not manifestly unreasonable, the operating agreement
- 28 may:
- 29 (1) restrict or eliminate the duty:
- 30 (a) as required in paragraph (1) of subsection b. and subsection
- 31 g. of section 39 of this act, to account to the limited liability
- 32 company and to hold as trustee for it any property, profit, or benefit
- 33 derived by the member in the conduct or winding up of the
- 34 company's business, from a use by the member of the company's
- 35 property, or from the appropriation of a limited liability company
- 36 opportunity;
- 37 (b) as required in paragraph (2) of subsection b. and subsection
- 38 g. of section 39 of this act, to refrain from dealing with the
- 39 company in the conduct or winding up of the company's business as
- 40 or on behalf of a party having an interest adverse to the company;
- 41 and
- 42 (c) as required by paragraph (3) of subsection b. and subsection
- 43 g. of section 39 of this act, to refrain from competing with the
- 44 company in the conduct of the company's business before the
- 45 dissolution of the company;
- 46 (2) identify specific types or categories of activities that do not
- 47 violate the duty of loyalty;

- 1 (3) alter the duty of care, except to authorize intentional
2 misconduct or knowing violation of law;
- 3 (4) alter any other fiduciary duty, including eliminating
4 particular aspects of that duty; and
- 5 (5) prescribe the standards by which to measure the performance
6 of the contractual obligation of good faith and fair dealing under
7 subsection d. and subsection g. of section 39 of this act.
- 8 e. The operating agreement may specify the method by which a
9 specific act or transaction that would otherwise violate the duty of
10 loyalty may be authorized or ratified by one or more disinterested
11 and independent persons after full disclosure of all material facts.
- 12 f. To the extent the operating agreement of a member-managed
13 limited liability company expressly relieves a member of a
14 responsibility that the member would otherwise have under this act
15 and imposes the responsibility on one or more other members, the
16 operating agreement may, to the benefit of the member that the
17 operating agreement relieves of the responsibility, also eliminate or
18 limit any fiduciary duty that would have pertained to the
19 responsibility.
- 20 g. The operating agreement may alter or eliminate the
21 indemnification for a member or manager provided by section 38 of
22 this act and may eliminate or limit a member or manager's liability
23 to the limited liability company and members for money damages,
24 except for:
- 25 (1) breach of the duty of loyalty;
- 26 (2) a financial benefit received by the member or manager to
27 which the member or manager is not entitled;
- 28 (3) a breach of a duty under section 36 of this act;
- 29 (4) intentional infliction of harm on the company or a member;
- 30 or
- 31 (5) an intentional violation of criminal law.
- 32 h. The court shall decide any claim under paragraph (1) of
33 subsection d. of this section that a term of an operating agreement is
34 manifestly unreasonable. The court:
- 35 (1) shall make its determination as of the time the challenged
36 term became part of the operating agreement and by considering
37 only circumstances existing at that time; and
- 38 (2) may invalidate the term only if, in light of the purposes and
39 activities of the limited liability company, it is readily apparent that:
- 40 (a) the objective of the term is unreasonable; or
- 41 (b) the term is an unreasonable means to achieve the provision's
42 objective.
- 43 i. This act is to be liberally construed to give the maximum
44 effect to the principle of freedom of contract and to the
45 enforceability of operating agreements.

1 12. Operating Agreement; Effect on Limited Liability Company
2 and Persons Becoming Members; Preformation Agreement.

3 a. A limited liability company is bound by and may enforce the
4 operating agreement, whether or not the company has itself
5 manifested assent to the operating agreement.

6 b. A person that becomes a member of a limited liability
7 company is deemed to assent to the operating agreement.

8 c. Two or more persons intending to become the initial
9 members of a limited liability company may make an agreement
10 providing that upon the formation of the company the agreement
11 will become the operating agreement. One person intending to
12 become the initial member of a limited liability company may
13 assent to terms providing that upon the formation of the company
14 the terms will become the operating agreement.

15
16 13. Operating Agreement; Effect on Third Parties and
17 Relationship to Records Effective on Behalf of Limited Liability
18 Company.

19 a. An operating agreement may specify that its amendment
20 requires the approval of a person that is not a party to the operating
21 agreement or the satisfaction of a condition. An amendment is
22 ineffective if its adoption does not include the required approval or
23 satisfy the specified condition.

24 b. The obligations of a limited liability company and its
25 members to a person in the person's capacity as a transferee or
26 dissociated member are governed by the operating agreement.
27 Subject only to any court order issued under paragraph (2) of
28 subsection b. ¹['and subsection g.'] of section 43 of this act to
29 effectuate a charging order, an amendment to the operating
30 agreement made after a person becomes a transferee or dissociated
31 member is effective with regard to any debt, obligation, or other
32 liability of the limited liability company or its members to the
33 person in the person's capacity as a transferee or dissociated
34 member.

35 c. If a record that has been delivered by a limited liability
36 company to the filing office for filing and has become effective
37 under this act contains a provision that would be ineffective under
38 subsection c. of section 11 of this act, if contained in the operating
39 agreement, the provision is likewise ineffective in the record.

40 d. Subject to subsection c. of this section, if a record that has
41 been delivered by a limited liability company to the filing office for
42 filing and has become effective under this act conflicts with a
43 provision of the operating agreement:

44 (1) the operating agreement prevails as to members, dissociated
45 members, transferees, and managers; and

46 (2) the record prevails as to other persons to the extent they
47 reasonably rely on the record.

1 14. Office and Agent for Service of Process.

2 a. A limited liability company shall designate and continuously
3 maintain in this State:

4 (1) an office, which need not be a place of its activity in this
5 State; and

6 (2) an agent for service of process.

7 b. A foreign limited liability company that has a certificate of
8 authority under section 58 of this act shall designate and
9 continuously maintain in this State an office and an agent for
10 service of process.

11 c. An agent for service of process of a limited liability
12 company or foreign limited liability company shall be an individual
13 who is a resident of this State or other person with authority to
14 transact business in this State.

15

16 15. Change of Designated Office or Agent For Service of
17 Process.

18 a. A limited liability company or foreign limited liability
19 company may change its registered office, its agent for service of
20 process, or the address of its agent for service of process by
21 delivering to the filing office for filing a statement of change
22 containing:

23 (1) the name of the company;

24 (2) the street and mailing addresses of its current registered
25 office;

26 (3) if the current registered office is to be changed, the street
27 and mailing addresses of the new registered office;

28 (4) the name and street and mailing addresses of its current
29 agent for service of process; and

30 (5) if the current agent for service of process or an address of
31 the agent is to be changed, the new information.

32 b. 'A registered agent may, with prior notice to the limited
33 liability company for which it is the registered agent, change the
34 address of the registered office of any domestic or foreign limited
35 liability company for which the registered agent is registered agent
36 to another address in this State by filing in the filing office a
37 statement of change, executed by the registered agent, setting forth
38 the names of each limited liability company, and the address at
39 which the registered agent has maintained the registered office for
40 each limited liability company, and further certifying to the new
41 address to which the registered office will be changed on a given
42 day, and at which new address the registered agent will thereafter
43 maintain the registered office for each limited liability company
44 recited in the statement of change. Upon the filing of such statement
45 of change, the filing office shall furnish to the registered agent a
46 filed copy of the same together with a receipt for the fees, and
47 thereafter, or until further change of address, as authorized by law,

1 the registered office in this State of each limited liability company
2 recited in the statement of change shall be located at the new
3 address of the registered agent thereof as given in such statement of
4 change.

5 c. In the event of a change of name of any person acting as a
6 registered agent of a limited liability company, the registered agent
7 shall file in the filing office a statement of change, executed by the
8 registered agent, setting forth the new name of the registered agent,
9 the name of the registered agent before it was changed, the name of
10 each limited liability company represented by the registered agent,
11 and the address at which the registered agent has maintained the
12 registered office for each limited liability company. Upon the filing
13 of the statement of change, the filing office shall furnish to the
14 registered agent a filed copy of the same together with a receipt for
15 the fees.

16 d. Filing a statement of change under this section shall be
17 deemed to be an amendment of the certificate of formation or the
18 certificate of authority of each limited liability company affected
19 thereby and no limited liability company shall be required to take
20 any further action with respect thereto, to amend its certificate of
21 formation or certificate of authority under this act.

22 e.¹ Subject to subsection c. of section 22 of this act, a statement
23 of change is effective when filed by the filing office.
24

25 16. Resignation of Agent for Service of Process.

26 a. To resign as an agent for service of process of a limited
27 liability company or foreign limited liability company, the agent
28 shall deliver to the filing office for filing a statement of resignation
29 containing the company name and stating that the agent is
30 resigning.

31 b. The filing office shall file a statement of resignation
32 delivered under subsection a. of this section and mail or otherwise
33 provide or deliver a copy to the registered office of the company or
34 the principal office of the company if the mailing address of the
35 principal office appears in the records of the filing office and is
36 different from the mailing address of the registered office.

37 c. An agency for service of process terminates on the earlier of:
38 (1) the 31st day after the filing office files the statement of
39 resignation;

40 (2) when a record designating a new agent for service of process
41 is delivered to the filing office for filing on behalf of the limited
42 liability company and becomes effective.

43

44 17. Service of Process.

45 a. An agent for service of process appointed by a limited
46 liability company or foreign limited liability company is an agent of

1 the company for service of any process, notice, or demand required
2 or permitted by law to be served on the company.

3 b. If a limited liability company or foreign limited liability
4 company does not appoint or maintain an agent for service of
5 process in this State or the agent for service of process cannot with
6 reasonable diligence be found at the agent's street address, the
7 filing office is an agent of the company upon whom process, notice,
8 or demand may be served.

9 c. Service of any process, notice, or demand on the filing office
10 as agent for a limited liability company or foreign limited liability
11 company may be made by delivering to the filing office duplicate
12 copies of the process, notice, or demand. If a process, notice, or
13 demand is served on the filing office, the filing office shall forward
14 one of the copies by mail or otherwise provide or deliver a copy to
15 the registered office of the company or the principal office of the
16 company if the mailing address of the principal office appears in the
17 records of the filing office and is different from the mailing address
18 of the registered office.

19 d. Service is effected under subsection c. of this section at the
20 earliest of:

21 (1) the date the limited liability company or foreign limited
22 liability company receives the process, notice, or demand;

23 (2) the date shown on the return receipt, if signed on behalf of
24 the company; or

25 (3) five days after the process, notice, or demand is deposited
26 with the United States Postal Service, if correctly addressed and
27 with sufficient postage.

28 e. The filing office shall keep a record of each process, notice,
29 and demand served pursuant to this section and record the date of,
30 and the action taken regarding, the service.

31 f. This section does not affect the right to serve process,
32 notice, or demand in any other manner provided by law.

33

34

ARTICLE 2

35 FORMATION; CERTIFICATE OF FORMATION AND OTHER 36 FILINGS

37 18. Formation of Limited Liability Company; Certificate of
38 Formation.

39 a. One or more persons may act as organizers to form a limited
40 liability company by signing and delivering to the filing office for
41 filing a certificate of formation.

42 b. A certificate of formation shall state:

43 (1) the name of the limited liability company, which complies
44 with section 8 of this act; and

45 (2) the street and mailing addresses of the initial registered
46 office and the name of the initial agent at that office for service of
47 process of the company.

1 c. Subject to subsection c. of section 12 of this act, a certificate
2 of formation may also contain statements as to matters other than
3 those required by subsection b. of this section. However, a
4 statement in a certificate of formation is not effective as a statement
5 of authority.

6 d. A limited liability company is formed when the filing office
7 has filed the certificate of formation and the company has at least
8 one member, unless the certificate states a delayed effective date
9 pursuant to subsection c. of section 22 of this act.

10 e. If the certificate states a delayed effective date, a limited
11 liability company is not formed if, before the certificate takes
12 effect, a certificate of dissolution is signed and delivered to the
13 filing office for filing and the filing office files the certificate.

14 f. Subject to any delayed effective date and except in a
15 proceeding by this State to dissolve a limited liability company, the
16 filing of the certificate of formation by the filing office is
17 conclusive proof that the organizer satisfied all conditions to the
18 formation of a limited liability company.

19

20 19. Amendment or Restatement of Certificate of Formation.

21 a. A certificate of formation may be amended or restated at any
22 time.

23 b. To amend its certificate of formation, a limited liability
24 company shall deliver to the filing office for filing an amendment
25 stating:

26 (1) the name of the company;

27 (2) the date of filing of its certificate of formation;

28 (3) such other information as may be required by the filing
29 office to correctly identify the company; and

30 (4) the changes the amendment makes to the certificate as most
31 recently amended or restated.

32 c. To restate its certificate of formation, a limited liability
33 company shall deliver to the filing office for filing a restated
34 certificate of formation, designated as such in its heading, stating:

35 (1) in the heading or an introductory paragraph, the company's
36 present name, the date of the filing of the company's initial
37 certificate of formation and such other information as may be
38 required by the filing office to correctly identify the company;

39 (2) if the company's name has been changed at any time since
40 the company's formation, each of the company's former names; and

41 (3) the changes the restated certificate of formation makes to the
42 certificate of formation as most recently amended or restated.

43 d. Subject to subsection c. of section 12 and subsection c. of
44 section 22 of this act, an amendment to or a restated certificate of
45 formation is effective when filed by the filing office.

46 e. If a member of a member-managed limited liability
47 company, or a manager of a manager-managed limited liability

1 company, knows that any information in a filed certificate of
2 formation was inaccurate when the certificate was filed or has
3 become inaccurate owing to changed circumstances, the member or
4 manager shall promptly:

5 (1) cause the certificate to be amended; or

6 (2) if appropriate, deliver to the filing office for filing a
7 statement of change under section 15 or a certificate of correction
8 under section 23 of this act.

9

10 20. Signing of Records to be Delivered for Filing to Filing
11 Office.

12 a. A record delivered to the filing office for filing pursuant to
13 this act shall be signed as follows:

14 (1) Except as otherwise provided in paragraphs (2) and (3) of
15 this subsection, a record signed on behalf of a limited liability
16 company shall be signed by a person authorized by the company.

17 (2) A limited liability company's initial certificate of formation
18 shall be signed by at least one person acting as an organizer.

19 (3) A record filed on behalf of a dissolved limited liability
20 company that has no members shall be signed by the person
21 winding up the company's activities under subsection c. of section
22 49 of this act or a person appointed under subsection d. of section
23 49 of this act to wind up those activities.

24 (4) A certificate of dissolution under subsection e. of section 18
25 of this act shall be signed by each organizer that signed the initial
26 certificate of formation, but a personal representative of a deceased
27 or incompetent organizer may sign in place of the decedent or
28 incompetent.

29 (5) A statement of denial by a person under section 29 of this
30 act shall be signed by that person.

31 (6) Any other record shall be signed by the person on whose
32 behalf the record is delivered to the filing office.

33 b. Any record filed under this act may be signed by an agent,
34 including an attorney in fact.

35

36 21. Signing and Filing Pursuant to Judicial Order.

37 a. If a person required by this act to sign a record or deliver a
38 record to the filing office for filing does not do so, any other person
39 that is aggrieved may petition the Superior Court to order:

40 (1) the person to sign the record;

41 (2) the person to deliver the record to the filing office for filing;

42 or

43 (3) the filing office to file the record unsigned.

44 b. If a petitioner under subsection a. of this section is not the
45 limited liability company or foreign limited liability company to
46 which the record pertains, the petitioner shall make the company a
47 party to the action.

1 22. Delivery to and Filing of Records by Filing Office; Effective
2 Time and Date.

3 a. A record authorized or required to be delivered to the filing
4 office for filing under this act shall be captioned to describe the
5 record's purpose, be in a medium permitted by the filing office, and
6 be delivered to the filing office. If the filing fees have been paid,
7 unless the filing office determines that a record does not comply
8 with the filing requirements of this act, the filing office shall file the
9 record and:

10 (1) for a statement of denial under section 29 of this act, send an
11 acknowledgement confirming the filing and a receipt for the fees to
12 the person who submitted the record; and

13 (2) for all other records, send an acknowledgement confirming
14 the filing and a receipt for the fees to the person who submitted the
15 record.

16 b. Upon request and payment of the requisite fee, the filing
17 office shall send to the requester a certified copy of a requested
18 record.

19 c. Except as otherwise provided in sections 15 and 23 of this
20 act, a record delivered to the filing office for filing under this act
21 may specify a delayed effective date. Subject to section 15,
22 subsection d. of section 18 and section 23 of this act, a record filed
23 by the filing office is effective:

24 (1) if the record does not specify a delayed effective date, on
25 the date the record is filed as evidenced by the filing office's
26 endorsement of the date on the record; and

27 (2) if the record specifies a delayed effective date after the date
28 the record is filed as evidenced by the filing office's endorsement of
29 the date on the record, on the delayed effective date.

30

31 23. Correcting Filed Record.

32 a. A limited liability company or foreign limited liability
33 company may deliver to the filing office for filing a certificate of
34 correction to correct a record previously delivered by the company
35 to the filing office and filed by the filing office, if at the time of
36 filing the record contained inaccurate information or was
37 defectively signed.

38 b. A certificate of correction under subsection a. of this section
39 may not state a delayed effective date and shall:

40 (1) describe the record to be corrected, including its filing date,
41 or attach a copy of the record as filed;

42 (2) specify the inaccurate information and the reason it is
43 inaccurate or the manner in which the signing was defective; and

44 (3) correct the defective signature or inaccurate information.

45 c. When filed by the filing office, a certificate of correction
46 under subsection a. of this section is effective retroactively as of the

1 effective date of the record the certificate corrects, but the
2 certificate is effective when filed:

- 3 (1) for the purposes of subsection d. of section 3 of this act; and
- 4 (2) as to persons that previously relied on the uncorrected record
5 and would be adversely affected by the retroactive effect.

6

7 24. Liability for Inaccurate Information in Filed Record.

8 a. If a record delivered to the filing office for filing under this
9 act and filed by the filing office contains inaccurate information, a
10 person that suffers a loss by reliance on the information may
11 recover damages for the loss from:

12 (1) a person that signed the record, or caused another to sign it
13 on the person's behalf, and knew the information to be inaccurate at
14 the time the record was signed; and

15 (2) subject to subsection b. of this section, a member of a
16 member-managed limited liability company or the manager of a
17 manager-managed limited liability company, if:

18 (a) the record was delivered for filing on behalf of the company;
19 and

20 (b) the member or manager had notice of the inaccuracy for a
21 reasonably sufficient time before the information was relied upon so
22 that, before the reliance, the member or manager reasonably could
23 have:

24 (i) effected an amendment under section 19 of this act;

25 (ii) filed a petition under section 21 of this act; or

26 (iii) delivered to the filing office for filing a certificate of change
27 under section 15 or a certificate of correction under section 23 of
28 this act.

29 b. To the extent that the operating agreement of a member-
30 managed limited liability company expressly relieves a member of
31 responsibility for maintaining the accuracy of information contained
32 in records delivered on behalf of the company to the filing office for
33 filing under this act and imposes that responsibility on one or more
34 other members, the liability stated in paragraph (2) of subsection a.
35 of this section applies to those other members and not to the
36 member that the operating agreement relieves of the responsibility.

37 c. An individual who signs a record authorized or required to
38 be filed under this act affirms under penalty of perjury that the
39 information stated in the record is accurate.

40

41 25. Certificate of Standing.

42 a. The filing office, upon request and payment of the requisite
43 fee, shall furnish to any person a certificate of standing for a limited
44 liability company if the records filed in the filing office show that
45 the company has been formed under section 18 of this act. A
46 certificate of standing shall state:

- 47 (1) the company's name;

- 1 (2) that the company was duly formed under the laws of this
2 State and the date of formation;
- 3 (3) whether all fees and penalties due under this act or other law
4 to the filing office have been paid;
- 5 (4) whether the company's most recent annual report required
6 by section 26 of this act has been filed in the filing office;
- 7 (5) whether the filing office has administratively revoked the
8 company; and
- 9 (6) whether the filing office has filed a certificate of dissolution.
- 10 b. The filing office, upon request and payment of the requisite
11 fee, shall furnish to any person a certificate of standing for a foreign
12 limited liability company if the records filed in the office of the
13 filing office show that the filing office has filed a certificate of
14 authority, has not revoked the certificate of authority, and has not
15 filed a notice of cancellation. A certificate of standing shall state:
- 16 (1) the company's name and any alternate name adopted under
17 subsection a. of section 61 of this act for use in this State;
- 18 (2) that the company is authorized to transact business in this
19 State;
- 20 (3) whether all fees and penalties due to the filing office under
21 this act or other law have been paid;
- 22 (4) whether the company's most recent annual report required
23 by section 26 of this act has been filed in the filing office;
- 24 (5) that the filing office has not revoked the company's
25 certificate of authority and has not filed a certificate of cancellation;
26 and
- 27 (6) other facts of record in the office of the filing office which
28 are specified by the person requesting the certificate.
- 29 c. Subject to any qualification stated in the certificate, a
30 certificate of standing issued by the filing office is conclusive
31 evidence that the limited liability company is in existence or the
32 foreign limited liability company is authorized to transact business
33 in this State.

34

35 26. Annual Report for Filing Office.

- 36 a. Each domestic and foreign limited liability company shall
37 file an annual report with the filing office, setting forth:
- 38 (1) the name and address of the limited liability company;
- 39 (2) the name and address of the registered agent of the limited
40 liability company; and
- 41 (3) the name and addresses of the managing members or
42 managers, as the case may be.
- 43 b. If no annual report is filed as required by this section for two
44 consecutive years:
- 45 (1) the certificate of a domestic limited liability company shall
46 be transferred to an inactive list maintained by the filing office. A
47 limited liability company on the inactive list shall remain a limited

1 liability company and the limited liability of its members and
2 managers shall not be affected by its transfer to this list. The name
3 of a limited liability company on the inactive list shall, subject to
4 any other rights that limited liability company may have to its
5 name, be available for use by any other limited liability company,
6 including a newly-formed limited liability company.

7 (2) the certificate of a foreign limited liability company may be
8 revoked by the filing office.

9 (3) if the certificate of a domestic limited liability company has
10 been transferred to the inactive list or if the certificate of a foreign
11 limited liability company has been revoked, the certificate shall be
12 reinstated by proclamation of the filing office upon payment of all
13 fees due to the filing office, consisting of a reinstatement filing fee,
14 current annual report fee, all delinquent annual report fees, and a
15 late filing fee. The reinstatement relates back to the date of transfer
16 of the certificate of a domestic limited liability company to the
17 inactive list or to the date of revocation of the certificate of a
18 foreign limited liability company, as the case may be, and shall
19 validate all actions taken in the interim. In the event that in the
20 interim the name of the limited liability company has become
21 unavailable, the filing office shall reinstate the certificate upon, in
22 the case of a domestic limited liability company, the filing of an
23 amendment to its certificate of formation to change the name to an
24 available name, and in the case of a foreign limited liability
25 company, the filing of an amended certificate of authority changing
26 the name to an available name. The filing office shall provide the
27 forms necessary to effect annual report reinstatements.

28 29 ARTICLE 3

30 RELATIONS OF MEMBERS AND MANAGERS TO PERSONS 31 DEALING WITH LIMITED LIABILITY COMPANY

32 27. No Agency Power or Member as Member.

33 a. A member is not an agent of a limited liability company
34 solely by reason of being a member.

35 b. A person's status as a member does not prevent or restrict
36 law other than this act from imposing liability on a limited liability
37 company because of the person's conduct.

38 39 28. Statement of Authority.

40 a. A limited liability company may deliver to the filing office
41 for filing a statement of authority. The statement:

42 (1) shall include the name of the company, the street and
43 mailing addresses of its registered office and such other information
44 as may be required by the filing office to correctly identify the
45 company;

- 1 (2) with respect to any position that exists in or with respect to
2 the company, may state the authority, or limitations on the
3 authority, of all persons holding the position to:
- 4 (a) execute an instrument transferring real property held in the
5 name of the company; or
6 (b) enter into other transactions on behalf of, or otherwise act
7 for or bind, the company; and
8 (3) may state the authority, or limitations on the authority, of a
9 specific person to:
- 10 (a) execute an instrument transferring real property held in the
11 name of the company; or
12 (b) enter into other transactions on behalf of, or otherwise act
13 for or bind, the company.
- 14 b. To amend or cancel a statement of authority filed with the
15 filing office under subsection a. of section 22 of this act, a limited
16 liability company shall deliver to the filing office for filing an
17 amendment or cancellation stating:
- 18 (1) the name of the company;
19 (2) the street and mailing addresses of the company's registered
20 office;
21 (3) such other information as may be required by the filing
22 office to correctly identify the company;
23 (4) the caption of the statement being amended or canceled and
24 the date the statement being affected became effective; and
25 (5) the contents of the amendment or a declaration that the
26 statement being affected is canceled.
- 27 c. A statement of authority affects only the power of a person
28 to bind a limited liability company to persons that are not members.
- 29 d. Subject to subsection c. of this section and subsection d. of
30 section 3 of this act, and except as otherwise provided in
31 subsections f., g. and h. of this section, a limitation on the authority
32 of a person or a position contained in an effective statement of
33 authority is not by itself evidence of knowledge or notice of the
34 limitation by any person.
- 35 e. Subject to subsection c. of this section, a grant of authority
36 not pertaining to transfers of real property and contained in an
37 effective statement of authority is conclusive in favor of a person
38 that gives value in reliance on the grant, except to the extent that
39 when the person gives value:
- 40 (1) the person has knowledge to the contrary;
41 (2) the statement has been canceled or restrictively amended
42 under subsection b. of this section; or
43 (3) a limitation on the grant is contained in another statement of
44 authority that became effective after the statement containing the
45 grant became effective.
- 46 f. Subject to subsection c. of this section, an effective
47 statement of authority that grants authority to transfer real property

1 held in the name of the limited liability company and that is
2 recorded by certified copy in the office for recording transfers of
3 the real property is conclusive in favor of a person that gives value
4 in reliance on the grant without knowledge to the contrary, except
5 to the extent that when the person gives value:

6 (1) the statement has been canceled or restrictively amended
7 under subsection b. of this section and a certified copy of the
8 cancellation or restrictive amendment has been recorded in the
9 office for recording transfers of the real property; or

10 (2) a limitation on the grant is contained in another statement of
11 authority that became effective after the statement containing the
12 grant became effective and a certified copy of the later-effective
13 statement is recorded in the office for recording transfers of the real
14 property.

15 g. Subject to subsection c. of this section, if a certified copy of
16 an effective statement containing a limitation on the authority to
17 transfer real property held in the name of a limited liability
18 company is recorded in the office for recording transfers of that real
19 property, all persons are deemed to know of the limitation.

20 h. Subject to subsection i. of this section, an effective
21 certificate of dissolution is a cancellation of any filed statement of
22 authority for the purposes of subsection f. of this section and is a
23 limitation on authority for the purposes of subsection g. of this
24 section.

25 i. After a certificate of dissolution becomes effective, a limited
26 liability company may deliver to the filing office for filing and, if
27 appropriate, may record a statement of authority that is designated
28 as a post-dissolution statement of authority. The statement operates
29 as provided in subsections f. and g. of this section.

30 j. An effective statement of denial operates as a restrictive
31 amendment under this section and may be recorded by certified
32 copy for the purposes of paragraph (1) of subsection f. of this
33 section.

34

35 29. Statement of Denial. A person named in a filed statement of
36 authority granting that person authority may deliver to the filing
37 office for filing a statement of denial that:

38 a. Provides the name of the limited liability company and such
39 other information as may be required by the filing office to
40 correctly identify the company and the caption of the statement of
41 authority to which the statement of denial pertains; and

42 b. Denies the grant of authority.

43

44 30. Liability of Members and Managers.

45 a. The debts, obligations, or other liabilities of a limited
46 liability company, whether arising in contract, tort, or otherwise:

- 1 (1) are solely the debts, obligations, or other liabilities of the
2 company; and
3 (2) do not become the debts, obligations, or other liabilities of a
4 member or manager solely by reason of the member acting as a
5 member or manager acting as a manager.
6 b. The failure of a limited liability company to observe any
7 particular formalities relating to the exercise of its powers or
8 management of its activities is not a ground for imposing liability
9 on the members or managers for the debts, obligations, or other
10 liabilities of the company.

11

12

ARTICLE 4

13

RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

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31. Becoming a Member.

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- a. If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.
- b. If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.
- c. After formation of a limited liability company, a person becomes a member:
- (1) as provided in the operating agreement;
 - (2) as the result of a transaction effective under Article 10 (sections 73 through 87 of this act);
 - (3) with the consent of all the members; or
 - (4) if, within 90 consecutive days after the company ceases to have any members:
 - (a) the last person to have been a member, or the legal representative of that person, designates a person to become a member; and
 - (b) the designated person consents to become a member.
- d. A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

32. Form of Contribution. A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

1 33. Liability for Contributions.

2 a. A person's obligation to make a contribution to a limited
3 liability company is not excused by the person's death, disability, or
4 other inability to perform personally. If a person does not make a
5 required contribution of property or services, the person or the
6 person's estate is obligated, at the option of the company, to
7 contribute money equal to the value of the part of the contribution
8 which has not been made.

9 b. A creditor of a limited liability company which extends
10 credit or otherwise acts in reliance on an obligation described in
11 subsection a. of this section may enforce the obligation.

12

13 34. Sharing of and Right to Distributions before Dissolution.

14 a. Any distributions made by a limited liability company before
15 its dissolution and winding up shall be in equal shares among
16 members and dissociated members, except to the extent necessary
17 to comply with any transfer effective under section 42 and any
18 charging order in effect under section 43 of this act.

19 b. A person has a right to a distribution before the dissolution
20 and winding up of a limited liability company only if the company
21 decides to make an interim distribution. A person's dissociation
22 does not entitle the person to a distribution.

23 c. A person does not have a right to demand or receive a
24 distribution from a limited liability company in any form other than
25 money. Except as otherwise provided in subsection c. of section 56
26 of this act, a limited liability company may distribute an asset in
27 kind if each part of the asset is fungible with each other part and
28 each person receives a percentage of the asset equal in value to the
29 person's share of distributions.

30 d. If a member or transferee becomes entitled to receive a
31 distribution, the member or transferee has the status of, and is
32 entitled to all remedies available to, a creditor of the limited
33 liability company with respect to the distribution.

34

35 35. Limitations on Distribution.

36 a. A limited liability company may not make a distribution if
37 after the distribution:

38 (1) the company would not be able to pay its debts as they
39 become due in the ordinary course of the company's activities; or

40 (2) the company's total assets would be less than the sum of its
41 total liabilities plus the amount that would be needed, if the
42 company were to be dissolved, wound up, and terminated at the
43 time of the distribution, to satisfy the preferential rights upon
44 dissolution, winding up, and termination of members whose
45 preferential rights are superior to those of persons receiving the
46 distribution.

1 b. A limited liability company may base a determination that a
2 distribution is not prohibited under subsection a. of this section on
3 financial statements prepared on the basis of accounting practices
4 and principles that are reasonable in the circumstances or on a fair
5 valuation or other method that is reasonable under the
6 circumstances.

7 c. Except as otherwise provided in subsection f. of this section,
8 the effect of a distribution under subsection a. of this section is
9 measured:

10 (1) in the case of a distribution by purchase, redemption, or
11 other acquisition of a transferable interest in the company, as of the
12 date money or other property is transferred or debt incurred by the
13 company; and

14 (2) in all other cases, as of the date:

15 (a) the distribution is authorized, if the payment occurs within
16 120 days after that date; or

17 (b) the payment is made, if the payment occurs more than 120
18 days after the distribution is authorized.

19 d. A limited liability company's indebtedness to a member
20 incurred by reason of a distribution made in accordance with this
21 section is at parity with the company's indebtedness to its general,
22 unsecured creditors.

23 e. A limited liability company's indebtedness, including
24 indebtedness issued in connection with or as part of a distribution,
25 is not a liability for purposes of subsection a. of this section if the
26 terms of the indebtedness provide that payment of principal and
27 interest are made only to the extent that a distribution could be
28 made to members under this section.

29 f. If indebtedness is issued as a distribution, each payment of
30 principal or interest on the indebtedness is treated as a distribution,
31 the effect of which is measured on the date the payment is made.

32 g. As used in this section, "distribution" does not include
33 amounts constituting reasonable compensation for present or past
34 services or reasonable payments made in the ordinary course of
35 business under a bona fide retirement plan or other benefits
36 program.

37

38 36. Liability for Improper Distributions.

39 a. Except as otherwise provided in subsection b. of this section,
40 if a member of a member-managed limited liability company or
41 manager of a manager-managed limited liability company consents
42 to a distribution made in violation of section 35 of this act and in
43 consenting to the distribution fails to comply with section 39 of this
44 act, the member or manager is personally liable to the company for
45 the amount of the distribution that exceeds the amount that could
46 have been distributed without the violation of section 35 of this act.

1 b. To the extent the operating agreement of a member-managed
2 limited liability company expressly relieves a member of the
3 authority and responsibility to consent to distributions and imposes
4 that authority and responsibility on one or more other members, the
5 liability stated in subsection a. of this section applies to the other
6 members and not the member that the operating agreement relieves
7 of authority and responsibility.

8 c. A person that receives a distribution knowing that the
9 distribution to that person was made in violation of section 35 of
10 this act is personally liable to the limited liability company but only
11 to the extent that the distribution received by the person exceeded
12 the amount that could have been properly paid under section 35 of
13 this act.

14 d. A person against which an action is commenced because the
15 person is liable under subsection a. of this section may:

16 (1) implead any other person that is subject to liability under
17 subsection a. of this section and seek to compel contribution from
18 the person; and

19 (2) implead any person that received a distribution in violation
20 of subsection c. of this section and seek to compel contribution
21 from the person in the amount the person received in violation of
22 subsection c. of this section.

23 e. An action under this section is barred if not commenced
24 within two years after the distribution.

25

26 37. Management of Limited Liability Company.

27 a. A limited liability company is a member-managed limited
28 liability company unless the operating agreement:

29 (1) expressly provides that:

30 (a) the company is or will be “manager-managed;”

31 (b) the company is or will be “managed by managers;” or

32 (c) management of the company is or will be “vested in
33 managers;” or

34 (2) includes words of similar import.

35 b. In a member-managed limited liability company, the
36 following rules apply:

37 (1) The management and conduct of the company are vested in
38 the members.

39 (2) Each member has equal rights in the management and
40 conduct of the company’s activities.

41 (3) A difference arising among members as to a matter in the
42 ordinary course of the activities of the company may be decided by
43 a majority of the members.

44 (4) An act outside the ordinary course of the activities of the
45 company may be undertaken only with the consent of all members.

46 (5) The operating agreement may be amended only with the
47 consent of all members.

- 1 c. In a manager-managed limited liability company, the
2 following rules apply:
- 3 (1) Except as otherwise expressly provided in this act, any
4 matter relating to the activities of the company is decided
5 exclusively by the managers.
- 6 (2) Each manager has equal rights in the management and
7 conduct of the activities of the company.
- 8 (3) A difference arising among managers as to a matter in the
9 ordinary course of the activities of the company may be decided by
10 a majority of the managers.
- 11 (4) The consent of all members is required to:
- 12 (a) sell, lease, exchange, or otherwise dispose of all, or
13 substantially all, of the company's property, with or without the
14 good will, outside the ordinary course of the company's activities;
- 15 (b) approve a merger, conversion, or domestication under
16 Article 10 (section 73 through 87 of this act);
- 17 (c) undertake any other act outside the ordinary course of the
18 company's activities; and
- 19 (d) amend the operating agreement.
- 20 (5) A manager may be chosen at any time by the consent of a
21 majority of the members and remains a manager until a successor
22 has been chosen, unless the manager at an earlier time resigns, is
23 removed, or dies, or, in the case of a manager that is not an
24 individual, terminates. A manager may be removed at any time by
25 the consent of a majority of the members without notice or cause.
- 26 (6) A person need not be a member to be a manager, but the
27 dissociation of a member that is also a manager removes the person
28 as a manager. If a person that is both a manager and a member
29 ceases to be a manager, that cessation does not by itself dissociate
30 the person as a member.
- 31 (7) A person's ceasing to be a manager does not discharge any
32 debt, obligation, or other liability to the limited liability company or
33 members which the person incurred while a manager.
- 34 d. An action requiring the consent of members under this act
35 may be taken without a meeting, and a member may appoint a
36 proxy or other agent to consent or otherwise act for the member by
37 signing an appointing record, personally or by the member's agent.
- 38 e. The dissolution of a limited liability company does not affect
39 the applicability of this section. However, a person that wrongfully
40 causes dissolution of the company loses the right to participate in
41 management as a member and a manager.
- 42 f. This act does not entitle a member to remuneration for
43 services performed for a member-managed limited liability
44 company, except for reasonable compensation for services rendered
45 in winding up the activities of the company.

46
47 38. Indemnification and Insurance.

1 a. As used in this section:

2 (1) "Company agent" means any person who is or was a
3 member of a member-managed company, a manager of a manager-
4 managed company, an officer, employee or agent of the
5 indemnifying company or of any constituent company absorbed by
6 the indemnifying company in a consolidation or merger and any
7 person who is or was a member, manager, officer, director, trustee,
8 employee or agent of any other enterprise, serving as such at the
9 request of the indemnifying company, or any such constituent
10 company, or the legal representatives of any such member,
11 manager, officer, director, trustee, employee or agent.

12 (2) "Other enterprise" and "another enterprise" mean any
13 domestic or foreign limited liability company other than the
14 company, and any corporation, partnership, joint venture, sole
15 proprietorship, trust or other enterprise, whether or not for profit,
16 served by a company agent;

17 (3) "Expenses" means reasonable costs, disbursements and
18 attorney's fees;

19 (4) "Liabilities" means amounts paid or incurred in satisfaction
20 of settlements, judgments, fines and penalties; and

21 (5) "Proceeding" means any pending, threatened or completed
22 civil, criminal, administrative or arbitral action, suit or
23 proceeding, and any appeal therein, and any inquiry or investigation
24 which could lead to that action or proceeding.

25 (6) References to an "other enterprise" or "another enterprise"
26 include employee benefit plans; and references to "fines" include
27 any excise taxes assessed on a person with respect to an employee
28 benefit plan.

29 b. A limited liability company shall indemnify a company
30 agent against expenses to the extent that such company agent has
31 been successful on the merits or otherwise in any proceeding
32 brought against the company agent by reason of the company agent
33 serving as a company agent or serving another enterprise at the
34 request of the limited liability company. If the company agent is
35 successful on the merits or otherwise in defense of any claim, issue
36 or matter in any such proceeding, indemnification shall be provided
37 under this subsection with respect to the claim, issue or matter.

38 c. A limited liability company shall indemnify a company
39 agent against any debt, obligation, expense or other liability
40 incurred by that company agent in the course of the company
41 agent's activities on behalf of the limited liability company or
42 another enterprise at the request of the limited liability company, if,
43 in making the payment or incurring the debt, obligation, expense or
44 other liability, the company agent complied with the duties stated in
45 sections 35 and 39 of this act.

46 d. A limited liability company may purchase and maintain
47 insurance on behalf of any company agent against any expenses

1 incurred in any proceeding and any liabilities asserted against the
2 company agent in his or her capacity as a company agent, whether
3 or not the limited liability company could eliminate or limit the
4 person's liability to the company for the conduct giving rise to the
5 liability under subsection g. of section 11 of this act. The limited
6 liability company may purchase such insurance from, or such
7 insurance may be reinsured in whole or in part by, an insurer owned
8 by or otherwise affiliated with the limited liability company,
9 whether or not such insurer does business with other insureds.

10

11 39. Standards of Conduct for Members and Managers.

12 a. A member of a member-managed limited liability company
13 owes to the company and, subject to subsection b. of section 67 of
14 this act, the other members, the duties of loyalty and care stated in
15 subsections b. and c. of this section.

16 b. The fiduciary duty of loyalty of a member in a member-
17 managed limited liability company includes the duties:

18 (1) to account to the company and to hold as trustee for it any
19 property, profit, or benefit derived by the member:

20 (a) in the conduct or winding up of the company's activities;

21 (b) from a use by the member of the company's property; or

22 (c) from the appropriation of a company opportunity;

23 (2) to refrain from dealing with the company in the conduct or
24 winding up of the company's activities as or on behalf of a person
25 having an interest adverse to the company; and

26 (3) to refrain from competing with the company in the conduct
27 of the company's activities before the dissolution of the company.

28 c. The duty of care of a member of a member-managed limited
29 liability company in the conduct and winding up of the company's
30 activities is to refrain from engaging in grossly negligent or reckless
31 conduct, intentional misconduct, or a knowing violation of law.

32 d. A member shall discharge the duties under this act or under
33 the operating agreement and exercise any rights consistently with
34 the contractual obligation of good faith and fair dealing.

35 e. A member does not violate a duty or obligation under this
36 act or under the operating agreement merely because the member's
37 conduct furthers the member's own interest.

38 f. All of the members of a member-managed limited liability
39 company or a manager-managed limited liability company may
40 authorize or ratify, after full disclosure of all material facts, a
41 specific act or transaction that otherwise would violate the duty of
42 loyalty.

43 g. It is a defense to a claim under paragraph (2) of subsection
44 b. of this section and any comparable claim in equity or at common
45 law that the transaction was fair to the limited liability company.

46 h. If, as permitted by subsection f. of this section or the
47 operating agreement, a member enters into a transaction with the

1 company that would otherwise be prohibited by paragraph (2) of
2 subsection b. of this section, the member's rights and obligations are
3 the same as those of a person not a member.

4 i. In a manager-managed limited liability company, the
5 following rules apply:

6 (1) Subsections a., b., c. and g. of this section apply to the
7 manager or managers and not the members, and the duty stated
8 under paragraph (3) of subsection b. of this section continues until
9 winding up is completed.

10 (2) Subsections d. and e. of this section apply to the managers as
11 well as the members and, subject to subsection d. of this section, a
12 member does not have any duty to the company or any other
13 member solely by reason of being a member.

14 (3) The power to ratify stated in subsection f. of this section
15 pertains only to the members.

16

17 40. Right of Members, Managers, and Dissociated Members to
18 Information.

19 a. In a member-managed limited liability company, the
20 following rules apply:

21 (1) On reasonable notice, a member may inspect and copy
22 during regular business hours, at a reasonable location specified by
23 the company, any record maintained by the company regarding the
24 company's activities, financial condition, and other circumstances,
25 to the extent the information is material to the member's rights and
26 duties under the operating agreement or this act.

27 (2) The company shall furnish to each member:

28 (a) without demand, any information concerning the company's
29 activities, financial condition, and other circumstances which the
30 company knows and is material to the proper exercise of the
31 member's rights and duties under the operating agreement or this
32 act, except to the extent the company can establish that it
33 reasonably believes the member already knows the information; and

34 (b) on demand, any other information concerning the company's
35 activities, financial condition, and other circumstances, except to
36 the extent the demand or information demanded is unreasonable or
37 otherwise improper under the circumstances.

38 (3) The duty to furnish information under paragraph (2) of this
39 subsection also applies to each member to the extent the member
40 knows any of the information described in paragraph (2).

41 b. In a manager-managed limited liability company, the
42 following rules apply:

43 (1) The informational rights stated in subsection a. of this
44 section and the duty stated in paragraph (3) of subsection a. of this
45 section apply to the managers and not the members.

46 (2) During regular business hours and at a reasonable location
47 specified by the company, a member may obtain from the company

1 and inspect and copy full information regarding the activities,
2 financial condition, and other circumstances of the company as is
3 just and reasonable if:

4 (a) the member seeks the information for a purpose material to
5 the member's interest as a member;

6 (b) the member makes a demand in a record received by the
7 company, describing with reasonable particularity the information
8 sought and the purpose for seeking the information; and

9 (c) the information sought is directly connected to the member's
10 purpose.

11 (3) Within 10 days after receiving a demand pursuant to
12 subparagraph (b) of paragraph (2) of this subsection, the company
13 shall in a record inform the member that made the demand:

14 (a) of the information that the company will provide in response
15 to the demand and when and where the company will provide the
16 information; and

17 (b) if the company declines to provide any demanded
18 information, the company's reasons for declining.

19 (4) Whenever this act or an operating agreement provides for a
20 member to give or withhold consent to a matter, before the consent
21 is given or withheld, the company shall, without demand, provide
22 the member with all information that is known to the company and
23 is material to the member's decision.

24 c. On 10 days' demand made in a record received by a limited
25 liability company, a dissociated member may have access to
26 information to which the person was entitled while a member if the
27 information pertains to the period during which the person was a
28 member, the person seeks the information in good faith, and the
29 person satisfies the requirements imposed on a member by
30 paragraph (2) of subsection b. of this section. The company shall
31 respond to a demand made pursuant to this subsection in the manner
32 provided in paragraph (3) of subsection b. of this section.

33 d. A limited liability company may charge a person that makes
34 a demand under this section the reasonable costs of copying, limited
35 to the costs of labor and material.

36 e. A member or dissociated member may exercise rights under
37 this section through an agent or, in the case of an individual under
38 legal disability, a legal representative. Any restriction or condition
39 imposed by the operating agreement or under subsection g. of this
40 section applies both to the agent or legal representative and the
41 member or dissociated member.

42 f. The rights under this section do not extend to a person as
43 transferee.

44 g. In addition to any restriction or condition stated in its
45 operating agreement, a limited liability company, as a matter within
46 the ordinary course of its activities, may impose reasonable
47 restrictions and conditions on access to and use of information to be

1 furnished under this section, including designating information
2 confidential and imposing nondisclosure and safeguarding
3 obligations on the recipient. In a dispute concerning the
4 reasonableness of a restriction under this subsection, the company
5 has the burden of proving reasonableness.

6
7 ARTICLE 5

8 TRANSFERABLE INTERESTS AND RIGHTS OF
9 TRANSFEREES AND CREDITORS

10 41. Nature of Transferable Interest.

11 A transferable interest shall be personal property.

12
13 42. Transfer of Transferable Interest.

14 a. A transfer, in whole or in part, of a transferable interest:

15 (1) is permissible;

16 (2) does not by itself cause a member's dissociation or a
17 dissolution and winding up of the limited liability company's
18 activities; and

19 (3) subject to section 44 of this act, does not entitle the
20 transferee to:

21 (a) participate in the management or conduct of the company's
22 activities; or

23 (b) except as otherwise provided in subsection c. of this section,
24 have access to records or other information concerning the
25 company's activities.

26 b. A transferee has the right to receive, in accordance with the
27 transfer, distributions to which the transferor would otherwise be
28 entitled.

29 c. In a dissolution and winding up of a limited liability
30 company, a transferee is entitled to an account of the company's
31 transactions only from the date of dissolution.

32 d. A transferable interest may be evidenced by a certificate of
33 the interest issued by the limited liability company in a record, and,
34 subject to this section, the interest represented by the certificate
35 may be transferred by a transfer of the certificate.

36 e. A limited liability company need not give effect to a
37 transferee's rights under this section until the company has notice of
38 the transfer.

39 f. A transfer of a transferable interest in violation of a
40 restriction on transfer contained in the operating agreement is
41 ineffective as to a person having notice of the restriction at the time
42 of transfer.

43 g. Except as otherwise provided in paragraph (2) of subsection
44 d. of section 46 of this act, when a member transfers a transferable
45 interest, the transferor retains the rights of a member other than the
46 interest in distributions transferred and retains all duties and
47 obligations of a member.

1 h. When a member transfers a transferable interest to a person
2 that becomes a member with respect to the transferred interest, the
3 transferee is liable for the member's obligations under section 43
4 and subsection c. of section 36 of this act known to the transferee
5 when the transferee becomes a member.

6
7 43. Charging Order.

8 a. On application by a judgment creditor of a member or
9 transferee, a court may enter a charging order against the
10 transferable interest of the judgment debtor for the unsatisfied
11 amount of the judgment. A charging order constitutes a lien on a
12 judgment debtor's transferable interest and requires the limited
13 liability company to pay over to the person to which the charging
14 order was issued any distribution that would otherwise be paid to
15 the judgment debtor.

16 b. To the extent necessary to effectuate the collection of
17 distributions pursuant to a charging order in effect under subsection
18 a. of this section, the court may:

19 (1) appoint a receiver of the distributions subject to the charging
20 order, with the power to make all inquiries the judgment debtor
21 might have made; and

22 (2) make all other orders necessary to give effect to the charging
23 order.

24 c. Upon a showing that distributions under a charging order
25 will not pay the judgment debt within a reasonable time, the court
26 may foreclose the lien and order the sale of the transferable interest.
27 The purchaser at the foreclosure sale only obtains the transferable
28 interest, does not thereby become a member, and is subject to
29 section 42 of this act.

30 d. At any time before foreclosure under subsection c. of this
31 section, the member or transferee whose transferable interest is
32 subject to a charging order under subsection a. of this section may
33 extinguish the charging order by satisfying the judgment and filing
34 a certified copy of the satisfaction with the court that issued the
35 charging order.

36 e. At any time before foreclosure under subsection c. of this
37 section, a limited liability company or one or more members whose
38 transferable interests are not subject to the charging order may pay
39 to the judgment creditor the full amount due under the judgment
40 and thereby succeed to the rights of the judgment creditor,
41 including the charging order.

42 f. This act shall not deprive any member or transferee of the
43 benefit of any exemption laws applicable to the member's or
44 transferee's transferable interest.

45 g. This section provides the exclusive remedy by which a
46 person seeking to enforce a judgment against a member or

1 transferee may, in the capacity of judgment creditor, satisfy the
2 judgment from the judgment debtor's transferable interest.

3

4 44. Power of Personal Representative of Deceased Member. If a
5 member dies, the deceased member's personal representative or
6 other legal representative may exercise the rights of a transferee
7 provided in subsection c. of section 42 of this act and, for the
8 purposes of settling the estate, the rights of a current member under
9 section 40 of this act.

10

11

ARTICLE 6

12

MEMBER'S POWER TO DISSOCIATE; WRONGFUL

13

DISSOCIATION

14

45. Member's Power to Dissociate; Wrongful Dissociation.

15

16

a. A person has the power to dissociate as a member at any
time, rightfully or wrongfully, by withdrawing as a member by
17 express will under section 46 of this act.

18

19

b. A person's dissociation from a limited liability company is
wrongful only if the dissociation:

20

21

(1) is in breach of an express provision of the operating
agreement; or

22

23

(2) occurs before the termination of the company and:

24

25

(a) the person is expelled as a member by judicial order under
subsection e. of section 46 of this act;

26

27

(b) the person is dissociated under paragraph (1) of subsection
g. of section 46 of this act, by becoming a debtor in bankruptcy; or

28

29

(c) in the case of a person that is not a trust other than a
business trust, an estate, or an individual, the person is expelled or
otherwise dissociated as a member because it willfully dissolved or
30 terminated; or

31

32

(3) in the case of a company for a definite term or particular
undertaking, by withdrawing as a member by express will under
33 section 46 of this act before the expiration of the term or the
34 completion of the undertaking.

35

36

37

c. A person that wrongfully dissociates as a member is liable to
the limited liability company and, subject to section 67 of this act,
38 to the other members for damages caused by the dissociation. The
39 liability is in addition to any other debt, obligation, or other liability
of the member to the company or the other members.

40

41

46. Events Causing Dissociation. A person is dissociated as a
member from a limited liability company when:

42

43

a. The company has notice of the person's express will to
withdraw as a member, but, if the person specified a withdrawal
44 date later than the date the company had notice, on that later date;

45

46

b. An event stated in the operating agreement as causing the
47 person's dissociation occurs;

- 1 c. The person is expelled as a member pursuant to the
2 operating agreement;
- 3 d. The person is expelled as a member by the unanimous
4 consent of the other members if:
- 5 (1) it is unlawful to carry on the company's activities with the
6 person as a member;
- 7 (2) there has been a transfer of all of the person's transferable
8 interest in the company, other than:
- 9 (a) a transfer for security purposes; or
10 (b) a charging order in effect under section 43 of this act which
11 has not been foreclosed;
- 12 (3) the person is a corporation and, within 90 days after the
13 company notifies the person that it will be expelled as a member
14 because the person has filed a certificate of dissolution or the
15 equivalent, its charter has been revoked, or its right to conduct
16 business has been suspended by the jurisdiction of its incorporation,
17 the certificate of dissolution has not been revoked or its charter or
18 right to conduct business has not been reinstated; or
- 19 (4) the person is a limited liability company or partnership that
20 has been dissolved and whose business is being wound up;
- 21 e. On application by the company, the person is expelled as a
22 member by judicial order because the person:
- 23 (1) has engaged, or is engaging, in wrongful conduct that has
24 adversely and materially affected, or will adversely and materially
25 affect, the company's activities;
- 26 (2) has willfully or persistently committed, or is willfully and
27 persistently committing, a material breach of the operating
28 agreement or the person's duties or obligations under section 39 of
29 this act; or
- 30 (3) has engaged, or is engaging, in conduct relating to the
31 company's activities which makes it not reasonably practicable to
32 carry on the activities with the person as a member;
- 33 f. In the case of a person who is an individual:
- 34 (1) the person dies; or
35 (2) in a member-managed limited liability company:
- 36 (a) a guardian or general conservator for the person is
37 appointed; or
38 (b) there is a judicial order that the person has otherwise become
39 incapable of performing the person's duties as a member under this
40 act or the operating agreement;
- 41 g. In a member-managed limited liability company, the person:
- 42 (1) becomes a debtor in bankruptcy;
43 (2) executes an assignment for the benefit of creditors; or
44 (3) seeks, consents to, or acquiesces in the appointment of a
45 trustee, receiver, or liquidator of the person or of all or substantially
46 all of the person's property;

- 1 h. In the case of a person that is a trust or is acting as a member
2 by virtue of being a trustee of a trust, the trust's entire transferable
3 interest in the company is distributed;
- 4 i. In the case of a person that is an estate or is acting as a
5 member by virtue of being a personal representative of an estate,
6 the estate's entire transferable interest in the company is distributed;
- 7 j. In the case of a member that is not an individual,
8 partnership, limited liability company, corporation, trust, or estate,
9 the termination of the member;
- 10 k. The company participates in a merger under Article 10
11 (sections 73 through 87 of this act) if:
12 (1) the company is not the surviving entity; or,
13 (2) otherwise as a result of the merger, the person ceases to be a
14 member;
- 15 l. The company participates in a conversion under Article 10
16 (sections 73 through 87 of this act);
- 17 m. The company participates in a domestication under Article
18 10 (sections 73 through 87 of this act), if, as a result of the
19 domestication, the person ceases to be a member; or
- 20 n. The company terminates.
- 21
- 22 47. Effect of Person's Dissociation as Member.
- 23 a. When a person is dissociated as a member of a limited
24 liability company:
25 (1) the person's right to participate as a member in the
26 management and conduct of the company's activities terminates;
27 (2) if the company is member-managed, the person's fiduciary
28 duties as a member end with regard to matters arising and events
29 occurring after the person's dissociation; and
30 (3) subject to section 44 and Article 10 (sections 73 through 87
31 of this act), any transferable interest owned by the person
32 immediately before dissociation in the person's capacity as a
33 member is owned by the person solely as a transferee.
- 34 b. A person's dissociation as a member of a limited liability
35 company does not of itself discharge the person from any debt,
36 obligation, or other liability to the company or the other members
37 which the person incurred while a member.
- 38 c. A court that expels a member from a company pursuant to
39 subsection e. of section 46 of this act may order the sale of the
40 interests held by such person immediately before dissociation to
41 either the company or to any other persons who are parties to the
42 action if the court determines, in its discretion, that such an order is
43 required by any other law, rule or regulation, or that such an order
44 would be fair and equitable to all parties under all of the
45 circumstances of the case.

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ARTICLE 7

DISSOLUTION AND WINDING UP

48. Events Causing Dissolution.

a. A limited liability company is dissolved, and its activities shall be wound up, upon the occurrence of any of the following:

(1) an event or circumstance that the operating agreement states causes dissolution;

(2) the consent of all the members;

(3) the passage of 90 consecutive days during which the company has no members;

(4) on application by a member, the entry by the Superior Court of an order dissolving the company on the grounds that:

(a) the conduct of all or substantially all of the company's activities is unlawful; or

(b) it is not reasonably practicable to carry on the company's activities in conformity with one or both of the certificate of formation and the operating agreement; or

(5) on application by a member, the entry by the Superior Court of an order dissolving the company on the grounds that the managers or those members in control of the company:

(a) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(b) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

(6) A certificate of dissolution is filed before the delayed effective date of a certificate of formation pursuant to subsection e. of section 18 of this act.

b. In a proceeding brought under paragraph (4) or (5) of subsection a. of this section, the court may order or a party may seek a remedy other than dissolution, including, but not limited to, the appointment of a custodian or one or more provisional managers. The court shall appoint a custodian or one or more provisional managers if it appears to the court that such an appointment may be in the best interests of the limited liability company and its members. In any proceeding under this section, the court shall allow reasonable compensation to any custodian or provisional manager for his or her services and reimbursement or direct payment of all his or her reasonable costs and expenses, which amounts shall be paid by the limited liability company. The court may appoint a custodian or one or more provisional managers in a summary proceeding or otherwise; or order the sale of all interests held by a member who is a party to the proceeding to either the limited liability company or any other member who is a party to the proceeding, if the court determines in its discretion that such an order would be fair and equitable to all parties under all of the circumstances of the case.

1 c. If the court determines that any party to a proceeding
2 brought under paragraph (4) or (5) of subsection a. of this section
3 has acted vexatiously, or otherwise not in good faith, it may in its
4 discretion award reasonable expenses, including counsel fees
5 incurred in connection with the action, to the injured party or
6 parties.

7
8 49. Winding Up.

9 a. A dissolved limited liability company shall wind up its
10 activities, and the company continues after dissolution only for the
11 purpose of winding up.

12 b. In winding up its activities, a limited liability company:

13 (1) shall discharge the company's debts, obligations, or other
14 liabilities, settle and close the company's activities, and marshal
15 and distribute the assets of the company; and

16 (2) shall:

17 (a) deliver to the filing office for filing a certificate of
18 dissolution stating the name of the company and such other
19 information as may be required by the filing office to correctly
20 identify the company and that the company is dissolved;

21 (b) preserve the company activities and property as a going
22 concern for a reasonable time;

23 (c) prosecute and defend actions and proceedings, whether civil,
24 criminal, or administrative;

25 (d) transfer the company's property;

26 (e) settle disputes by mediation or arbitration;

27 (f) deliver to the filing office for filing a statement of
28 termination stating the name of the company and that the company
29 is terminated; and

30 (g) perform other acts necessary or appropriate to the winding
31 up.

32 c. If a dissolved limited liability company has no members, the
33 legal representative of the last person to have been a member may
34 wind up the activities of the company. If the person does so, the
35 person has the powers of a sole manager under subsection c. of
36 section 37 of this act and is deemed to be a manager for the
37 purposes of paragraph (2) of subsection a. of section 30 of this act.

38 d. If the legal representative under subsection c. of this section
39 declines or fails to wind up the company's activities, a person may
40 be appointed to do so by the consent of transferees owning a
41 majority of the rights to receive distributions as transferees at the
42 time the consent is to be effective. A person appointed under this
43 subsection:

44 (1) has the powers of a sole manager under subsection c. of
45 section 37 of this act and is deemed to be a manager for the
46 purposes of paragraph (2) of subsection a. of section 30 of this act;
47 and

- 1 (2) shall promptly deliver to the filing office for filing an
2 amendment to the company's certificate of formation to:
- 3 (a) state that the company has no members;
- 4 (b) state that the person has been appointed pursuant to this
5 subsection to wind up the company; and
- 6 (c) provide the street and mailing addresses of the person.
- 7 e. The Superior Court may order judicial supervision of the
8 winding up of a dissolved limited liability company, including the
9 appointment of a person to wind up the company's activities:
- 10 (1) on application of a member, if the applicant establishes good
11 cause;
- 12 (2) on the application of a transferee, if:
- 13 (a) the company does not have any members;
- 14 (b) the legal representative of the last person to have been a
15 member declines or fails to wind up the company's activities; and
- 16 (c) within a reasonable time following the dissolution a person
17 has not been appointed pursuant to subsection d. of this section; or
- 18 (3) in connection with a proceeding under paragraph (4) or (5)
19 of subsection a. of section 48 of this act.
- 20

21 50. Known Claims Against Dissolved Limited Liability
22 Company.

- 23 a. Except as otherwise provided in subsection d. of this section,
24 a dissolved limited liability company may give notice of a known
25 claim under subsection b. of this section, which has the effect as
26 provided in subsection c. of this section.
- 27 b. A dissolved limited liability company may in a record notify
28 its known claimants of the dissolution. The notice shall:
- 29 (1) specify the information required to be included in a claim;
- 30 (2) provide a mailing address to which the claim is to be sent;
- 31 (3) state the deadline for receipt of the claim, which may not be
32 less than 120 days after the date the notice is received by the
33 claimant; and
- 34 (4) state that the claim will be barred if not received by the
35 deadline.
- 36 c. A claim against a dissolved limited liability company is
37 barred if the requirements of subsection b. of this section are met
38 and:
- 39 (1) the claim is not received by the specified deadline; or
- 40 (2) if the claim is timely received but rejected by the company:
- 41 (a) the company causes the claimant to receive a notice in a
42 record stating that the claim is rejected and will be barred unless the
43 claimant commences an action against the company to enforce the
44 claim within 90 days after the claimant receives the notice; and
- 45 (b) the claimant does not commence the required action within
46 the 90 days.

1 d. This section does not apply to a claim based on an event
2 occurring after the effective date of dissolution or a liability that on
3 that date is contingent.

4

5 51. Other Claims Against Dissolved Limited Liability Company.

6 a. A dissolved limited liability company may publish notice of
7 its dissolution and request persons having claims against the
8 company to present them in accordance with the notice.

9 b. The notice authorized by subsection a. of this section shall:

10 (1) be published at least once in a newspaper of general
11 circulation in the county in this State in which the dissolved limited
12 liability company's principal office is located or, if it has none in
13 this State, in the county in which the company's registered office is
14 or was last located;

15 (2) describe the information required to be contained in a claim
16 and provide a mailing address to which the claim is to be sent; and

17 (3) state that a claim against the company is barred unless an
18 action to enforce the claim is commenced within five years after
19 publication of the notice.

20 c. If a dissolved limited liability company publishes a notice in
21 accordance with subsection b. of this section, unless the claimant
22 commences an action to enforce the claim against the company
23 within five years after the publication date of the notice, the claim
24 of each of the following claimants is barred:

25 (1) a claimant that did not receive notice in a record under
26 section 50 of this act;

27 (2) a claimant whose claim was timely sent to the company but
28 not acted on; and

29 (3) a claimant whose claim is contingent at, or based on an
30 event occurring after, the effective date of dissolution.

31 d. A claim not barred under this section may be enforced:

32 (1) against a dissolved limited liability company, to the extent of
33 its undistributed assets; and

34 (2) if assets of the company have been distributed after
35 dissolution, against a member or transferee to the extent of that
36 person's proportionate share of the claim or of the assets distributed
37 to the member or transferee after dissolution, whichever is less, but
38 a person's total liability for all claims under this paragraph does not
39 exceed the total amount of assets distributed to the person after
40 dissolution.

41

42 52. Claims Against Member or Transferee Barred Unless Filed
43 Within Five Years After Limited Liability Company Dissolved.

44 a. A claimant, and all those claiming through or under the
45 claimant, shall be forever barred from suing a member or transferee
46 on any claim, or otherwise realizing upon or enforcing any claim
47 against a member or transferee, unless an action is commenced

1 against the member or transferee, pursuant to paragraph (2) of
2 subsection d. of section 51 of this act, or otherwise, within five
3 years after the limited liability company was dissolved.

4 b. This section shall not:

5 (1) apply to claims against members or transferees which are in
6 litigation on the effective date of this section;

7 (2) operate to extend any otherwise applicable statute of
8 limitations; or

9 (3) affect any rights of creditors under the “Uniform Fraudulent
10 Transfer Act,” R.S.25:2-20 et seq.

11

12 53. Administrative Action.

13 a. The filing office may place a limited liability company on
14 the inactive list if the company does not:

15 (1) pay, within 60 days after the due date, any fee or penalty due
16 to the filing office under this act or law other than this act; ¹or¹

17 (2) file annual reports for two consecutive years pursuant to
18 section 26 of this act.

19 b. If the filing office determines that a ground exists for
20 placing a company on the inactive list, the filing office shall
21 provide notice of the filing office’s intent to the registered office of
22 the company or the principal office of the company if the mailing
23 address of the principal office appears in the records of the filing
24 office and is different from the mailing address of the registered
25 office.

26 c. If within 60 days after service of the notice pursuant to
27 subsection b. of this section a limited liability company does not
28 correct each ground for being placed on the inactive list or
29 demonstrate to the reasonable satisfaction of the filing office that
30 each ground determined by the filing office does not exist, the filing
31 office shall place the company on the inactive list and file a
32 declaration of the action. The filing office shall send a notice of the
33 action to the registered office of the company or the principal office
34 of the company if the mailing address of the principal office
35 appears in the records of the filing office and is different from the
36 mailing address of the registered office.

37 d. A limited liability company that has been placed on the
38 inactive list continues in existence but, subject to section 54 of this
39 act, may carry on only activities necessary to wind up its activities
40 and liquidate its assets under sections 49 and 56 of this act and to
41 notify claimants under sections 50 and 51 of this act.

42 e. An inactivation of a limited liability company does not
43 terminate the authority of its agent for service of process.

44

45 54. Reinstatement Following Administrative Dissolution.

1 a. A limited liability company that has been placed on the
2 inactive list may apply to the filing office for reinstatement. The
3 application shall be delivered to the filing office for filing and state:

4 (1) the name of the company and such other information as may
5 be required by the filing office to correctly identify the company;
6 and

7 (2) that the company's name satisfies the requirements of
8 section 8 of this act.

9 b. If the filing office determines that an application under
10 subsection a. of this section contains the required information and
11 that the information is correct, the filing office shall reinstate the
12 company and provide notice of the reinstatement to the company.

13 c. When a reinstatement becomes effective, it relates back to
14 and takes effect as of the effective date of the filing office action
15 placing the company on the inactive list, and the limited liability
16 company may resume its activities as if the filing office action had
17 not occurred.

18

19 55. Appeal from Rejection of Reinstatement.

20 a. If the filing office rejects a limited liability company's
21 application for reinstatement, the filing office shall present a notice
22 to the company explaining the reason for rejection.

23 b. Within 30 days after a rejection of reinstatement under
24 subsection a. of this section, a limited liability company may appeal
25 from the rejection by petitioning the court to set aside the filing
26 office action. The petition shall be served on the filing office and
27 contain a copy of the company's application for reinstatement and
28 the filing office's notice of rejection.

29 c. The court may order the filing office to reinstate a limited
30 liability company or take other action the court considers
31 appropriate.

32

33 56. Distribution of Assets in Winding Up Limited Liability
34 Company's Activities.

35 a. In winding up its activities, a limited liability company shall
36 apply its assets to discharge its obligations to creditors, including
37 members that are creditors.

38 b. After a limited liability company complies with subsection a.
39 of this section, any surplus shall be distributed in the following
40 order, subject to any charging order in effect under section 43 of
41 this act:

42 (1) to each person owning a transferable interest that reflects
43 contributions made by a member and not previously returned, an
44 amount equal to the value of the unreturned contributions; and

45 (2) in equal shares among members and dissociated members,
46 except to the extent necessary to comply with any transfer effective
47 under section 42 of this act.

1 c. If a limited liability company does not have sufficient
2 surplus to comply with paragraph (1) of subsection b. of this
3 section, any surplus shall be distributed among the owners of
4 transferable interests in proportion to the value of their respective
5 unreturned contributions.

6 d. All distributions made under subsections b. and c. of this
7 section shall be paid in money.

8

9

ARTICLE 8

10

FOREIGN LIMITED LIABILITY COMPANIES

11

57. Governing Law.

12

a. The law of the state or other jurisdiction under which a
13 foreign limited liability company is formed governs:

14

(1) the internal affairs of the company; and

15

(2) the liability of a member as member and a manager as
16 manager for the debts, obligations, or other liabilities of the
17 company.

18

b. A foreign limited liability company may not be denied a
19 certificate of authority by reason of any difference between the laws
20 of the jurisdiction under which the company is formed and the law
21 of this State.

22

c. A certificate of authority does not authorize a foreign limited
23 liability company to engage in any business or exercise any power
24 that a limited liability company may not engage in or exercise in
25 this State.

26

27

58. Application for Certificate of Authority ¹; Amendments to
28 Certificate of Authority¹.

29

¹Before doing business in this State, a foreign limited liability
30 company shall obtain a certificate of authority to transact business
31 in this State.

32

a.¹ A foreign limited liability company may apply for a
33 certificate of authority to transact business in this State by
34 delivering an application to the filing office for filing. The
35 application shall state:

36

¹[a.] (1)¹ the name of the company and, if the name does not
37 comply with section 8 of this act, an alternate name adopted
38 pursuant to subsection a. of section 61 of this act;

39

¹[b.] (2)¹ the name of the state or other jurisdiction under
40 whose law the company is formed;

41

¹[c.] (3)¹ the street and mailing addresses of the company's
42 principal office and, if the law of the jurisdiction under which the
43 company is formed require the company to maintain an office in
44 that jurisdiction, the street and mailing addresses of the required
45 office; and

46

¹[d.] (4)¹ the name and street and mailing addresses of the
47 company's initial agent for service of process in this State.

1 'b. If any statement in the application for a certificate of
2 authority of a foreign limited liability company was false when
3 made or any arrangements or other facts described have changed,
4 making the application false in any respect, the foreign limited
5 liability company shall promptly file in the filing office an amended
6 application, executed by an authorized person, correcting the
7 statement.'¹

8
9 59. Activities Not Constituting Transacting Business.

10 a. Activities of a foreign limited liability company which do
11 not constitute transacting business in this State within the meaning
12 of this section include:

13 (1) maintaining, defending, or settling an action or proceeding;

14 (2) carrying on any activity concerning its internal affairs,
15 including holding meetings of its members or managers;

16 (3) maintaining accounts in financial institutions;

17 (4) maintaining offices or agencies for the transfer, exchange,
18 and registration of the company's own securities or maintaining
19 trustees or depositories with respect to those securities;

20 (5) selling through independent contractors;

21 (6) soliciting or obtaining orders, whether by mail or electronic
22 means or through employees or agents or otherwise, if the orders
23 require acceptance outside this State before they become contracts;

24 (7) creating or acquiring indebtedness, mortgages, or security
25 interests in real or personal property;

26 (8) securing or collecting debts or enforcing mortgages or other
27 security interests in property securing the debts and holding,
28 protecting, or maintaining property so acquired;

29 (9) conducting an isolated transaction that is completed within
30 30 days and is not in the course of similar transactions; and

31 (10) transacting business in interstate commerce.

32 b. For purposes of this section, the ownership in this State of
33 income-producing real property or tangible personal property, other
34 than property excluded under subsection a. of this section,
35 constitutes transacting business in this State.

36 c. This section does not apply in determining the contacts or
37 activities that may subject a foreign limited liability company to
38 service of process, taxation, or regulation under law of this State
39 other than this act.

40
41 60. Filing of Certificate of Authority. Unless the filing office
42 determines that an application for a certificate of authority does not
43 comply with the filing requirements of this act, the filing office,
44 upon payment of all filing fees, shall file the application of a
45 foreign limited liability company, prepare and file a certificate of
46 authority to transact business in this State, and provide a copy of the

1 filed certificate, together with a receipt for the fees, to the company
2 or its representative.

3

4 61. Noncomplying Name of Foreign Limited Liability Company.

5 a. A foreign limited liability company whose name does not
6 comply with section 8 of this act may not obtain a certificate of
7 authority until it adopts, for the purpose of transacting business in
8 this State, an alternate name that complies with section 8 of this act.
9 A foreign limited liability company that adopts an alternate name
10 under this subsection and obtains a certificate of authority with the
11 alternate name need not comply with R.S.56:1-1 et seq. After
12 obtaining a certificate of authority with an alternate name, a foreign
13 limited liability company shall transact business in this State under
14 the alternate name unless the company is authorized under
15 R.S.56:1-1 et seq. to transact business in this State under another
16 name.

17 b. If a foreign limited liability company authorized to transact
18 business in this State changes its name to one that does not comply
19 with section 8 of this act, it may not thereafter transact business in
20 this State until it complies with subsection a. of this section and
21 obtains an amended certificate of authority.

22

23 62. Revocation of Certificate of Authority.

24 a. A certificate of authority of a foreign limited liability
25 company to transact business in this State may be revoked by the
26 filing office in the manner provided in subsections b. and c. of this
27 section, if the company does not:

28 (1) pay, within 60 days after the due date, any fee or penalty due
29 to the filing office under this act or law other than this act;

30 (2) file annual reports for two consecutive years pursuant to
31 section 26 of this act.

32 b. To revoke a certificate of authority of a foreign limited
33 liability company, the filing office shall provide notice of the filing
34 office's intent to the registered office of the company or the
35 principal office of the company if the mailing address of the
36 principal office appears in the records of the filing office and is
37 different from the mailing address of the registered office.

38 c. If, within 60 days after service of the notice pursuant to
39 subsection b. of this section, a company does not correct each
40 ground for revocation or demonstrate to the reasonable satisfaction
41 of the filing office that each ground determined by the filing office
42 does not exist, the filing office shall revoke the company and file a
43 declaration of the action. The filing office shall send the company a
44 notice of the action to the registered office of the company or the
45 principal office of the company if the mailing address of the
46 principal office appears in the records of the filing office and is
47 different from the mailing address of the registered office.

1 d. The authority of a foreign limited liability company to
2 transact business in this State ceases on the effective date of the
3 notice of revocation unless before that date the company cures each
4 ground for revocation stated in the notice filed under subsection b.
5 of this section

6

7 63. Reinstatement of Certificate of Authority.

8 a. A foreign limited liability company that has been revoked
9 may apply to the filing office for reinstatement. The application
10 shall be delivered to the filing office for filing and state:

11 (1) the name of the company and such other information as may
12 be required by the filing office to correctly identify the company;
13 and

14 (2) that the company's name satisfies the requirements of
15 section 8 of this act.

16 b. If the filing office determines that an application under
17 subsection a. of this section contains the required information and
18 that the information is correct, the filing office shall reinstate the
19 company and provide notice of the reinstatement to the company.

20 c. When a reinstatement becomes effective, it relates back to
21 and takes effect as of the effective date of the filing office
22 revocation action, and the foreign limited liability company may
23 resume its activities as if the filing office action had not occurred.

24

25 64. Cancellation of Certificate of Authority. To cancel its
26 certificate of authority to transact business in this State, a foreign
27 limited liability company shall deliver to the filing office for filing
28 a certificate of cancellation stating the name of the company and
29 such other information as may be required by the filing office to
30 correctly identify the company and that the company desires to
31 cancel its certificate of authority. The certificate of authority is
32 canceled when the certificate of cancellation becomes effective.

33

34 65. Effect of Failure to Have Certificate of Authority.

35 a. A foreign limited liability company transacting business in
36 this State may not maintain an action or proceeding in this State
37 unless it has a certificate of authority to transact business in this
38 State.

39 b. The failure of a foreign limited liability company to have a
40 certificate of authority to transact business in this State does not
41 impair the validity of a contract or act of the company or prevent
42 the company from defending an action or proceeding in this State.

43 c. A member or manager of a foreign limited liability company
44 is not liable for the debts, obligations, or other liabilities of the
45 company solely because the company transacted business in this
46 State without a certificate of authority.

1 d. If a foreign limited liability company transacts business in
2 this State without a certificate of authority or cancels its certificate
3 of authority, it appoints the filing office as its agent for service of
4 process for rights of action arising out of the transaction of business
5 in this State.

6
7 66. Action by Attorney General. The Attorney General of the
8 State of New Jersey may maintain an action to enjoin a foreign
9 limited liability company from transacting business in this State in
10 violation of this act. 'A foreign limited liability company doing
11 business in this State without first having obtained a certificate of
12 authority to transact business shall be fined and shall pay to the
13 State Treasurer \$200 for each year or part thereof during which the
14 foreign limited liability company failed to obtain a certificate of
15 authority. The penalty shall be recovered with costs in an action
16 prosecuted by the Attorney General. The Superior Court may
17 proceed in the action in a summary manner or otherwise.'¹

18
19 ARTICLE 9

20 ACTIONS BY MEMBERS

21 67. Direct Action by Member.

22 a. Subject to subsection b. of this section, a member may
23 maintain a direct action against another member, a manager, or the
24 limited liability company to enforce the member's rights and
25 otherwise protect the member's interests, including rights and
26 interests under the operating agreement or this act or arising
27 independently of the membership relationship.

28 b. A member maintaining a direct action under this section
29 shall plead and prove an actual or threatened injury that is not
30 solely the result of an injury suffered or threatened to be suffered by
31 the limited liability company.

32
33 68. Derivative Action. A member may maintain a derivative
34 action to enforce a right of a limited liability company if:

35 a. the member first makes a demand on the other members in a
36 member-managed limited liability company, or the managers of a
37 manager-managed limited liability company, requesting that they
38 cause the company to bring an action to enforce the right, and the
39 managers or other members do not bring the action within a
40 reasonable time; or

41 b. A demand under subsection a. of this section would be
42 futile.

43
44 69. Proper Plaintiff.

45 a. Except as otherwise provided in subsection b. of this section,
46 a derivative action under section 68 of this act may be maintained

1 only by a person that is a member at the time the action is
2 commenced and remains a member while the action continues.

3 b. If the sole plaintiff in a derivative action dies while the
4 action is pending, the court may permit another member of the
5 limited liability company to be substituted as plaintiff.

6

7 70. Pleading. In a derivative action under section 68 of this act,
8 the complaint shall state with particularity:

9 a. The date and content of plaintiff's demand and the response
10 to the demand by the managers or other members; or

11 b. If a demand has not been made, the reasons a demand under
12 subsection a. of section 68 of this act would be futile.

13

14 71. Special Litigation Committee.

15 a. If a limited liability company is named as or made a party in
16 a derivative proceeding, the company may appoint a special
17 litigation committee to investigate the claims asserted in the
18 proceeding and determine whether pursuing the action is in the best
19 interests of the company. If the company appoints a special
20 litigation committee, on motion by the committee made in the name
21 of the company, except for good cause shown, the court shall stay
22 discovery for the time reasonably necessary to permit the committee
23 to make its investigation. This subsection shall not prevent the
24 court from enforcing a person's right to information under section
25 40 of this act or, for good cause shown, granting extraordinary
26 relief in the form of a temporary restraining order or preliminary
27 injunction.

28 b. A special litigation committee may be composed of one or
29 more disinterested and independent individuals, who may be
30 members.

31 c. A special litigation committee may be appointed:

32 (1) in a member-managed limited liability company:

33 (a) by the consent of a majority of the members not named as
34 defendants or plaintiffs in the proceeding; and

35 (b) if all members are named as defendants or plaintiffs in the
36 proceeding, by a majority of the members named as defendants; or

37 (2) in a manager-managed limited liability company:

38 (a) by a majority of the managers not named as defendants or
39 plaintiffs in the proceeding; and

40 (b) if all managers are named as defendants or plaintiffs in the
41 proceeding, by a majority of the managers named as defendants.

42 d. After appropriate investigation, a special litigation
43 committee may determine that it is in the best interests of the
44 limited liability company that the proceeding:

45 (1) continue under the control of the plaintiff;

46 (2) continue under the control of the committee;

47 (3) be settled on terms approved by the committee; or

1 (4) be dismissed.

2 e. After making a determination under subsection d. of this
3 section, a special litigation committee shall file with the court a
4 statement of its determination and its report supporting its
5 determination, giving notice to the plaintiff. The court shall
6 determine whether the members of the committee were disinterested
7 and independent and whether the committee conducted its
8 investigation and made its recommendation in good faith,
9 independently, and with reasonable care, with the committee having
10 the burden of proof. If the court finds that the members of the
11 committee were disinterested and independent and that the
12 committee acted in good faith, independently, and with reasonable
13 care, the court shall enforce the determination of the committee.
14 Otherwise, the court shall dissolve the stay of discovery entered
15 under subsection a. of this section and allow the action to proceed
16 under the direction of the plaintiff.

17

18 72. Proceeds and Expenses.

19 a. Except as otherwise provided in subsection b. of this section:

20 (1) any proceeds or other benefits of a derivative action under
21 section 68 of this act, whether by judgment, compromise, or
22 settlement, belong to the limited liability company and not to the
23 plaintiff; and

24 (2) if the plaintiff receives any proceeds, the plaintiff shall remit
25 them immediately to the company.

26 b. If a derivative action under section 68 of this act is
27 successful in whole or in part, the court may award the plaintiff
28 reasonable expenses, including reasonable attorney's fees and costs,
29 from the recovery of the limited liability company.

30

31

ARTICLE 10

32

MERGER, CONVERSION AND DOMESTICATION

33

34 73. Definitions. As used in this Article 10 (sections 73 through
35 87 of this act):

36 "Constituent limited liability company" means a constituent
37 organization that is a limited liability company.

38 "Constituent organization" means an organization that is party to
39 a merger.

40 "Converted organization" means the organization into which a
41 converting organization converts pursuant to sections 78 through 81
42 of this act.

43 "Converting limited liability company" means a converting
44 organization that is a limited liability company.

45 "Converting organization" means an organization that converts
46 into another organization pursuant to section 78 of this act.

47 "Domesticated company" means the company that exists after a
domesticating foreign limited liability company or limited liability

1 company effects a domestication pursuant to sections 82 through 85
2 of this act.

3 “Domesticating company” means the company that effects a
4 domestication pursuant to sections 82 through 85 of this act.

5 “Governing statute” means the statute that governs an
6 organization’s internal affairs.

7 “Organization” means a general partnership, including a limited
8 liability partnership, limited partnership, including a limited
9 liability limited partnership, limited liability company, business
10 trust, corporation, or any other person having a governing statute.
11 The term includes a domestic or foreign organization regardless of
12 whether organized for profit.

13 “Organizational documents” means:

14 (1) for a domestic or foreign general partnership, its partnership
15 agreement;

16 (2) for a limited partnership or foreign limited partnership, its
17 certificate of limited partnership and partnership agreement;

18 (3) for a domestic or foreign limited liability company, its
19 certificate or articles of formation and operating agreement, or
20 comparable records as provided in its governing statute;

21 (4) for a business trust, its agreement of trust and declaration of
22 trust;

23 (5) for a domestic or foreign corporation for profit, its articles of
24 incorporation, bylaws, and other agreements among its shareholders
25 which are authorized by its governing statute, or comparable
26 records as provided in its governing statute; and

27 (6) for any other organization, the basic records that create the
28 organization and determine its internal governance and the relations
29 among the persons that own it, have an interest in it, or are
30 members of it.

31 “Personal liability” means liability for a debt, obligation, or other
32 liability of an organization which is imposed on a person that co-
33 owns, has an interest in, or is a member of the organization:

34 (1) by the governing statute solely by reason of the person co-
35 owning, having an interest in, or being a member of the
36 organization; or

37 (2) by the organization’s organizational documents under a
38 provision of the governing statute authorizing those documents to
39 make one or more specified persons liable for all or specified debts,
40 obligations, or other liabilities of the organization solely by reason
41 of the person or persons co-owning, having an interest in, or being a
42 member of the organization.

43 “Surviving organization” means an organization into which one
44 or more other organizations are merged whether the organization
45 preexisted the merger or was created by the merger.

46

47 74. Merger.

- 1 a. A limited liability company may merge with one or more
2 other constituent organizations pursuant to this section, sections 75
3 through 77 of this act, and a plan of merger, if:
- 4 (1) the governing statute of each of the other organizations
5 authorizes the merger;
- 6 (2) the merger is not prohibited by the law of a jurisdiction that
7 enacted any of the governing statutes; and
- 8 (3) each of the other organizations complies with its governing
9 statute in effecting the merger.
- 10 b. A plan of merger shall be in a record and shall include:
- 11 (1) the name and form of each constituent organization;
- 12 (2) the name and form of the surviving organization and, if the
13 surviving organization is to be created by the merger, a statement to
14 that effect;
- 15 (3) the terms and conditions of the merger, including the manner
16 and basis for converting the interests in each constituent
17 organization into any combination of money, interests in the
18 surviving organization, and other consideration;
- 19 (4) if the surviving organization is to be created by the merger,
20 the surviving organization's organizational documents that are
21 proposed to be in a record; and
- 22 (5) if the surviving organization is not to be created by the
23 merger, any amendments to be made by the merger to the surviving
24 organization's organizational documents that are, or are proposed to
25 be, in a record.

26
27 75. Action on Plan of Merger by Constituent Limited Liability
28 Company.

- 29 a. Subject to section 86 of this act, a plan of merger shall be
30 consented to by all the members of a constituent limited liability
31 company.
- 32 b. Subject to section 86 of this act and any contractual rights,
33 after a merger is approved, and at any time before articles of merger
34 are delivered to the filing office for filing under section 76 of this
35 act, a constituent limited liability company may amend the plan or
36 abandon the merger:
- 37 (1) as provided in the plan; or
- 38 (2) except as otherwise prohibited in the plan, with the same
39 consent as was required to approve the plan.

40
41 76. Filings Required for Merger; Effective Date.

- 42 a. After each constituent organization has approved a merger,
43 articles of merger shall be signed on behalf of:
- 44 (1) each constituent limited liability company, as provided in
45 subsection a. of section 20 of this act; and
- 46 (2) each other constituent organization, as provided in its
47 governing statute.

- 1 b. Articles of merger under this section shall include:
- 2 (1) the name and form of each constituent organization and the
3 jurisdiction of its governing statute;
- 4 (2) the name and form of the surviving organization, the
5 jurisdiction of its governing statute, and, if the surviving
6 organization is created by the merger, a statement to that effect;
- 7 (3) the date the merger is effective under the governing statute
8 of the surviving organization;
- 9 (4) if the surviving organization is to be created by the merger:
- 10 (a) if it will be a limited liability company, the company's
11 certificate of formation; or
- 12 (b) if it will be an organization other than a limited liability
13 company, the organizational document that creates the organization
14 that is in a public record;
- 15 (5) if the surviving organization preexists the merger, any
16 amendments provided for in the plan of merger for the
17 organizational document that created the organization that are in a
18 public record;
- 19 (6) a statement as to each constituent organization that the
20 merger was approved as required by the organization's governing
21 statute;
- 22 (7) if the surviving organization is a foreign organization not
23 authorized to transact business in this State, the street and mailing
24 addresses of an office that the filing office may use for the purposes
25 of subsection b. of section 77 of this act; and
- 26 (8) any additional information required by the governing statute
27 of any constituent organization.
- 28 c. The surviving organization shall deliver the articles of
29 merger for filing in the office of the filing office.
- 30 d. A merger becomes effective under this act:
- 31 (1) if the surviving organization is a limited liability company,
32 upon the later of:
- 33 (a) compliance with subsection c. of this section; or
34 (b) subject to subsection c. of section 22 of this act, as specified
35 in the articles of merger; or
- 36 (2) if the surviving organization is not a limited liability
37 company, as provided by the governing statute of the surviving
38 organization.
- 39
- 40 77. Effect of Merger.
- 41 a. When a merger becomes effective:
- 42 (1) the surviving organization continues or comes into
43 existence;
- 44 (2) each constituent organization that merges into the surviving
45 organization ceases to exist as a separate entity;
- 46 (3) all property owned by each constituent organization that
47 ceases to exist vests in the surviving organization;

- 1 (4) all debts, obligations, or other liabilities of each constituent
2 organization that has ceased to exist continue as debts, obligations,
3 or other liabilities of the surviving organization;
- 4 (5) an action or proceeding pending by or against any
5 constituent organization that ceases to exist may be continued as if
6 the merger had not occurred;
- 7 (6) except as prohibited by other law, all of the rights,
8 privileges, immunities, powers, and purposes of each constituent
9 organization that ceases to exist vest in the surviving organization;
- 10 (7) except as otherwise provided in the plan of merger, the terms
11 and conditions of the plan of merger take effect; and
- 12 (8) except as otherwise agreed, if a constituent limited liability
13 company ceases to exist, the merger does not dissolve the limited
14 liability company for the purposes of Article 7, Dissolution and
15 Winding Up (sections 48 through 56 of this act);
- 16 (9) if the surviving organization is created by the merger:
- 17 (a) if it is a limited liability company, the certificate of
18 formation becomes effective; or
- 19 (b) if it is an organization other than a limited liability company,
20 the organizational document that creates the organization becomes
21 effective; and
- 22 (10) if the surviving organization preexisted the merger, any
23 amendments provided for in the articles of merger for the
24 organizational document that created the organization become
25 effective.
- 26 b. A surviving organization that is a foreign organization
27 consents to the jurisdiction of the courts of this State to enforce any
28 debt, obligation, or other liability owed by a constituent
29 organization, if before the merger the constituent organization was
30 subject to suit in this State on the debt, obligation, or other liability.
31 A surviving organization that is a foreign organization and not
32 authorized to transact business in this State appoints the filing
33 office as its agent for service of process for the purposes of
34 enforcing a debt, obligation, or other liability under this subsection.
35 Service on the filing office under this subsection shall be made in
36 the same manner and shall have the same consequences as in
37 subsections c. and d. of section 17 of this act
38
- 39 78. Conversion.
- 40 a. An organization, other than a limited liability company or a
41 foreign limited liability company, may convert to a limited liability
42 company, and a limited liability company may convert to an
43 organization other than a foreign limited liability company pursuant
44 to this section, sections 79 through 81 of this act, and a plan of
45 conversion, if:
- 46 (1) the other organization's governing statute authorizes the
47 conversion;

1 (2) the conversion is not prohibited by the law of the jurisdiction
2 that enacted the other organization's governing statute; and

3 (3) the other organization complies with its governing statute in
4 effecting the conversion.

5 b. A plan of conversion shall be in a record and shall include:

6 (1) the name and form of the organization before conversion;

7 (2) the name and form of the organization after conversion;

8 (3) the terms and conditions of the conversion, including the
9 manner and basis for converting interests in the converting
10 organization into any combination of money, interests in the
11 converted organization, and other consideration; and

12 (4) the organizational documents of the converted organization
13 that are, or are proposed to be, in a record.

14

15 79. Action on Plan of Conversion by Converting Limited
16 Liability Company.

17 a. Subject to section 86 of this act, a plan of conversion shall
18 be consented to by all the members of a converting limited liability
19 company.

20 b. Subject to section 86 of this act and any contractual rights,
21 after a conversion is approved, and at any time before articles of
22 conversion are delivered to the filing office for filing under section
23 80 of this act, a converting limited liability company may amend
24 the plan or abandon the conversion:

25 (1) as provided in the plan; or

26 (2) except as otherwise prohibited in the plan, by the same
27 consent as was required to approve the plan.

28

29 80. Filings Required for Conversion; Effective Date.

30 a. After a plan of conversion is approved:

31 (1) a converting limited liability company shall deliver to the
32 filing office for filing articles of conversion, which shall be signed
33 as provided in subsection a. of section 20 of this act and shall
34 include:

35 (a) a statement that the limited liability company has been
36 converted into another organization;

37 (b) the name and form of the organization and such other
38 information as may be required by the filing office to correctly
39 identify the company and the jurisdiction of its governing statute;

40 (c) the date the conversion is effective under the governing
41 statute of the converted organization;

42 (d) a statement that the conversion was approved as required by
43 this act;

44 (e) a statement that the conversion was approved as required by
45 the governing statute of the converted organization; and

46 (f) if the converted organization is a foreign organization not
47 authorized to transact business in this State, the street and mailing

- 1 addresses of an office which the filing office may use for the
2 purposes of subsection c. of section 81 of this act; and
- 3 (2) if the converting organization is not a converting limited
4 liability company, the converting organization shall deliver to the
5 filing office for filing a certificate of formation, which shall
6 include, in addition to the information required by subsection b. of
7 section 18 of this act:
- 8 (a) a statement that the converted organization was converted
9 from another organization;
- 10 (b) the name and form of that converting organization and the
11 jurisdiction of its governing statute; and
- 12 (c) a statement that the conversion was approved in a manner
13 that complied with the converting organization's governing statute.
- 14 b. A conversion becomes effective:
- 15 (1) if the converted organization is a limited liability company,
16 when the certificate of formation takes effect; and
- 17 (2) if the converted organization is not a limited liability
18 company, as provided by the governing statute of the converted
19 organization.
- 20
- 21 81. Effect of Conversion.
- 22 a. An organization that has been converted pursuant to this
23 Article 10 (sections 73 through 87 of this act) is for all purposes the
24 same entity that existed before the conversion.
- 25 b. When a conversion takes effect:
- 26 (1) all property owned by the converting organization remains
27 vested in the converted organization;
- 28 (2) all debts, obligations, or other liabilities of the converting
29 organization continue as debts, obligations, or other liabilities of the
30 converted organization;
- 31 (3) an action or proceeding pending by or against the converting
32 organization may be continued as if the conversion had not
33 occurred;
- 34 (4) except as prohibited by law other than this act, all of the
35 rights, privileges, immunities, powers, and purposes of the
36 converting organization remain vested in the converted
37 organization;
- 38 (5) except as otherwise provided in the plan of conversion, the
39 terms and conditions of the plan of conversion take effect; and
- 40 (6) except as otherwise agreed, the conversion does not dissolve
41 a converting limited liability company for the purposes of Article 7,
42 Dissolution and Winding Up (sections 48 through 56 of this act).
- 43 c. A converted organization that is a foreign organization
44 consents to the jurisdiction of the courts of this State to enforce any
45 debt, obligation, or other liability for which the converting limited
46 liability company is liable if, before the conversion, the converting
47 limited liability company was subject to suit in this State on the

1 debt, obligation, or other liability. A converted organization that is
2 a foreign organization and not authorized to transact business in this
3 State appoints the filing office as its agent for service of process for
4 purposes of enforcing a debt, obligation, or other liability under this
5 subsection. Service on the filing office under this subsection shall
6 be made in the same manner and has the same consequences as in
7 subsections c. and d. of section 17 of this act.

8

9 82. Domestication.

10 a. A foreign limited liability company may become a limited
11 liability company pursuant to this section, sections 83 through 85 of
12 this act, and a plan of domestication, if:13 (1) the foreign limited liability company's governing statute
14 authorizes the domestication;15 (2) the domestication is not prohibited by the law of the
16 jurisdiction that enacted the governing statute; and17 (3) the foreign limited liability company complies with its
18 governing statute in effecting the domestication.19 b. A limited liability company may become a foreign limited
20 liability company pursuant to this section, sections 83 through 85 of
21 this act, and a plan of domestication, if:

22 (1) the foreign governing statute authorizes the domestication;

23 (2) the domestication is not prohibited by the law of the
24 jurisdiction that enacted the governing statute; and25 (3) the limited liability company complies with the foreign
26 governing statute in effecting the domestication.27 c. A plan of domestication shall be in a record and shall
28 include:29 (1) the name of the domesticating company before
30 domestication and such other information as may be required by the
31 filing office to correctly identify the company and the jurisdiction
32 of its governing statute;33 (2) the name of the domesticated company after domestication
34 and the jurisdiction of its governing statute;35 (3) the terms and conditions of the domestication, including the
36 manner and basis for converting interests in the domesticating
37 company into any combination of money, interests in the
38 domesticated company, and other consideration; and39 (4) the organizational documents of the domesticated company
40 that are, or are proposed to be, in a record.

41

42 83. Action on Plan of Domestication By Domesticating Limited
43 Liability Company.

44 a. A plan of domestication shall be consented to:

45 (1) by all the members, subject to section 86 of this act, if the
46 domesticating company is a limited liability company; and

- 1 (2) as provided in the domesticating company's governing
2 statute, if the company is a foreign limited liability company.
- 3 b. Subject to any contractual rights, after a domestication is
4 approved, and at any time before articles of domestication are
5 delivered to the filing office for filing under section 84 of this act, a
6 domesticating limited liability company may amend the plan or
7 abandon the domestication:
- 8 (1) as provided in the plan; or
9 (2) except as otherwise prohibited in the plan, by the same
10 consent as was required to approve the plan.

11

12 84. Filings Required for Domestication; Effective Date.

13 a. After a plan of domestication is approved, a domesticating
14 company shall deliver to the filing office for filing articles of
15 domestication, which shall include:

- 16 (1) a statement, as the case may be, that the company has been
17 domesticated from or into another jurisdiction;
- 18 (2) the name of the domesticating company and such other
19 information as may be required by the filing office to correctly
20 identify the company and the jurisdiction of its governing statute;
- 21 (3) the name of the domesticated company and the jurisdiction
22 of its governing statute;
- 23 (4) the date the domestication is effective under the governing
24 statute of the domesticated company;
- 25 (5) if the domesticating company was a limited liability
26 company, a statement that the domestication was approved as
27 required by this act;
- 28 (6) if the domesticating company was a foreign limited liability
29 company, a statement that the domestication was approved as
30 required by the governing statute of the other jurisdiction; and
- 31 (7) if the domesticated company was a foreign limited liability
32 company not authorized to transact business in this State, the street
33 and mailing addresses of an office that the filing office may use for
34 the purposes of subsection b. section 85 of this act.

35 b. A domestication becomes effective:

- 36 (1) when the certificate of formation takes effect, if the
37 domesticated company is a limited liability company; and
- 38 (2) according to the governing statute of the domesticated
39 company, if the domesticated organization is a foreign limited
40 liability company.

41

42 85. Effect of Domestication.

43 a. When a domestication takes effect:

- 44 (1) the domesticated company is for all purposes the company
45 that existed before the domestication;
- 46 (2) all property owned by the domesticating company remains
47 vested in the domesticated company;

- 1 (3) all debts, obligations, or other liabilities of the domesticating
2 company continue as debts, obligations, or other liabilities of the
3 domesticated company;
- 4 (4) an action or proceeding pending by or against a
5 domesticating company may be continued as if the domestication
6 had not occurred;
- 7 (5) except as prohibited by other law, all of the rights,
8 privileges, immunities, powers, and purposes of the domesticating
9 company remain vested in the domesticated company;
- 10 (6) except as otherwise provided in the plan of domestication,
11 the terms and conditions of the plan of domestication take effect;
12 and
- 13 (7) except as otherwise agreed, the domestication does not
14 dissolve a domesticating limited liability company for the purposes
15 of Article 7, Dissolution and Winding Up (sections 48 through 56
16 of this act).
- 17 b. A domesticated company that is a foreign limited liability
18 company consents to the jurisdiction of the courts of this State to
19 enforce any debt, obligation, or other liability owed by the
20 domesticating company, if, before the domestication, the
21 domesticating company was subject to suit in this State on the debt,
22 obligation, or other liability. A domesticated company that is a
23 foreign limited liability company and not authorized to transact
24 business in this State appoints the filing office as its agent for
25 service of process for purposes of enforcing a debt, obligation, or
26 other liability under this subsection. Service on the filing office
27 under this subsection shall be made in the same manner and has the
28 same consequences as in subsections c. and d. of section 17 of this
29 act.
- 30 c. If a limited liability company has adopted and approved a
31 plan of domestication under section 82 of this act providing for the
32 company to be domesticated in a foreign jurisdiction, a statement
33 surrendering the company's certificate of formation shall be
34 delivered to the filing office for filing setting forth:
- 35 (1) the name of the company and such other information as may
36 be required by the filing office to correctly identify the company;
- 37 (2) a statement that the certificate of formation is being
38 surrendered in connection with the domestication of the company in
39 a foreign jurisdiction;
- 40 (3) a statement that the domestication was approved as required
41 by this act; and
- 42 (4) the jurisdiction of formation of the domesticated foreign
43 limited liability company.
- 44
- 45 86. Restrictions on Approval of Mergers, Conversions, and
46 Domestications.

1 a. If a member of a constituent, converting, or domesticating
2 limited liability company will have personal liability with respect to
3 a surviving, converted, or domesticated organization, approval or
4 amendment of a plan of merger, conversion, or domestication are
5 ineffective without the consent of the member, unless:

6 (1) the company's operating agreement provides for approval of
7 a merger, conversion, or domestication with the consent of fewer
8 than all the members; and

9 (2) the member has consented to the provision of the operating
10 agreement.

11 b. A member does not give the consent required by subsection
12 a. of this section merely by consenting to a provision of the
13 operating agreement that permits the operating agreement to be
14 amended with the consent of fewer than all the members.

15
16 87. Article Not Exclusive.

17 'a.' This Article 10 (¹~~Section~~ sections¹ 73 through 87 of this
18 act) does not preclude an entity from being merged, converted, or
19 domesticated under law other than this act.

20 'b. Without limiting the foregoing, it is intended that a limited
21 liability company, whenever formed, that acquires the assets,
22 liabilities and business of a predecessor organization with common
23 ownership, shall be presumed to have the rights, privileges and
24 perquisites of the predecessor organization. Furthermore, in
25 computing time periods and continuity of ownership for
26 determining eligibility for government grants, property rights, or
27 other entitlements, there shall be a tacking of time periods with
28 respect to the limited liability company and the predecessor
29 organization.

30 c. Nothing in this section 87 is intended to require the
31 assignment of a contract in violation of its express terms.¹

32 33 ARTICLE 11

34 MISCELLANEOUS PROVISIONS

35 88. Uniformity of Application and Construction. In applying
36 and construing this uniform act, consideration shall be given to the
37 need to promote uniformity of the law with respect to its subject
38 matter among states that enact it.

39
40 89. Relation to Electronic Signatures In Global and National
41 Commerce Act. This act modifies, limits, and supersedes the
42 federal "Electronic Signatures in Global and National Commerce
43 Act," Pub.L.106-229, 15 U.S.C. s.7001 et seq., but does not modify,
44 limit, or supersede section 101(c) of that act, 15 U.S.C. s.7001(c),
45 or authorize electronic delivery of any of the notices described in
46 section 103(b) of that act, 15 U.S.C. s.7003(b).

1 90. Savings Clause. This act does not affect an action
2 commenced, proceeding brought, or right accrued before this act
3 takes effect.

4
5 91. Application to Existing Relationships.

6 a. Before the first day of the 18th month next following the
7 enactment date of this act, this act governs only:

8 (1) a limited liability company formed on or after the effective
9 date of this act; and

10 (2) a limited liability company formed before the effective date
11 of this act, which elects, in the manner provided in its operating
12 agreement or by law for amending the operating agreement, to be
13 subject to this act.

14 b. On and after the first day of the 18th month next following
15 the enactment date of this act, this act governs all limited liability
16 companies.

17
18 92. Tax Classification.

19 a. For all purposes of taxation ¹~~['on income']~~¹ under the laws of
20 this State ¹~~['and only for those purposes']~~¹, a limited liability
21 company formed under this act or qualified to do business in this
22 State as a foreign limited liability company with two or more
23 members shall be classified as a partnership unless classified
24 otherwise for federal income tax purposes, in which case the limited
25 liability company shall be classified in the same manner as it is
26 classified for federal income tax purposes. For all purposes of
27 taxation under the laws of this State, a member or a transferee of a
28 member of a limited liability company formed under this act or
29 qualified to do business in this State as a foreign limited liability
30 company shall be treated as a partner in a partnership unless the
31 limited liability company is classified otherwise for federal income
32 tax purposes, in which case the member or transferee of a member
33 shall have the same status as the member or transferee of a member
34 has for federal income tax purposes.

35 b. For all purposes of taxation on income under the laws of this
36 State and only for those purposes, a limited liability company
37 formed under this act or qualified to do business in this State as a
38 foreign limited liability company with one member is disregarded
39 as an entity separate from its owner, unless classified otherwise for
40 federal tax purposes, in which case the limited liability company
41 will be classified in the same manner as it is classified for federal
42 income tax purposes. For all purposes of taxation on income under
43 the laws of this State and only for those purposes, the sole member
44 or a transferee of all of the limited liability company interest of the
45 sole member of a limited liability company formed under this act or
46 qualified to do business in this State as a foreign limited liability
47 company is treated as the direct owner of the underlying assets of

1 the limited liability company and of its operations, unless the
2 limited liability company is classified otherwise for federal income
3 tax purposes, in which case the member or transferee of a member
4 will have the same status as the member or transferee of a member
5 has for federal income tax purposes.

6

7 93. Fees.

8 a. No document required to be filed under this act shall be
9 effective until the applicable fee required by this section is paid.
10 The following fees shall be paid to and collected by the State
11 Treasurer for the use of the State:

12 (1) Upon the receipt for filing of a certificate of registration of
13 alternate name or a certificate of renewal pursuant to section 9 of
14 this act, a fee in the amount of \$50.

15 (2) Upon the receipt for filing of an application for reservation
16 of name, an application for renewal of reservation or a notice of
17 transfer or cancellation of reservation pursuant to section 10 of this
18 act, a fee in the amount of \$50.

19 (3) Upon the receipt for filing of a statement under section 15 of
20 this act, a fee in the amount of \$25, upon the receipt for filing of a
21 statement under section 16 of this act, a fee in the amount of \$25
22 and a further fee of \$10 for each limited liability company affected
23 by that statement.

24 (4) Upon the receipt for filing of a certificate of formation under
25 section 18 of this act, a fee in the amount of \$125; and upon receipt
26 for filing, a certificate of correction under section 23 of this act, a
27 certificate of amendment or restatement under section 19 of this act,
28 a certificate of dissolution under section 49 of this act, or articles of
29 merger under section 76 of this act, a fee in the amount of \$100.

30 (5) Upon the filing of articles of conversion under section 80 of
31 this act, a fee in the amount of \$100.

32 (6) Upon filing of an annual report, a fee in the amount of
33 \$50.00.

34 (7) Upon requesting a reinstatement of a certificate of a limited
35 liability company, a late filing fee of \$200.00 and a reinstatement
36 filing fee of \$75.00.

37 (8) For certifying copies of any paper on file as provided for by
38 this act, a fee in the amount of \$25 for each copy certified.

39 (9) The State Treasurer may issue copies of instruments on file
40 as well as other copies, and for all of those copies, whether certified
41 or not, a fee in the amount of \$10 for the first page and \$2 per page
42 thereafter shall be paid.

43 (10) Upon the receipt for filing of an application for certificate
44 of authority as a foreign limited liability company under section 58
45 of this act or a certificate of cancellation under section 64 of this
46 act, a fee in the amount of \$125.

1 (11) For preclearance of any document for filing, a fee in the
2 amount of \$100.

3 (12) For preparing and providing a written report of a record
4 search, a fee in the amount of \$50.

5 (13) For issuing any certificate of the State Treasurer, including
6 but not limited to a certificate of good standing, other than a
7 certification of a copy under paragraph (8) of this subsection, a fee
8 in the amount of \$50, except that for issuing any certificate of the
9 State Treasurer that recites all of a limited liability company's
10 filings with the State Treasurer, a fee of \$100 shall be paid for each
11 such certificate.

12 (14) For receiving and filing or indexing any certificate, affidavit,
13 agreement or any other paper provided for by this act, for which no
14 different fee is specifically prescribed, a fee in the amount of \$75.

15 (15) The State Treasurer may in his discretion charge a fee of
16 \$50 for each check received for payment of any fee that is returned
17 due to insufficient funds or the result of a stop payment order.

18 b. In addition to those fees charged under subsection a. of this
19 section, there shall be collected by and paid to the State Treasurer
20 the following:

21 (1) for all services described in subsection a. of this section that
22 are requested to be completed within the same day as the day of the
23 request, an additional sum of up to \$50; and

24 (2) for all services described in subsection a. of this section that
25 are requested to be completed within a 24-hour period from the time
26 of the request, an additional sum of up to \$25.

27 The State Treasurer shall establish, and may from time to time
28 amend, a schedule of specific fees payable pursuant to this
29 subsection.

30 c. The State Treasurer may in his discretion permit the
31 extension of credit for the fees required by this section upon such
32 terms as he shall deem to be appropriate.

33

34 94. Notices. In computing the period of time for the giving of
35 any notice:

36 a. Required or permitted by this act, or,

37 b. Unless otherwise provided therein, an operating agreement,
38 the day on which the notice is given shall be excluded, and the day
39 on which the matter noticed is to occur shall be included.

40

41 95. Repeals. Effective on the first day of the 18th month next
42 following the enactment date of this act, the following are repealed:

43 P.L.1993, c.210 (C.42:2B-1 et seq.);

44 Section 22 of P.L.1997, c.139 (C.42:2B-8.1);

45 Section 14 of P.L.1997, c.139 (C.42:2B-24.1); and

46 Sections 1 and 2 of P.L.2003, c.12 (C.42:2B-49.1 and 42:2B-
47 49.2).

1 96. Effective Date. This act shall take effect on the 180th day
2 next following enactment.

3

4

5

6

7

"Revised Uniform Limited Liability Company Act."

ASSEMBLY, No. 1543

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblyman **JOHN J. BURZICHELLI**
District 3 (Cumberland, Gloucester and Salem)
Assemblyman **SCOTT T. RUMANA**
District 40 (Bergen, Essex, Morris and Passaic)
Assemblyman **TROY SINGLETON**
District 7 (Burlington)
Assemblyman **JOHN S. WISNIEWSKI**
District 19 (Middlesex)

Co-Sponsored by:

Assemblywoman **McHose**

SYNOPSIS

"Revised Uniform Limited Liability Company Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning the creation and operation of limited liability
2 companies, supplementing Title 42 of the Revised Statutes and
3 repealing various parts of the statutory law.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 ARTICLE 1

9 GENERAL PROVISIONS

10 1. Short Title. This act shall be known and may be cited as the
11 "Revised Uniform Limited Liability Company Act."
12

13 2. Definitions. As used in this act:

14 "Certificate of formation" means the certificate required by
15 section 18 of this act. The term includes the certificate as amended
16 or restated.

17 "Contribution" means any benefit provided by a person to a
18 limited liability company:

19 (1) in order to become a member upon formation of the
20 company and in accordance with an agreement between or among
21 the persons who have agreed to become the initial members of the
22 company;

23 (2) in order to become a member after formation of the company
24 and in accordance with an agreement between the person and the
25 company; or

26 (3) in the person's capacity as a member and in accordance with
27 the operating agreement or an agreement between the member and
28 the company.

29 "Debtor in bankruptcy" means a person who is the subject of:

30 (1) an order for relief under Title 11 of the United States Code
31 or a successor statute of general application; or

32 (2) a comparable order under federal, state, or foreign law
33 governing insolvency.

34 "Distribution" except as otherwise provided in subsection g. of
35 section 35 of this act, means a transfer of money or other property
36 from a limited liability company to another person on account of a
37 transferable interest.

38 "Effective" with respect to a record required or permitted to be
39 delivered to the filing office for filing under this act, means
40 effective under subsection c. of section 22 of this act.

41 "Filing office" means the Division of Revenue in the Department
42 of the Treasury, or such other State office designated as such by
43 law.

44 "Foreign limited liability company" means an unincorporated
45 entity formed under the law of a jurisdiction other than this State
46 and denominated by that law as a limited liability company.

1 “Limited liability company” except in the phrase “foreign limited
2 liability company,” means an entity formed under this act.

3 “Manager” means a person that under the operating agreement of
4 a manager-managed limited liability company is responsible, alone
5 or in concert with others, for performing the management functions
6 stated in subsection c. of section 37 of this act.

7 “Manager-managed limited liability company” means a limited
8 liability company that qualifies under subsection a. of section 37 of
9 this act.

10 “Member” means a person that has become a member of a
11 limited liability company pursuant to section 31 of this act and has
12 not dissociated pursuant to section 46 of this act.

13 “Member-managed limited liability company” means a limited
14 liability company that is not a manager-managed limited liability
15 company.

16 “Operating agreement” means the agreement, whether or not
17 referred to as an operating agreement and whether oral, in a record,
18 implied, or in any combination thereof, of all the members of a
19 limited liability company, including a sole member, concerning the
20 matters described in subsection a. of section 11 of this act. The term
21 includes the agreement as amended or restated.

22 “Organizer” means a person that acts to form a limited liability
23 company pursuant to section 18 of this act.

24 “Person” means an individual, corporation, business trust, estate,
25 trust, partnership, limited liability company, association, joint
26 venture, public corporation, government or governmental
27 subdivision, agency, or instrumentality, or any other legal or
28 commercial entity.

29 “Principal office” means the principal executive office of a
30 limited liability company or foreign limited liability company,
31 whether or not the office is located in this State.

32 “Record” means information that is inscribed on a tangible
33 medium or that is stored in an electronic or other medium and is
34 retrievable in perceivable form.

35 “Registered office” means:

36 (1) the office that a limited liability company is required to
37 designate and maintain pursuant to section 14 of this act; or

38 (2) the principal office of a foreign limited liability company.

39 “Sign” means, with the present intent to authenticate or adopt a
40 record:

41 (1) to execute or adopt a tangible symbol; or

42 (2) to attach to or logically associate with the record an
43 electronic symbol, sound, or process.

44 “State” means a state of the United States, the District of
45 Columbia, Puerto Rico, the United States Virgin Islands, or any
46 territory or insular possession subject to the jurisdiction of the
47 United States.

1 “Terminated” means, with respect to a limited liability company,
2 that such company has been dissolved, that all of its affairs have
3 been wound up, and that all of its assets have been either applied to
4 discharge its obligations to creditors, including members that are
5 creditors, or distributed to its members.

6 “Transfer” includes an assignment, conveyance, deed, bill of
7 sale, lease, mortgage, security interest, encumbrance, gift, and
8 transfer by operation of law.

9 “Transferable interest” means the right, as originally associated
10 with a person’s capacity as a member, to receive distributions from
11 a limited liability company in accordance with the operating
12 agreement, whether or not the person remains a member or
13 continues to own any part of the right.

14 “Transferee” means a person to which all or part of a transferable
15 interest has been transferred, whether or not the transferor is a
16 member.

17

18 3. Knowledge; Notice.

19 a. A person knows a fact when the person:

20 (1) has actual knowledge of it; or

21 (2) is deemed to know it under paragraph (1) of subsection d. of
22 this section or law other than this act.

23 b. A person has notice of a fact when the person:

24 (1) has reason to know the fact from all of the facts known to
25 the person at the time in question; or

26 (2) is deemed to have notice of the fact under paragraph (2) of
27 subsection d. of this section;

28 c. A person notifies another of a fact by taking steps
29 reasonably required to inform the other person in ordinary course,
30 whether or not the other person knows the fact.

31 d. A person that is not a member is deemed:

32 (1) to know of a limitation on authority to transfer real property
33 as provided in subsection g. of section 28 of this act; and

34 (2) to have notice of a limited liability company’s:

35 (a) dissolution, 90 days after a certificate of dissolution,
36 pursuant to subparagraph (a) of paragraph (2) of subsection b. of
37 section 49 of this act becomes effective;

38 (b) termination, 90 days after a statement of termination,
39 pursuant to subparagraph (f) of paragraph (2) of subsection b. of
40 section 49 of this act becomes effective; and

41 (c) merger, conversion, or domestication, 90 days after articles
42 of merger, conversion, or domestication under Article 10 (sections
43 73 through 87 of this act) become effective.

44

45 4. Nature, Purpose and Duration of Limited Liability Company.

46 a. A limited liability company is an entity distinct from its
47 members.

- 1 b. A limited liability company may have any lawful purpose,
2 regardless of whether for profit.
- 3 c. A limited liability company has perpetual duration.
4
- 5 5. Powers. A limited liability company has the capacity to sue
6 and be sued in its own name and the power to do all things
7 necessary or convenient to carry on its activities.
8
- 9 6. Governing Law. The law of this State governs:
10 a. The internal affairs of a limited liability company; and
11 b. The liability of a member as member and a manager as
12 manager for the debts, obligations, or other liabilities of a limited
13 liability company.
14
- 15 7. Supplemental Principles of Law. Unless displaced by
16 particular provisions of this act, the principles of law and equity
17 supplement this act.
18
- 19 8. Name.
20 a. The name of a limited liability company shall contain the
21 words “limited liability company” or the abbreviation “L.L.C.” or
22 “LLC”. “Limited” may be abbreviated as “Ltd.”, and “company”
23 may be abbreviated as “Co.”.
24 b. Unless authorized by subsection c. of this section, the name
25 of a limited liability company shall be distinguishable in the records
26 of the filing office from:
27 (1) the name of each person that is not an individual and that is
28 incorporated, organized, or authorized to transact business in this
29 State; and
30 (2) each name reserved under section 10 of this act.
31 c. Furthermore, the name of a limited liability company shall
32 not contain any word or phrase, or any abbreviation or derivative
33 thereof, the use of which is prohibited or restricted by any other
34 statute of this State, unless the limited liability company has
35 complied with the restrictions.
36 d. A limited liability company may apply to the filing office for
37 authorization to use a name that does not comply with subsection b.
38 of this section. The filing office shall authorize use of the name
39 applied for if, as to each noncomplying name:
40 (1) the present user, registrant, or owner of the noncomplying
41 name consents in a signed record to the use and submits an
42 undertaking in a form satisfactory to the filing office to change the
43 noncomplying name to a name that complies with subsection b. of
44 this section and is distinguishable in the records of the filing office
45 from the name applied for; or

1 (2) the applicant delivers to the filing office a certified copy of
2 the final judgment of a court establishing the applicant's right to use
3 in this State the name applied for.

4 e. Subject to section 61, the provisions of this act shall apply to
5 a foreign limited liability company transacting business in this State
6 which has a certificate of authority to transact business in this State
7 or which has applied for a certificate of authority.

8

9 9. Use of Name Other Than Actual Limited Liability Company
10 Name.

11 a. A domestic limited liability company or foreign limited
12 liability company which conducts activities in this State shall not
13 conduct any of those activities using an alternate name, including
14 an abbreviation of its name or an acronym, unless:

15 (1) it also uses its actual name in the transaction of any of its
16 activities in a manner that is not deceptive as to its actual identity;
17 or

18 (2) it has first registered the alternate name as provided in
19 subsection b. of this section.

20 b. Any limited liability company may adopt and use any
21 alternate name, including a name which would be unavailable as the
22 name of a domestic or foreign limited liability company because of
23 the prohibitions of subsection a. or b. of section 8 of this act, but
24 not including any name not permitted as a limited liability company
25 name by subsection c. of section 8 of this act, by filing an original
26 and a copy of a certificate of registration of alternate name with the
27 filing office executed on behalf of the limited liability company.
28 The certificate shall set forth:

29 (1) The name, jurisdiction and date of formation of the limited
30 liability company;

31 (2) The alternate name;

32 (3) A brief statement of the character or nature of the particular
33 activities to be conducted using the alternate name;

34 (4) That the limited liability company intends to use the
35 alternate name in this State;

36 (5) That the limited liability company has not previously used
37 the alternate name in this State in violation of this section or, if it
38 has, the month and year in which it commenced the use.

39 c. The registration shall be effective for five years from the
40 date of filing and may be renewed successively for additional five-
41 year periods by filing an original and a copy of the certificate of
42 renewal executed on behalf of the limited liability company any
43 time within 90 days prior to, but not later than, the date of
44 expiration of the registration. The certificate of renewal shall set
45 forth the information required in paragraphs (1) through (4) of
46 subsection b. of this section, the date of the certificate of

1 registration then in effect and that the limited liability company is
2 continuing to use the alternate name.

3 d. This section shall not:

4 (1) Grant to the registrant of an alternate name any right in the
5 name as against any prior or subsequent use of the name, regardless
6 of whether used as a trademark, trade name, business name or
7 corporate name; or

8 (2) Interfere with the power of any court to enjoin the use of the
9 name on the basis of the law of unfair competition or on any other
10 basis except the identity or similarity of the alternate name to any
11 corporate, limited partnership or limited liability company name.

12 e. A limited liability company which has used an alternate
13 name in this State contrary to the provisions of this section shall,
14 upon filing a certificate of registration of alternate name or an
15 untimely certificate of renewal, pay to the filing office the filing fee
16 prescribed for the certificate plus an additional filing fee equal to
17 the full amount of the regular filing fee multiplied by the number of
18 years it has been using the alternate name in violation of this
19 section. For the purpose of this subsection, any part of a year shall
20 be considered a full year.

21 f. The failure of a limited liability company to file a certificate
22 of registration or renewal of alternate name shall not impair the
23 validity of any contract or act of the limited liability company and
24 shall not prevent the limited liability company from defending any
25 action or proceedings in any court of this State, but the limited
26 liability company shall not maintain any action or proceeding in any
27 court of this State arising out of a contract or act in which it used
28 the alternate name until it has filed the applicable certificate.

29 g. (1) A limited liability company which files a certificate of
30 registration of alternate name which contains a false statement or
31 omission regarding the date it first used an alternate name in this
32 State shall, if the false statement or omission reduces the amount of
33 the additional fee it paid or should have paid as provided in
34 subsection e. of this section, forfeit to the State a penalty of not less
35 than \$200 nor more than \$500.

36 (2) A limited liability company which should have filed a
37 certificate of registration or renewal of alternate name and fails to
38 do so within 60 days after being notified of its obligation to do so
39 by the filing office, by any other governmental officer, or by any
40 person aggrieved by its failure to do so, shall forfeit to the State a
41 penalty of not less than \$200 nor more than \$500.

42 (3) A penalty imposed under this section shall be recovered with
43 costs in an action brought by the Attorney General. The court may
44 proceed on the action in a summary manner.

45

46 10. Reservation of Name.

1 a. A person may reserve the exclusive use of the name of a
2 limited liability company, including a fictitious or assumed name
3 for a foreign limited liability company whose name is not available,
4 by delivering an application to the filing office for filing. The
5 application must state the name and address of the applicant and the
6 name proposed to be reserved. If the filing office finds that the
7 name applied for is available, it must be reserved for the applicant's
8 exclusive use for a 120-day period.

9 b. The owner of a name reserved for a limited liability
10 company may transfer the reservation to another person by
11 delivering to the filing office for filing a signed notice of the
12 transfer which states the name and address of the transferee.

13
14 11. Operating Agreement; Scope, Function, and Limitations.

15 a. Except as provided in subsections b. and c. of this section,
16 the operating agreement governs:

17 (1) relations among the members as members and between the
18 members and the limited liability company;

19 (2) the rights and duties under this act of a person in the
20 capacity of manager;

21 (3) the activities of the company and the conduct of those
22 activities; and

23 (4) the means and conditions for amending the operating
24 agreement.

25 b. To the extent the operating agreement does not otherwise
26 provide for a matter described in subsection a. of this section, this
27 act governs the matter.

28 c. An operating agreement may not:

29 (1) vary a limited liability company's capacity under section 5
30 of this act to sue and be sued in its own name;

31 (2) vary the law applicable under section 6 of this act;

32 (3) vary the power of the court under section 21 of this act;

33 (4) subject to subsections d. through g. of this section, eliminate
34 the duty of loyalty, the duty of care, or any other fiduciary duty;

35 (5) subject to subsections d. through g. of this section, eliminate
36 the contractual obligation of good faith and fair dealing under
37 subsection d. of section 39 of this act;

38 (6) unreasonably restrict the duties and rights stated in section
39 40 of this act;

40 (7) vary the power of a court to decree dissolution in the
41 circumstances specified in paragraphs (4) and (5) of subsection a. of
42 section 48 of this act;

43 (8) vary the requirement to wind up a limited liability
44 company's business as specified in subsection a. and paragraph (1)
45 of subsection b. of section 49 of this act;

46 (9) unreasonably restrict the right of a member to maintain an
47 action under Article 9 (sections 67 through 72 of this act);

1 (10) restrict the right to approve a merger, conversion, or
2 domestication under section 86 of this act to a member that will
3 have personal liability with respect to a surviving, converted, or
4 domesticated organization; or

5 (11) except as otherwise provided in subsection b. of section 13
6 of this act, restrict the rights under this act of a person other than a
7 member or manager.

8 d. If not manifestly unreasonable, the operating agreement
9 may:

10 (1) restrict or eliminate the duty:

11 (a) as required in paragraph (1) of subsection b. and subsection
12 g. of section 39 of this act, to account to the limited liability
13 company and to hold as trustee for it any property, profit, or benefit
14 derived by the member in the conduct or winding up of the
15 company's business, from a use by the member of the company's
16 property, or from the appropriation of a limited liability company
17 opportunity;

18 (b) as required in paragraph (2) of subsection b. and subsection
19 g. of section 39 of this act, to refrain from dealing with the
20 company in the conduct or winding up of the company's business as
21 or on behalf of a party having an interest adverse to the company;
22 and

23 (c) as required by paragraph (3) of subsection b. and subsection
24 g. of section 39 of this act, to refrain from competing with the
25 company in the conduct of the company's business before the
26 dissolution of the company;

27 (2) identify specific types or categories of activities that do not
28 violate the duty of loyalty;

29 (3) alter the duty of care, except to authorize intentional
30 misconduct or knowing violation of law;

31 (4) alter any other fiduciary duty, including eliminating
32 particular aspects of that duty; and

33 (5) prescribe the standards by which to measure the performance
34 of the contractual obligation of good faith and fair dealing under
35 subsection d. and subsection g. of section 39 of this act.

36 e. The operating agreement may specify the method by which a
37 specific act or transaction that would otherwise violate the duty of
38 loyalty may be authorized or ratified by one or more disinterested
39 and independent persons after full disclosure of all material facts.

40 f. To the extent the operating agreement of a member-managed
41 limited liability company expressly relieves a member of a
42 responsibility that the member would otherwise have under this act
43 and imposes the responsibility on one or more other members, the
44 operating agreement may, to the benefit of the member that the
45 operating agreement relieves of the responsibility, also eliminate or
46 limit any fiduciary duty that would have pertained to the
47 responsibility.

1 g. The operating agreement may alter or eliminate the
2 indemnification for a member or manager provided by section 38 of
3 this act and may eliminate or limit a member or manager's liability
4 to the limited liability company and members for money damages,
5 except for:

6 (1) breach of the duty of loyalty;

7 (2) a financial benefit received by the member or manager to
8 which the member or manager is not entitled;

9 (3) a breach of a duty under section 36 of this act;

10 (4) intentional infliction of harm on the company or a member;

11 or

12 (5) an intentional violation of criminal law.

13 h. The court shall decide any claim under paragraph (1) of
14 subsection d. of this section that a term of an operating agreement is
15 manifestly unreasonable. The court:

16 (1) shall make its determination as of the time the challenged
17 term became part of the operating agreement and by considering
18 only circumstances existing at that time; and

19 (2) may invalidate the term only if, in light of the purposes and
20 activities of the limited liability company, it is readily apparent that:

21 (a) the objective of the term is unreasonable; or

22 (b) the term is an unreasonable means to achieve the provision's
23 objective.

24 i. This act is to be liberally construed to give the maximum
25 effect to the principle of freedom of contract and to the
26 enforceability of operating agreements.

27
28 12. Operating Agreement; Effect on Limited Liability Company
29 and Persons Becoming Members; Preformation Agreement.

30 a. A limited liability company is bound by and may enforce the
31 operating agreement, whether or not the company has itself
32 manifested assent to the operating agreement.

33 b. A person that becomes a member of a limited liability
34 company is deemed to assent to the operating agreement.

35 c. Two or more persons intending to become the initial
36 members of a limited liability company may make an agreement
37 providing that upon the formation of the company the agreement
38 will become the operating agreement. One person intending to
39 become the initial member of a limited liability company may
40 assent to terms providing that upon the formation of the company
41 the terms will become the operating agreement.

42
43 13. Operating Agreement; Effect on Third Parties and
44 Relationship to Records Effective on Behalf of Limited Liability
45 Company.

46 a. An operating agreement may specify that its amendment
47 requires the approval of a person that is not a party to the operating

1 agreement or the satisfaction of a condition. An amendment is
2 ineffective if its adoption does not include the required approval or
3 satisfy the specified condition.

4 b. The obligations of a limited liability company and its
5 members to a person in the person's capacity as a transferee or
6 dissociated member are governed by the operating agreement.
7 Subject only to any court order issued under paragraph (2) of
8 subsection b. and subsection g. of section 43 of this act to effectuate
9 a charging order, an amendment to the operating agreement made
10 after a person becomes a transferee or dissociated member is
11 effective with regard to any debt, obligation, or other liability of the
12 limited liability company or its members to the person in the
13 person's capacity as a transferee or dissociated member.

14 c. If a record that has been delivered by a limited liability
15 company to the filing office for filing and has become effective
16 under this act contains a provision that would be ineffective under
17 subsection c. of section 11 of this act, if contained in the operating
18 agreement, the provision is likewise ineffective in the record.

19 d. Subject to subsection c. of this section, if a record that has
20 been delivered by a limited liability company to the filing office for
21 filing and has become effective under this act conflicts with a
22 provision of the operating agreement:

23 (1) the operating agreement prevails as to members, dissociated
24 members, transferees, and managers; and

25 (2) the record prevails as to other persons to the extent they
26 reasonably rely on the record.

27

28 14. Office and Agent for Service of Process.

29 a. A limited liability company shall designate and continuously
30 maintain in this State:

31 (1) an office, which need not be a place of its activity in this
32 State; and

33 (2) an agent for service of process.

34 b. A foreign limited liability company that has a certificate of
35 authority under section 58 of this act shall designate and
36 continuously maintain in this State an office and an agent for
37 service of process.

38 c. An agent for service of process of a limited liability
39 company or foreign limited liability company shall be an individual
40 who is a resident of this State or other person with authority to
41 transact business in this State.

42

43 15. Change of Designated Office or Agent For Service of
44 Process.

45 a. A limited liability company or foreign limited liability
46 company may change its registered office, its agent for service of
47 process, or the address of its agent for service of process by

1 delivering to the filing office for filing a statement of change
2 containing:

- 3 (1) the name of the company;
4 (2) the street and mailing addresses of its current registered
5 office;
6 (3) if the current registered office is to be changed, the street
7 and mailing addresses of the new registered office;
8 (4) the name and street and mailing addresses of its current
9 agent for service of process; and
10 (5) if the current agent for service of process or an address of
11 the agent is to be changed, the new information.

12 b. Subject to subsection c. of section 22 of this act, a statement
13 of change is effective when filed by the filing office.
14

15 16. Resignation of Agent for Service of Process.

16 a. To resign as an agent for service of process of a limited
17 liability company or foreign limited liability company, the agent
18 shall deliver to the filing office for filing a statement of resignation
19 containing the company name and stating that the agent is
20 resigning.

21 b. The filing office shall file a statement of resignation
22 delivered under subsection a. of this section and mail or otherwise
23 provide or deliver a copy to the registered office of the company or
24 the principal office of the company if the mailing address of the
25 principal office appears in the records of the filing office and is
26 different from the mailing address of the registered office.

27 c. An agency for service of process terminates on the earlier of:

- 28 (1) the 31st day after the filing office files the statement of
29 resignation;
30 (2) when a record designating a new agent for service of process
31 is delivered to the filing office for filing on behalf of the limited
32 liability company and becomes effective.
33

34 17. Service of Process.

35 a. An agent for service of process appointed by a limited
36 liability company or foreign limited liability company is an agent of
37 the company for service of any process, notice, or demand required
38 or permitted by law to be served on the company.

39 b. If a limited liability company or foreign limited liability
40 company does not appoint or maintain an agent for service of
41 process in this State or the agent for service of process cannot with
42 reasonable diligence be found at the agent's street address, the
43 filing office is an agent of the company upon whom process, notice,
44 or demand may be served.

45 c. Service of any process, notice, or demand on the filing office
46 as agent for a limited liability company or foreign limited liability
47 company may be made by delivering to the filing office duplicate

1 copies of the process, notice, or demand. If a process, notice, or
2 demand is served on the filing office, the filing office shall forward
3 one of the copies by mail or otherwise provide or deliver a copy to
4 the registered office of the company or the principal office of the
5 company if the mailing address of the principal office appears in the
6 records of the filing office and is different from the mailing address
7 of the registered office.

8 d. Service is effected under subsection c. of this section at the
9 earliest of:

10 (1) the date the limited liability company or foreign limited
11 liability company receives the process, notice, or demand;

12 (2) the date shown on the return receipt, if signed on behalf of
13 the company; or

14 (3) five days after the process, notice, or demand is deposited
15 with the United States Postal Service, if correctly addressed and
16 with sufficient postage.

17 e. The filing office shall keep a record of each process, notice,
18 and demand served pursuant to this section and record the date of,
19 and the action taken regarding, the service.

20 f. This section does not affect the right to serve process,
21 notice, or demand in any other manner provided by law.

22

23 ARTICLE 2

24 FORMATION; CERTIFICATE OF FORMATION AND OTHER 25 FILINGS

26 18. Formation of Limited Liability Company; Certificate of
27 Formation.

28 a. One or more persons may act as organizers to form a limited
29 liability company by signing and delivering to the filing office for
30 filing a certificate of formation.

31 b. A certificate of formation shall state:

32 (1) the name of the limited liability company, which complies
33 with section 8 of this act; and

34 (2) the street and mailing addresses of the initial registered
35 office and the name of the initial agent at that office for service of
36 process of the company.

37 c. Subject to subsection c. of section 12 of this act, a certificate
38 of formation may also contain statements as to matters other than
39 those required by subsection b. of this section. However, a
40 statement in a certificate of formation is not effective as a statement
41 of authority.

42 d. A limited liability company is formed when the filing office
43 has filed the certificate of formation and the company has at least
44 one member, unless the certificate states a delayed effective date
45 pursuant to subsection c. of section 22 of this act.

46 e. If the certificate states a delayed effective date, a limited
47 liability company is not formed if, before the certificate takes

1 effect, a certificate of dissolution is signed and delivered to the
2 filing office for filing and the filing office files the certificate.

3 f. Subject to any delayed effective date and except in a
4 proceeding by this State to dissolve a limited liability company, the
5 filing of the certificate of formation by the filing office is
6 conclusive proof that the organizer satisfied all conditions to the
7 formation of a limited liability company.

8

9 19. Amendment or Restatement of Certificate of Formation.

10 a. A certificate of formation may be amended or restated at any
11 time.

12 b. To amend its certificate of formation, a limited liability
13 company shall deliver to the filing office for filing an amendment
14 stating:

15 (1) the name of the company;

16 (2) the date of filing of its certificate of formation;

17 (3) such other information as may be required by the filing
18 office to correctly identify the company; and

19 (4) the changes the amendment makes to the certificate as most
20 recently amended or restated.

21 c. To restate its certificate of formation, a limited liability
22 company shall deliver to the filing office for filing a restated
23 certificate of formation, designated as such in its heading, stating:

24 (1) in the heading or an introductory paragraph, the company's
25 present name, the date of the filing of the company's initial
26 certificate of formation and such other information as may be
27 required by the filing office to correctly identify the company;

28 (2) if the company's name has been changed at any time since
29 the company's formation, each of the company's former names; and

30 (3) the changes the restated certificate of formation makes to the
31 certificate of formation as most recently amended or restated.

32 d. Subject to subsection c. of section 12 and subsection c. of
33 section 22 of this act, an amendment to or a restated certificate of
34 formation is effective when filed by the filing office.

35 e. If a member of a member-managed limited liability
36 company, or a manager of a manager-managed limited liability
37 company, knows that any information in a filed certificate of
38 formation was inaccurate when the certificate was filed or has
39 become inaccurate owing to changed circumstances, the member or
40 manager shall promptly:

41 (1) cause the certificate to be amended; or

42 (2) if appropriate, deliver to the filing office for filing a
43 statement of change under section 15 or a certificate of correction
44 under section 23 of this act.

1 20. Signing of Records to be Delivered for Filing to Filing
2 Office.

3 a. A record delivered to the filing office for filing pursuant to
4 this act shall be signed as follows:

5 (1) Except as otherwise provided in paragraphs (2) and (3) of
6 this subsection, a record signed on behalf of a limited liability
7 company shall be signed by a person authorized by the company.

8 (2) A limited liability company's initial certificate of formation
9 shall be signed by at least one person acting as an organizer.

10 (3) A record filed on behalf of a dissolved limited liability
11 company that has no members shall be signed by the person
12 winding up the company's activities under subsection c. of section
13 49 of this act or a person appointed under subsection d. of section
14 49 of this act to wind up those activities.

15 (4) A certificate of dissolution under subsection e. of section 18
16 of this act shall be signed by each organizer that signed the initial
17 certificate of formation, but a personal representative of a deceased
18 or incompetent organizer may sign in place of the decedent or
19 incompetent.

20 (5) A statement of denial by a person under section 29 of this
21 act shall be signed by that person.

22 (6) Any other record shall be signed by the person on whose
23 behalf the record is delivered to the filing office.

24 b. Any record filed under this act may be signed by an agent,
25 including an attorney in fact.

26

27 21. Signing and Filing Pursuant to Judicial Order.

28 a. If a person required by this act to sign a record or deliver a
29 record to the filing office for filing does not do so, any other person
30 that is aggrieved may petition the Superior Court to order:

31 (1) the person to sign the record;

32 (2) the person to deliver the record to the filing office for filing;

33 or

34 (3) the filing office to file the record unsigned.

35 b. If a petitioner under subsection a. of this section is not the
36 limited liability company or foreign limited liability company to
37 which the record pertains, the petitioner shall make the company a
38 party to the action.

39

40 22. Delivery to and Filing of Records by Filing Office; Effective
41 Time and Date.

42 a. A record authorized or required to be delivered to the filing
43 office for filing under this act shall be captioned to describe the
44 record's purpose, be in a medium permitted by the filing office, and
45 be delivered to the filing office. If the filing fees have been paid,
46 unless the filing office determines that a record does not comply

1 with the filing requirements of this act, the filing office shall file the
2 record and:

3 (1) for a statement of denial under section 29 of this act, send an
4 acknowledgement confirming the filing and a receipt for the fees to
5 the person who submitted the record; and

6 (2) for all other records, send an acknowledgement confirming
7 the filing and a receipt for the fees to the person who submitted the
8 record.

9 b. Upon request and payment of the requisite fee, the filing
10 office shall send to the requester a certified copy of a requested
11 record.

12 c. Except as otherwise provided in sections 15 and 23 of this
13 act, a record delivered to the filing office for filing under this act
14 may specify a delayed effective date. Subject to section 15,
15 subsection d. of section 18 and section 23 of this act, a record filed
16 by the filing office is effective:

17 (1) if the record does not specify a delayed effective date, on
18 the date the record is filed as evidenced by the filing office's
19 endorsement of the date on the record; and

20 (2) if the record specifies a delayed effective date after the date
21 the record is filed as evidenced by the filing office's endorsement of
22 the date on the record, on the delayed effective date.

23

24 23. Correcting Filed Record.

25 a. A limited liability company or foreign limited liability
26 company may deliver to the filing office for filing a certificate of
27 correction to correct a record previously delivered by the company
28 to the filing office and filed by the filing office, if at the time of
29 filing the record contained inaccurate information or was
30 defectively signed.

31 b. A certificate of correction under subsection a. of this section
32 may not state a delayed effective date and shall:

33 (1) describe the record to be corrected, including its filing date,
34 or attach a copy of the record as filed;

35 (2) specify the inaccurate information and the reason it is
36 inaccurate or the manner in which the signing was defective; and

37 (3) correct the defective signature or inaccurate information.

38 c. When filed by the filing office, a certificate of correction
39 under subsection a. of this section is effective retroactively as of the
40 effective date of the record the certificate corrects, but the
41 certificate is effective when filed:

42 (1) for the purposes of subsection d. of section 3 of this act; and

43 (2) as to persons that previously relied on the uncorrected record
44 and would be adversely affected by the retroactive effect.

45

46 24. Liability for Inaccurate Information in Filed Record.

1 a. If a record delivered to the filing office for filing under this
2 act and filed by the filing office contains inaccurate information, a
3 person that suffers a loss by reliance on the information may
4 recover damages for the loss from:

5 (1) a person that signed the record, or caused another to sign it
6 on the person's behalf, and knew the information to be inaccurate at
7 the time the record was signed; and

8 (2) subject to subsection b. of this section, a member of a
9 member-managed limited liability company or the manager of a
10 manager-managed limited liability company, if:

11 (a) the record was delivered for filing on behalf of the company;
12 and

13 (b) the member or manager had notice of the inaccuracy for a
14 reasonably sufficient time before the information was relied upon so
15 that, before the reliance, the member or manager reasonably could
16 have:

17 (i) effected an amendment under section 19 of this act;

18 (ii) filed a petition under section 21 of this act; or

19 (iii) delivered to the filing office for filing a certificate of change
20 under section 15 or a certificate of correction under section 23 of
21 this act.

22 b. To the extent that the operating agreement of a member-
23 managed limited liability company expressly relieves a member of
24 responsibility for maintaining the accuracy of information contained
25 in records delivered on behalf of the company to the filing office for
26 filing under this act and imposes that responsibility on one or more
27 other members, the liability stated in paragraph (2) of subsection a.
28 of this section applies to those other members and not to the
29 member that the operating agreement relieves of the responsibility.

30 c. An individual who signs a record authorized or required to
31 be filed under this act affirms under penalty of perjury that the
32 information stated in the record is accurate.

33

34 25. Certificate of Standing.

35 a. The filing office, upon request and payment of the requisite
36 fee, shall furnish to any person a certificate of standing for a limited
37 liability company if the records filed in the filing office show that
38 the company has been formed under section 18 of this act. A
39 certificate of standing shall state:

40 (1) the company's name;

41 (2) that the company was duly formed under the laws of this
42 State and the date of formation;

43 (3) whether all fees and penalties due under this act or other law
44 to the filing office have been paid;

45 (4) whether the company's most recent annual report required
46 by section 26 of this act has been filed in the filing office;

- 1 (5) whether the filing office has administratively revoked the
2 company; and
- 3 (6) whether the filing office has filed a certificate of dissolution.
- 4 b. The filing office, upon request and payment of the requisite
5 fee, shall furnish to any person a certificate of standing for a foreign
6 limited liability company if the records filed in the office of the
7 filing office show that the filing office has filed a certificate of
8 authority, has not revoked the certificate of authority, and has not
9 filed a notice of cancellation. A certificate of standing shall state:
- 10 (1) the company's name and any alternate name adopted under
11 subsection a. of section 61 of this act for use in this State;
- 12 (2) that the company is authorized to transact business in this
13 State;
- 14 (3) whether all fees and penalties due to the filing office under
15 this act or other law have been paid;
- 16 (4) whether the company's most recent annual report required
17 by section 26 of this act has been filed in the filing office;
- 18 (5) that the filing office has not revoked the company's
19 certificate of authority and has not filed a certificate of cancellation;
20 and
- 21 (6) other facts of record in the office of the filing office which
22 are specified by the person requesting the certificate.
- 23 c. Subject to any qualification stated in the certificate, a
24 certificate of standing issued by the filing office is conclusive
25 evidence that the limited liability company is in existence or the
26 foreign limited liability company is authorized to transact business
27 in this State.
- 28
- 29 26. Annual Report for Filing Office.
- 30 a. Each domestic and foreign limited liability company shall
31 file an annual report with the filing office, setting forth:
- 32 (1) the name and address of the limited liability company;
- 33 (2) the name and address of the registered agent of the limited
34 liability company; and
- 35 (3) the name and addresses of the managing members or
36 managers, as the case may be.
- 37 b. If no annual report is filed as required by this section for two
38 consecutive years:
- 39 (1) the certificate of a domestic limited liability company shall
40 be transferred to an inactive list maintained by the filing office. A
41 limited liability company on the inactive list shall remain a limited
42 liability company and the limited liability of its members and
43 managers shall not be affected by its transfer to this list. The name
44 of a limited liability company on the inactive list shall, subject to
45 any other rights that limited liability company may have to its
46 name, be available for use by any other limited liability company,
47 including a newly-formed limited liability company.

1 (2) the certificate of a foreign limited liability company may be
2 revoked by the filing office.

3 (3) if the certificate of a domestic limited liability company has
4 been transferred to the inactive list or if the certificate of a foreign
5 limited liability company has been revoked, the certificate shall be
6 reinstated by proclamation of the filing office upon payment of all
7 fees due to the filing office, consisting of a reinstatement filing fee,
8 current annual report fee, all delinquent annual report fees, and a
9 late filing fee. The reinstatement relates back to the date of transfer
10 of the certificate of a domestic limited liability company to the
11 inactive list or to the date of revocation of the certificate of a
12 foreign limited liability company, as the case may be, and shall
13 validate all actions taken in the interim. In the event that in the
14 interim the name of the limited liability company has become
15 unavailable, the filing office shall reinstate the certificate upon, in
16 the case of a domestic limited liability company, the filing of an
17 amendment to its certificate of formation to change the name to an
18 available name, and in the case of a foreign limited liability
19 company, the filing of an amended certificate of authority changing
20 the name to an available name. The filing office shall provide the
21 forms necessary to effect annual report reinstatements.

22

23 ARTICLE 3

24 RELATIONS OF MEMBERS AND MANAGERS TO PERSONS 25 DEALING WITH LIMITED LIABILITY COMPANY

26 27. No Agency Power or Member as Member.

27 a. A member is not an agent of a limited liability company
28 solely by reason of being a member.

29 b. A person's status as a member does not prevent or restrict
30 law other than this act from imposing liability on a limited liability
31 company because of the person's conduct.

32

33 28. Statement of Authority.

34 a. A limited liability company may deliver to the filing office
35 for filing a statement of authority. The statement:

36 (1) shall include the name of the company, the street and
37 mailing addresses of its registered office and such other information
38 as may be required by the filing office to correctly identify the
39 company;

40 (2) with respect to any position that exists in or with respect to
41 the company, may state the authority, or limitations on the
42 authority, of all persons holding the position to:

43 (a) execute an instrument transferring real property held in the
44 name of the company; or

45 (b) enter into other transactions on behalf of, or otherwise act
46 for or bind, the company; and

- 1 (3) may state the authority, or limitations on the authority, of a
2 specific person to:
- 3 (a) execute an instrument transferring real property held in the
4 name of the company; or
- 5 (b) enter into other transactions on behalf of, or otherwise act
6 for or bind, the company.
- 7 b. To amend or cancel a statement of authority filed with the
8 filing office under subsection a. of section 22 of this act, a limited
9 liability company shall deliver to the filing office for filing an
10 amendment or cancellation stating:
- 11 (1) the name of the company;
- 12 (2) the street and mailing addresses of the company's registered
13 office;
- 14 (3) such other information as may be required by the filing
15 office to correctly identify the company;
- 16 (4) the caption of the statement being amended or canceled and
17 the date the statement being affected became effective; and
- 18 (5) the contents of the amendment or a declaration that the
19 statement being affected is canceled.
- 20 c. A statement of authority affects only the power of a person
21 to bind a limited liability company to persons that are not members.
- 22 d. Subject to subsection c. of this section and subsection d. of
23 section 3 of this act, and except as otherwise provided in
24 subsections f., g. and h. of this section, a limitation on the authority
25 of a person or a position contained in an effective statement of
26 authority is not by itself evidence of knowledge or notice of the
27 limitation by any person.
- 28 e. Subject to subsection c. of this section, a grant of authority
29 not pertaining to transfers of real property and contained in an
30 effective statement of authority is conclusive in favor of a person
31 that gives value in reliance on the grant, except to the extent that
32 when the person gives value:
- 33 (1) the person has knowledge to the contrary;
- 34 (2) the statement has been canceled or restrictively amended
35 under subsection b. of this section; or
- 36 (3) a limitation on the grant is contained in another statement of
37 authority that became effective after the statement containing the
38 grant became effective.
- 39 f. Subject to subsection c. of this section, an effective
40 statement of authority that grants authority to transfer real property
41 held in the name of the limited liability company and that is
42 recorded by certified copy in the office for recording transfers of
43 the real property is conclusive in favor of a person that gives value
44 in reliance on the grant without knowledge to the contrary, except
45 to the extent that when the person gives value:
- 46 (1) the statement has been canceled or restrictively amended
47 under subsection b. of this section and a certified copy of the

1 cancellation or restrictive amendment has been recorded in the
2 office for recording transfers of the real property; or

3 (2) a limitation on the grant is contained in another statement of
4 authority that became effective after the statement containing the
5 grant became effective and a certified copy of the later-effective
6 statement is recorded in the office for recording transfers of the real
7 property.

8 g. Subject to subsection c. of this section, if a certified copy of
9 an effective statement containing a limitation on the authority to
10 transfer real property held in the name of a limited liability
11 company is recorded in the office for recording transfers of that real
12 property, all persons are deemed to know of the limitation.

13 h. Subject to subsection i. of this section, an effective
14 certificate of dissolution is a cancellation of any filed statement of
15 authority for the purposes of subsection f. of this section and is a
16 limitation on authority for the purposes of subsection g. of this
17 section.

18 i. After a certificate of dissolution becomes effective, a limited
19 liability company may deliver to the filing office for filing and, if
20 appropriate, may record a statement of authority that is designated
21 as a post-dissolution statement of authority. The statement operates
22 as provided in subsections f. and g. of this section.

23 j. An effective statement of denial operates as a restrictive
24 amendment under this section and may be recorded by certified
25 copy for the purposes of paragraph (1) of subsection f. of this
26 section.

27

28 29. Statement of Denial. A person named in a filed statement of
29 authority granting that person authority may deliver to the filing
30 office for filing a statement of denial that:

31 a. Provides the name of the limited liability company and such
32 other information as may be required by the filing office to
33 correctly identify the company and the caption of the statement of
34 authority to which the statement of denial pertains; and

35 b. Denies the grant of authority.

36

37 30. Liability of Members and Managers.

38 a. The debts, obligations, or other liabilities of a limited
39 liability company, whether arising in contract, tort, or otherwise:

40 (1) are solely the debts, obligations, or other liabilities of the
41 company; and

42 (2) do not become the debts, obligations, or other liabilities of a
43 member or manager solely by reason of the member acting as a
44 member or manager acting as a manager.

45 b. The failure of a limited liability company to observe any
46 particular formalities relating to the exercise of its powers or
47 management of its activities is not a ground for imposing liability

1 on the members or managers for the debts, obligations, or other
2 liabilities of the company.

3

4

ARTICLE 4

5

RELATIONS OF MEMBERS TO EACH OTHER AND TO
6 LIMITED LIABILITY COMPANY

7

31. Becoming a Member.

8 a. If a limited liability company is to have only one member
9 upon formation, the person becomes a member as agreed by that
10 person and the organizer of the company. That person and the
11 organizer may be, but need not be, different persons. If different,
12 the organizer acts on behalf of the initial member.

13 b. If a limited liability company is to have more than one
14 member upon formation, those persons become members as agreed
15 by the persons before the formation of the company. The organizer
16 acts on behalf of the persons in forming the company and may be,
17 but need not be, one of the persons.

18 c. After formation of a limited liability company, a person
19 becomes a member:

20 (1) as provided in the operating agreement;

21 (2) as the result of a transaction effective under Article 10
22 (sections 73 through 87 of this act);

23 (3) with the consent of all the members; or

24 (4) if, within 90 consecutive days after the company ceases to
25 have any members:

26 (a) the last person to have been a member, or the legal
27 representative of that person, designates a person to become a
28 member; and

29 (b) the designated person consents to become a member.

30 d. A person may become a member without acquiring a
31 transferable interest and without making or being obligated to make
32 a contribution to the limited liability company.

33

34 32. Form of Contribution. A contribution may consist of
35 tangible or intangible property or other benefit to a limited liability
36 company, including money, services performed, promissory notes,
37 other agreements to contribute money or property, and contracts for
38 services to be performed.

39

40 33. Liability for Contributions.

41 a. A person's obligation to make a contribution to a limited
42 liability company is not excused by the person's death, disability, or
43 other inability to perform personally. If a person does not make a
44 required contribution of property or services, the person or the
45 person's estate is obligated, at the option of the company, to
46 contribute money equal to the value of the part of the contribution
47 which has not been made.

1 b. A creditor of a limited liability company which extends
2 credit or otherwise acts in reliance on an obligation described in
3 subsection a. of this section may enforce the obligation.

4
5 34. Sharing of and Right to Distributions before Dissolution.

6 a. Any distributions made by a limited liability company before
7 its dissolution and winding up shall be in equal shares among
8 members and dissociated members, except to the extent necessary
9 to comply with any transfer effective under section 42 and any
10 charging order in effect under section 43 of this act.

11 b. A person has a right to a distribution before the dissolution
12 and winding up of a limited liability company only if the company
13 decides to make an interim distribution. A person's dissociation
14 does not entitle the person to a distribution.

15 c. A person does not have a right to demand or receive a
16 distribution from a limited liability company in any form other than
17 money. Except as otherwise provided in subsection c. of section 56
18 of this act, a limited liability company may distribute an asset in
19 kind if each part of the asset is fungible with each other part and
20 each person receives a percentage of the asset equal in value to the
21 person's share of distributions.

22 d. If a member or transferee becomes entitled to receive a
23 distribution, the member or transferee has the status of, and is
24 entitled to all remedies available to, a creditor of the limited
25 liability company with respect to the distribution.

26
27 35. Limitations on Distribution.

28 a. A limited liability company may not make a distribution if
29 after the distribution:

30 (1) the company would not be able to pay its debts as they
31 become due in the ordinary course of the company's activities; or

32 (2) the company's total assets would be less than the sum of its
33 total liabilities plus the amount that would be needed, if the
34 company were to be dissolved, wound up, and terminated at the
35 time of the distribution, to satisfy the preferential rights upon
36 dissolution, winding up, and termination of members whose
37 preferential rights are superior to those of persons receiving the
38 distribution.

39 b. A limited liability company may base a determination that a
40 distribution is not prohibited under subsection a. of this section on
41 financial statements prepared on the basis of accounting practices
42 and principles that are reasonable in the circumstances or on a fair
43 valuation or other method that is reasonable under the
44 circumstances.

45 c. Except as otherwise provided in subsection f. of this section,
46 the effect of a distribution under subsection a. of this section is
47 measured:

- 1 (1) in the case of a distribution by purchase, redemption, or
2 other acquisition of a transferable interest in the company, as of the
3 date money or other property is transferred or debt incurred by the
4 company; and
- 5 (2) in all other cases, as of the date:
- 6 (a) the distribution is authorized, if the payment occurs within
7 120 days after that date; or
- 8 (b) the payment is made, if the payment occurs more than 120
9 days after the distribution is authorized.
- 10 d. A limited liability company's indebtedness to a member
11 incurred by reason of a distribution made in accordance with this
12 section is at parity with the company's indebtedness to its general,
13 unsecured creditors.
- 14 e. A limited liability company's indebtedness, including
15 indebtedness issued in connection with or as part of a distribution,
16 is not a liability for purposes of subsection a. of this section if the
17 terms of the indebtedness provide that payment of principal and
18 interest are made only to the extent that a distribution could be
19 made to members under this section.
- 20 f. If indebtedness is issued as a distribution, each payment of
21 principal or interest on the indebtedness is treated as a distribution,
22 the effect of which is measured on the date the payment is made.
- 23 g. As used in this section, "distribution" does not include
24 amounts constituting reasonable compensation for present or past
25 services or reasonable payments made in the ordinary course of
26 business under a bona fide retirement plan or other benefits
27 program.
- 28
- 29 36. Liability for Improper Distributions.
- 30 a. Except as otherwise provided in subsection b. of this section,
31 if a member of a member-managed limited liability company or
32 manager of a manager-managed limited liability company consents
33 to a distribution made in violation of section 35 of this act and in
34 consenting to the distribution fails to comply with section 39 of this
35 act, the member or manager is personally liable to the company for
36 the amount of the distribution that exceeds the amount that could
37 have been distributed without the violation of section 35 of this act.
- 38 b. To the extent the operating agreement of a member-managed
39 limited liability company expressly relieves a member of the
40 authority and responsibility to consent to distributions and imposes
41 that authority and responsibility on one or more other members, the
42 liability stated in subsection a. of this section applies to the other
43 members and not the member that the operating agreement relieves
44 of authority and responsibility.
- 45 c. A person that receives a distribution knowing that the
46 distribution to that person was made in violation of section 35 of
47 this act is personally liable to the limited liability company but only

1 to the extent that the distribution received by the person exceeded
2 the amount that could have been properly paid under section 35 of
3 this act.

4 d. A person against which an action is commenced because the
5 person is liable under subsection a. of this section may:

6 (1) implead any other person that is subject to liability under
7 subsection a. of this section and seek to compel contribution from
8 the person; and

9 (2) implead any person that received a distribution in violation
10 of subsection c. of this section and seek to compel contribution
11 from the person in the amount the person received in violation of
12 subsection c. of this section.

13 e. An action under this section is barred if not commenced
14 within two years after the distribution.

15

16 37. Management of Limited Liability Company.

17 a. A limited liability company is a member-managed limited
18 liability company unless the operating agreement:

19 (1) expressly provides that:

20 (a) the company is or will be “manager-managed;”

21 (b) the company is or will be “managed by managers;” or

22 (c) management of the company is or will be “vested in
23 managers;” or

24 (2) includes words of similar import.

25 b. In a member-managed limited liability company, the
26 following rules apply:

27 (1) The management and conduct of the company are vested in
28 the members.

29 (2) Each member has equal rights in the management and
30 conduct of the company’s activities.

31 (3) A difference arising among members as to a matter in the
32 ordinary course of the activities of the company may be decided by
33 a majority of the members.

34 (4) An act outside the ordinary course of the activities of the
35 company may be undertaken only with the consent of all members.

36 (5) The operating agreement may be amended only with the
37 consent of all members.

38 c. In a manager-managed limited liability company, the
39 following rules apply:

40 (1) Except as otherwise expressly provided in this act, any
41 matter relating to the activities of the company is decided
42 exclusively by the managers.

43 (2) Each manager has equal rights in the management and
44 conduct of the activities of the company.

45 (3) A difference arising among managers as to a matter in the
46 ordinary course of the activities of the company may be decided by
47 a majority of the managers.

- 1 (4) The consent of all members is required to:
- 2 (a) sell, lease, exchange, or otherwise dispose of all, or
- 3 substantially all, of the company's property, with or without the
- 4 good will, outside the ordinary course of the company's activities;
- 5 (b) approve a merger, conversion, or domestication under
- 6 Article 10 (section 73 through 87 of this act);
- 7 (c) undertake any other act outside the ordinary course of the
- 8 company's activities; and
- 9 (d) amend the operating agreement.
- 10 (5) A manager may be chosen at any time by the consent of a
- 11 majority of the members and remains a manager until a successor
- 12 has been chosen, unless the manager at an earlier time resigns, is
- 13 removed, or dies, or, in the case of a manager that is not an
- 14 individual, terminates. A manager may be removed at any time by
- 15 the consent of a majority of the members without notice or cause.
- 16 (6) A person need not be a member to be a manager, but the
- 17 dissociation of a member that is also a manager removes the person
- 18 as a manager. If a person that is both a manager and a member
- 19 ceases to be a manager, that cessation does not by itself dissociate
- 20 the person as a member.
- 21 (7) A person's ceasing to be a manager does not discharge any
- 22 debt, obligation, or other liability to the limited liability company or
- 23 members which the person incurred while a manager.
- 24 d. An action requiring the consent of members under this act
- 25 may be taken without a meeting, and a member may appoint a
- 26 proxy or other agent to consent or otherwise act for the member by
- 27 signing an appointing record, personally or by the member's agent.
- 28 e. The dissolution of a limited liability company does not affect
- 29 the applicability of this section. However, a person that wrongfully
- 30 causes dissolution of the company loses the right to participate in
- 31 management as a member and a manager.
- 32 f. This act does not entitle a member to remuneration for
- 33 services performed for a member-managed limited liability
- 34 company, except for reasonable compensation for services rendered
- 35 in winding up the activities of the company.
- 36
- 37 38. Indemnification and Insurance.
- 38 a. As used in this section:
- 39 (1) "Company agent" means any person who is or was a
- 40 member of a member-managed company, a manager of a manager-
- 41 managed company, an officer, employee or agent of the
- 42 indemnifying company or of any constituent company absorbed by
- 43 the indemnifying company in a consolidation or merger and any
- 44 person who is or was a member, manager, officer, director, trustee,
- 45 employee or agent of any other enterprise, serving as such at the
- 46 request of the indemnifying company, or any such constituent

1 company, or the legal representatives of any such member,
2 manager, officer, director, trustee, employee or agent.

3 (2) "Other enterprise" and "another enterprise" mean any
4 domestic or foreign limited liability company other than the
5 company, and any corporation, partnership, joint venture, sole
6 proprietorship, trust or other enterprise, whether or not for profit,
7 served by a company agent;

8 (3) "Expenses" means reasonable costs, disbursements and
9 attorney's fees;

10 (4) "Liabilities" means amounts paid or incurred in satisfaction
11 of settlements, judgments, fines and penalties; and

12 (5) "Proceeding" means any pending, threatened or completed
13 civil, criminal, administrative or arbitral action, suit or
14 proceeding, and any appeal therein, and any inquiry or investigation
15 which could lead to that action or proceeding.

16 (6) References to an "other enterprise" or "another enterprise"
17 include employee benefit plans; and references to "fines" include
18 any excise taxes assessed on a person with respect to an employee
19 benefit plan.

20 b. A limited liability company shall indemnify a company
21 agent against expenses to the extent that such company agent has
22 been successful on the merits or otherwise in any proceeding
23 brought against the company agent by reason of the company agent
24 serving as a company agent or serving another enterprise at the
25 request of the limited liability company. If the company agent is
26 successful on the merits or otherwise in defense of any claim, issue
27 or matter in any such proceeding, indemnification shall be provided
28 under this subsection with respect to the claim, issue or matter.

29 c. A limited liability company shall indemnify a company
30 agent against any debt, obligation, expense or other liability
31 incurred by that company agent in the course of the company
32 agent's activities on behalf of the limited liability company or
33 another enterprise at the request of the limited liability company, if,
34 in making the payment or incurring the debt, obligation, expense or
35 other liability, the company agent complied with the duties stated in
36 sections 35 and 39 of this act.

37 d. A limited liability company may purchase and maintain
38 insurance on behalf of any company agent against any expenses
39 incurred in any proceeding and any liabilities asserted against the
40 company agent in his or her capacity as a company agent, whether
41 or not the limited liability company could eliminate or limit the
42 person's liability to the company for the conduct giving rise to the
43 liability under subsection g. of section 11 of this act. The limited
44 liability company may purchase such insurance from, or such
45 insurance may be reinsured in whole or in part by, an insurer owned
46 by or otherwise affiliated with the limited liability company,
47 whether or not such insurer does business with other insureds.

- 1 39. Standards of Conduct for Members and Managers.
- 2 a. A member of a member-managed limited liability company
3 owes to the company and, subject to subsection b. of section 67 of
4 this act, the other members, the duties of loyalty and care stated in
5 subsections b. and c. of this section.
- 6 b. The fiduciary duty of loyalty of a member in a member-
7 managed limited liability company includes the duties:
- 8 (1) to account to the company and to hold as trustee for it any
9 property, profit, or benefit derived by the member:
- 10 (a) in the conduct or winding up of the company's activities;
11 (b) from a use by the member of the company's property; or
12 (c) from the appropriation of a company opportunity;
- 13 (2) to refrain from dealing with the company in the conduct or
14 winding up of the company's activities as or on behalf of a person
15 having an interest adverse to the company; and
- 16 (3) to refrain from competing with the company in the conduct
17 of the company's activities before the dissolution of the company.
- 18 c. The duty of care of a member of a member-managed limited
19 liability company in the conduct and winding up of the company's
20 activities is to refrain from engaging in grossly negligent or reckless
21 conduct, intentional misconduct, or a knowing violation of law.
- 22 d. A member shall discharge the duties under this act or under
23 the operating agreement and exercise any rights consistently with
24 the contractual obligation of good faith and fair dealing.
- 25 e. A member does not violate a duty or obligation under this
26 act or under the operating agreement merely because the member's
27 conduct furthers the member's own interest.
- 28 f. All of the members of a member-managed limited liability
29 company or a manager-managed limited liability company may
30 authorize or ratify, after full disclosure of all material facts, a
31 specific act or transaction that otherwise would violate the duty of
32 loyalty.
- 33 g. It is a defense to a claim under paragraph (2) of subsection
34 b. of this section and any comparable claim in equity or at common
35 law that the transaction was fair to the limited liability company.
- 36 h. If, as permitted by subsection f. of this section or the
37 operating agreement, a member enters into a transaction with the
38 company that would otherwise be prohibited by paragraph (2) of
39 subsection b. of this section, the member's rights and obligations are
40 the same as those of a person not a member.
- 41 i. In a manager-managed limited liability company, the
42 following rules apply:
- 43 (1) Subsections a., b., c. and g. of this section apply to the
44 manager or managers and not the members, and the duty stated
45 under paragraph (3) of subsection b. of this section continues until
46 winding up is completed.

1 (2) Subsections d. and e. of this section apply to the managers as
2 well as the members and, subject to subsection d. of this section, a
3 member does not have any duty to the company or any other
4 member solely by reason of being a member.

5 (3) The power to ratify stated in subsection f. of this section
6 pertains only to the members.

7
8 40. Right of Members, Managers, and Dissociated Members to
9 Information.

10 a. In a member-managed limited liability company, the
11 following rules apply:

12 (1) On reasonable notice, a member may inspect and copy
13 during regular business hours, at a reasonable location specified by
14 the company, any record maintained by the company regarding the
15 company's activities, financial condition, and other circumstances,
16 to the extent the information is material to the member's rights and
17 duties under the operating agreement or this act.

18 (2) The company shall furnish to each member:

19 (a) without demand, any information concerning the company's
20 activities, financial condition, and other circumstances which the
21 company knows and is material to the proper exercise of the
22 member's rights and duties under the operating agreement or this
23 act, except to the extent the company can establish that it
24 reasonably believes the member already knows the information; and

25 (b) on demand, any other information concerning the company's
26 activities, financial condition, and other circumstances, except to
27 the extent the demand or information demanded is unreasonable or
28 otherwise improper under the circumstances.

29 (3) The duty to furnish information under paragraph (2) of this
30 subsection also applies to each member to the extent the member
31 knows any of the information described in paragraph (2).

32 b. In a manager-managed limited liability company, the
33 following rules apply:

34 (1) The informational rights stated in subsection a. of this
35 section and the duty stated in paragraph (3) of subsection a. of this
36 section apply to the managers and not the members.

37 (2) During regular business hours and at a reasonable location
38 specified by the company, a member may obtain from the company
39 and inspect and copy full information regarding the activities,
40 financial condition, and other circumstances of the company as is
41 just and reasonable if:

42 (a) the member seeks the information for a purpose material to
43 the member's interest as a member;

44 (b) the member makes a demand in a record received by the
45 company, describing with reasonable particularity the information
46 sought and the purpose for seeking the information; and

- 1 (c) the information sought is directly connected to the member's
2 purpose.
- 3 (3) Within 10 days after receiving a demand pursuant to
4 subparagraph (b) of paragraph (2) of this subsection, the company
5 shall in a record inform the member that made the demand:
- 6 (a) of the information that the company will provide in response
7 to the demand and when and where the company will provide the
8 information; and
- 9 (b) if the company declines to provide any demanded
10 information, the company's reasons for declining.
- 11 (4) Whenever this act or an operating agreement provides for a
12 member to give or withhold consent to a matter, before the consent
13 is given or withheld, the company shall, without demand, provide
14 the member with all information that is known to the company and
15 is material to the member's decision.
- 16 c. On 10 days' demand made in a record received by a limited
17 liability company, a dissociated member may have access to
18 information to which the person was entitled while a member if the
19 information pertains to the period during which the person was a
20 member, the person seeks the information in good faith, and the
21 person satisfies the requirements imposed on a member by
22 paragraph (2) of subsection b. of this section. The company shall
23 respond to a demand made pursuant to this subsection in the manner
24 provided in paragraph (3) of subsection b. of this section.
- 25 d. A limited liability company may charge a person that makes
26 a demand under this section the reasonable costs of copying, limited
27 to the costs of labor and material.
- 28 e. A member or dissociated member may exercise rights under
29 this section through an agent or, in the case of an individual under
30 legal disability, a legal representative. Any restriction or condition
31 imposed by the operating agreement or under subsection g. of this
32 section applies both to the agent or legal representative and the
33 member or dissociated member.
- 34 f. The rights under this section do not extend to a person as
35 transferee.
- 36 g. In addition to any restriction or condition stated in its
37 operating agreement, a limited liability company, as a matter within
38 the ordinary course of its activities, may impose reasonable
39 restrictions and conditions on access to and use of information to be
40 furnished under this section, including designating information
41 confidential and imposing nondisclosure and safeguarding
42 obligations on the recipient. In a dispute concerning the
43 reasonableness of a restriction under this subsection, the company
44 has the burden of proving reasonableness.

1 ARTICLE 5
2 TRANSFERABLE INTERESTS AND RIGHTS OF
3 TRANSFEREES AND CREDITORS
4 41. Nature of Transferable Interest.
5 A transferable interest shall be personal property.
6
7 42. Transfer of Transferable Interest.
8 a. A transfer, in whole or in part, of a transferable interest:
9 (1) is permissible;
10 (2) does not by itself cause a member's dissociation or a
11 dissolution and winding up of the limited liability company's
12 activities; and
13 (3) subject to section 44 of this act, does not entitle the
14 transferee to:
15 (a) participate in the management or conduct of the company's
16 activities; or
17 (b) except as otherwise provided in subsection c. of this section,
18 have access to records or other information concerning the
19 company's activities.
20 b. A transferee has the right to receive, in accordance with the
21 transfer, distributions to which the transferor would otherwise be
22 entitled.
23 c. In a dissolution and winding up of a limited liability
24 company, a transferee is entitled to an account of the company's
25 transactions only from the date of dissolution.
26 d. A transferable interest may be evidenced by a certificate of
27 the interest issued by the limited liability company in a record, and,
28 subject to this section, the interest represented by the certificate
29 may be transferred by a transfer of the certificate.
30 e. A limited liability company need not give effect to a
31 transferee's rights under this section until the company has notice of
32 the transfer.
33 f. A transfer of a transferable interest in violation of a
34 restriction on transfer contained in the operating agreement is
35 ineffective as to a person having notice of the restriction at the time
36 of transfer.
37 g. Except as otherwise provided in paragraph (2) of subsection
38 d. of section 46 of this act, when a member transfers a transferable
39 interest, the transferor retains the rights of a member other than the
40 interest in distributions transferred and retains all duties and
41 obligations of a member.
42 h. When a member transfers a transferable interest to a person
43 that becomes a member with respect to the transferred interest, the
44 transferee is liable for the member's obligations under section 43
45 and subsection c. of section 36 of this act known to the transferee
46 when the transferee becomes a member.

1 43. Charging Order.

2 a. On application by a judgment creditor of a member or
3 transferee, a court may enter a charging order against the
4 transferable interest of the judgment debtor for the unsatisfied
5 amount of the judgment. A charging order constitutes a lien on a
6 judgment debtor's transferable interest and requires the limited
7 liability company to pay over to the person to which the charging
8 order was issued any distribution that would otherwise be paid to
9 the judgment debtor.

10 b. To the extent necessary to effectuate the collection of
11 distributions pursuant to a charging order in effect under subsection
12 a. of this section, the court may:

13 (1) appoint a receiver of the distributions subject to the charging
14 order, with the power to make all inquiries the judgment debtor
15 might have made; and

16 (2) make all other orders necessary to give effect to the charging
17 order.

18 c. Upon a showing that distributions under a charging order
19 will not pay the judgment debt within a reasonable time, the court
20 may foreclose the lien and order the sale of the transferable interest.
21 The purchaser at the foreclosure sale only obtains the transferable
22 interest, does not thereby become a member, and is subject to
23 section 42 of this act.

24 d. At any time before foreclosure under subsection c. of this
25 section, the member or transferee whose transferable interest is
26 subject to a charging order under subsection a. of this section may
27 extinguish the charging order by satisfying the judgment and filing
28 a certified copy of the satisfaction with the court that issued the
29 charging order.

30 e. At any time before foreclosure under subsection c. of this
31 section, a limited liability company or one or more members whose
32 transferable interests are not subject to the charging order may pay
33 to the judgment creditor the full amount due under the judgment
34 and thereby succeed to the rights of the judgment creditor,
35 including the charging order.

36 f. This act shall not deprive any member or transferee of the
37 benefit of any exemption laws applicable to the member's or
38 transferee's transferable interest.

39 g. This section provides the exclusive remedy by which a
40 person seeking to enforce a judgment against a member or
41 transferee may, in the capacity of judgment creditor, satisfy the
42 judgment from the judgment debtor's transferable interest.

43

44 44. Power of Personal Representative of Deceased Member. If a
45 member dies, the deceased member's personal representative or
46 other legal representative may exercise the rights of a transferee
47 provided in subsection c. of section 42 of this act and, for the

1 purposes of settling the estate, the rights of a current member under
2 section 40 of this act.

3

4

ARTICLE 6

5

MEMBER'S POWER TO DISSOCIATE; WRONGFUL

6

DISSOCIATION

7

45. Member's Power to Dissociate; Wrongful Dissociation.

8

a. A person has the power to dissociate as a member at any
9 time, rightfully or wrongfully, by withdrawing as a member by
10 express will under section 46 of this act.

11

b. A person's dissociation from a limited liability company is
12 wrongful only if the dissociation:

13

(1) is in breach of an express provision of the operating
14 agreement; or

15

(2) occurs before the termination of the company and:

16

(a) the person is expelled as a member by judicial order under
17 subsection e. of section 46 of this act;

18

(b) the person is dissociated under paragraph (1) of subsection
19 g. of section 46 of this act, by becoming a debtor in bankruptcy; or

20

(c) in the case of a person that is not a trust other than a
21 business trust, an estate, or an individual, the person is expelled or
22 otherwise dissociated as a member because it willfully dissolved or
23 terminated; or

24

(3) in the case of a company for a definite term or particular
25 undertaking, by withdrawing as a member by express will under
26 section 46 of this act before the expiration of the term or the
27 completion of the undertaking.

28

c. A person that wrongfully dissociates as a member is liable to
29 the limited liability company and, subject to section 67 of this act,
30 to the other members for damages caused by the dissociation. The
31 liability is in addition to any other debt, obligation, or other liability
32 of the member to the company or the other members.

33

34 46. Events Causing Dissociation. A person is dissociated as a
35 member from a limited liability company when:

36

a. The company has notice of the person's express will to
37 withdraw as a member, but, if the person specified a withdrawal
38 date later than the date the company had notice, on that later date;

39

b. An event stated in the operating agreement as causing the
40 person's dissociation occurs;

41

c. The person is expelled as a member pursuant to the
42 operating agreement;

43

d. The person is expelled as a member by the unanimous
44 consent of the other members if:

45

(1) it is unlawful to carry on the company's activities with the
46 person as a member;

- 1 (2) there has been a transfer of all of the person's transferable
2 interest in the company, other than:
- 3 (a) a transfer for security purposes; or
4 (b) a charging order in effect under section 43 of this act which
5 has not been foreclosed;
- 6 (3) the person is a corporation and, within 90 days after the
7 company notifies the person that it will be expelled as a member
8 because the person has filed a certificate of dissolution or the
9 equivalent, its charter has been revoked, or its right to conduct
10 business has been suspended by the jurisdiction of its incorporation,
11 the certificate of dissolution has not been revoked or its charter or
12 right to conduct business has not been reinstated; or
- 13 (4) the person is a limited liability company or partnership that
14 has been dissolved and whose business is being wound up;
- 15 e. On application by the company, the person is expelled as a
16 member by judicial order because the person:
- 17 (1) has engaged, or is engaging, in wrongful conduct that has
18 adversely and materially affected, or will adversely and materially
19 affect, the company's activities;
- 20 (2) has willfully or persistently committed, or is willfully and
21 persistently committing, a material breach of the operating
22 agreement or the person's duties or obligations under section 39 of
23 this act; or
- 24 (3) has engaged, or is engaging, in conduct relating to the
25 company's activities which makes it not reasonably practicable to
26 carry on the activities with the person as a member;
- 27 f. In the case of a person who is an individual:
- 28 (1) the person dies; or
29 (2) in a member-managed limited liability company:
- 30 (a) a guardian or general conservator for the person is
31 appointed; or
32 (b) there is a judicial order that the person has otherwise become
33 incapable of performing the person's duties as a member under this
34 act or the operating agreement;
- 35 g. In a member-managed limited liability company, the person:
- 36 (1) becomes a debtor in bankruptcy;
37 (2) executes an assignment for the benefit of creditors; or
38 (3) seeks, consents to, or acquiesces in the appointment of a
39 trustee, receiver, or liquidator of the person or of all or substantially
40 all of the person's property;
- 41 h. In the case of a person that is a trust or is acting as a member
42 by virtue of being a trustee of a trust, the trust's entire transferable
43 interest in the company is distributed;
- 44 i. In the case of a person that is an estate or is acting as a
45 member by virtue of being a personal representative of an estate,
46 the estate's entire transferable interest in the company is distributed;

1 j. In the case of a member that is not an individual,
2 partnership, limited liability company, corporation, trust, or estate,
3 the termination of the member;

4 k. The company participates in a merger under Article 10
5 (sections 73 through 87 of this act) if:

6 (1) the company is not the surviving entity; or,

7 (2) otherwise as a result of the merger, the person ceases to be a
8 member;

9 l. The company participates in a conversion under Article 10
10 (sections 73 through 87 of this act);

11 m. The company participates in a domestication under Article
12 10 (sections 73 through 87 of this act), if, as a result of the
13 domestication, the person ceases to be a member; or

14 n. The company terminates.

15
16 47. Effect of Person's Dissociation as Member.

17 a. When a person is dissociated as a member of a limited
18 liability company:

19 (1) the person's right to participate as a member in the
20 management and conduct of the company's activities terminates;

21 (2) if the company is member-managed, the person's fiduciary
22 duties as a member end with regard to matters arising and events
23 occurring after the person's dissociation; and

24 (3) subject to section 44 and Article 10 (sections 73 through 87
25 of this act), any transferable interest owned by the person
26 immediately before dissociation in the person's capacity as a
27 member is owned by the person solely as a transferee.

28 b. A person's dissociation as a member of a limited liability
29 company does not of itself discharge the person from any debt,
30 obligation, or other liability to the company or the other members
31 which the person incurred while a member.

32 c. A court that expels a member from a company pursuant to
33 subsection e. of section 46 of this act may order the sale of the
34 interests held by such person immediately before dissociation to
35 either the company or to any other persons who are parties to the
36 action if the court determines, in its discretion, that such an order is
37 required by any other law, rule or regulation, or that such an order
38 would be fair and equitable to all parties under all of the
39 circumstances of the case.

40
41 ARTICLE 7

42 DISSOLUTION AND WINDING UP

43 48. Events Causing Dissolution.

44 a. A limited liability company is dissolved, and its activities
45 shall be wound up, upon the occurrence of any of the following:

46 (1) an event or circumstance that the operating agreement states
47 causes dissolution;

1 (2) the consent of all the members;

2 (3) the passage of 90 consecutive days during which the
3 company has no members;

4 (4) on application by a member, the entry by the Superior Court
5 of an order dissolving the company on the grounds that:

6 (a) the conduct of all or substantially all of the company's
7 activities is unlawful; or

8 (b) it is not reasonably practicable to carry on the company's
9 activities in conformity with one or both of the certificate of
10 formation and the operating agreement; or

11 (5) on application by a member, the entry by the Superior Court
12 of an order dissolving the company on the grounds that the
13 managers or those members in control of the company:

14 (a) have acted, are acting, or will act in a manner that is illegal
15 or fraudulent; or

16 (b) have acted or are acting in a manner that is oppressive and
17 was, is, or will be directly harmful to the applicant.

18 (6) A certificate of dissolution is filed before the delayed
19 effective date of a certificate of formation pursuant to subsection e.
20 of section 18 of this act.

21 b. In a proceeding brought under paragraph (4) or (5) of
22 subsection a. of this section, the court may order or a party may
23 seek a remedy other than dissolution, including, but not limited to,
24 the appointment of a custodian or one or more provisional
25 managers. The court shall appoint a custodian or one or more
26 provisional managers if it appears to the court that such an
27 appointment may be in the best interests of the limited liability
28 company and its members. In any proceeding under this section,
29 the court shall allow reasonable compensation to any custodian or
30 provisional manager for his or her services and reimbursement or
31 direct payment of all his or her reasonable costs and expenses,
32 which amounts shall be paid by the limited liability company. The
33 court may appoint a custodian or one or more provisional managers
34 in a summary proceeding or otherwise; or order the sale of all
35 interests held by a member who is a party to the proceeding to
36 either the limited liability company or any other member who is a
37 party to the proceeding, if the court determines in its discretion that
38 such an order would be fair and equitable to all parties under all of
39 the circumstances of the case.

40 c. If the court determines that any party to a proceeding
41 brought under paragraph (4) or (5) of subsection a. of this section
42 has acted vexatiously, or otherwise not in good faith, it may in its
43 discretion award reasonable expenses, including counsel fees
44 incurred in connection with the action, to the injured party or
45 parties.

46

47 49. Winding Up.

- 1 a. A dissolved limited liability company shall wind up its
2 activities, and the company continues after dissolution only for the
3 purpose of winding up.
- 4 b. In winding up its activities, a limited liability company:
5 (1) shall discharge the company's debts, obligations, or other
6 liabilities, settle and close the company's activities, and marshal
7 and distribute the assets of the company; and
8 (2) shall:
9 (a) deliver to the filing office for filing a certificate of
10 dissolution stating the name of the company and such other
11 information as may be required by the filing office to correctly
12 identify the company and that the company is dissolved;
13 (b) preserve the company activities and property as a going
14 concern for a reasonable time;
15 (c) prosecute and defend actions and proceedings, whether civil,
16 criminal, or administrative;
17 (d) transfer the company's property;
18 (e) settle disputes by mediation or arbitration;
19 (f) deliver to the filing office for filing a statement of
20 termination stating the name of the company and that the company
21 is terminated; and
22 (g) perform other acts necessary or appropriate to the winding
23 up.
- 24 c. If a dissolved limited liability company has no members, the
25 legal representative of the last person to have been a member may
26 wind up the activities of the company. If the person does so, the
27 person has the powers of a sole manager under subsection c. of
28 section 37 of this act and is deemed to be a manager for the
29 purposes of paragraph (2) of subsection a. of section 30 of this act.
- 30 d. If the legal representative under subsection c. of this section
31 declines or fails to wind up the company's activities, a person may
32 be appointed to do so by the consent of transferees owning a
33 majority of the rights to receive distributions as transferees at the
34 time the consent is to be effective. A person appointed under this
35 subsection:
36 (1) has the powers of a sole manager under subsection c. of
37 section 37 of this act and is deemed to be a manager for the
38 purposes of paragraph (2) of subsection a. of section 30 of this act;
39 and
40 (2) shall promptly deliver to the filing office for filing an
41 amendment to the company's certificate of formation to:
42 (a) state that the company has no members;
43 (b) state that the person has been appointed pursuant to this
44 subsection to wind up the company; and
45 (c) provide the street and mailing addresses of the person.

- 1 e. The Superior Court may order judicial supervision of the
2 winding up of a dissolved limited liability company, including the
3 appointment of a person to wind up the company's activities:
4 (1) on application of a member, if the applicant establishes good
5 cause;
6 (2) on the application of a transferee, if:
7 (a) the company does not have any members;
8 (b) the legal representative of the last person to have been a
9 member declines or fails to wind up the company's activities; and
10 (c) within a reasonable time following the dissolution a person
11 has not been appointed pursuant to subsection d. of this section; or
12 (3) in connection with a proceeding under paragraph (4) or (5)
13 of subsection a. of section 48 of this act.
14

15 50. Known Claims Against Dissolved Limited Liability
16 Company.

17 a. Except as otherwise provided in subsection d. of this section,
18 a dissolved limited liability company may give notice of a known
19 claim under subsection b. of this section, which has the effect as
20 provided in subsection c. of this section.

21 b. A dissolved limited liability company may in a record notify
22 its known claimants of the dissolution. The notice shall:

- 23 (1) specify the information required to be included in a claim;
24 (2) provide a mailing address to which the claim is to be sent;
25 (3) state the deadline for receipt of the claim, which may not be
26 less than 120 days after the date the notice is received by the
27 claimant; and
28 (4) state that the claim will be barred if not received by the
29 deadline.

30 c. A claim against a dissolved limited liability company is
31 barred if the requirements of subsection b. of this section are met
32 and:

- 33 (1) the claim is not received by the specified deadline; or
34 (2) if the claim is timely received but rejected by the company:
35 (a) the company causes the claimant to receive a notice in a
36 record stating that the claim is rejected and will be barred unless the
37 claimant commences an action against the company to enforce the
38 claim within 90 days after the claimant receives the notice; and
39 (b) the claimant does not commence the required action within
40 the 90 days.

41 d. This section does not apply to a claim based on an event
42 occurring after the effective date of dissolution or a liability that on
43 that date is contingent.
44

45 51. Other Claims Against Dissolved Limited Liability Company.

- 1 a. A dissolved limited liability company may publish notice of
2 its dissolution and request persons having claims against the
3 company to present them in accordance with the notice.
- 4 b. The notice authorized by subsection a. of this section shall:
- 5 (1) be published at least once in a newspaper of general
6 circulation in the county in this State in which the dissolved limited
7 liability company's principal office is located or, if it has none in
8 this State, in the county in which the company's registered office is
9 or was last located;
- 10 (2) describe the information required to be contained in a claim
11 and provide a mailing address to which the claim is to be sent; and
- 12 (3) state that a claim against the company is barred unless an
13 action to enforce the claim is commenced within five years after
14 publication of the notice.
- 15 c. If a dissolved limited liability company publishes a notice in
16 accordance with subsection b. of this section, unless the claimant
17 commences an action to enforce the claim against the company
18 within five years after the publication date of the notice, the claim
19 of each of the following claimants is barred:
- 20 (1) a claimant that did not receive notice in a record under
21 section 50 of this act;
- 22 (2) a claimant whose claim was timely sent to the company but
23 not acted on; and
- 24 (3) a claimant whose claim is contingent at, or based on an
25 event occurring after, the effective date of dissolution.
- 26 d. A claim not barred under this section may be enforced:
- 27 (1) against a dissolved limited liability company, to the extent of
28 its undistributed assets; and
- 29 (2) if assets of the company have been distributed after
30 dissolution, against a member or transferee to the extent of that
31 person's proportionate share of the claim or of the assets distributed
32 to the member or transferee after dissolution, whichever is less, but
33 a person's total liability for all claims under this paragraph does not
34 exceed the total amount of assets distributed to the person after
35 dissolution.
- 36
- 37 52. Claims Against Member or Transferee Barred Unless Filed
38 Within Five Years After Limited Liability Company Dissolved.
- 39 a. A claimant, and all those claiming through or under the
40 claimant, shall be forever barred from suing a member or transferee
41 on any claim, or otherwise realizing upon or enforcing any claim
42 against a member or transferee, unless an action is commenced
43 against the member or transferee, pursuant to paragraph (2) of
44 subsection d. of section 51 of this act, or otherwise, within five
45 years after the limited liability company was dissolved.
- 46 b. This section shall not:

1 (1) apply to claims against members or transferees which are in
2 litigation on the effective date of this section;

3 (2) operate to extend any otherwise applicable statute of
4 limitations; or

5 (3) affect any rights of creditors under the “Uniform Fraudulent
6 Transfer Act,” R.S.25:2-20 et seq.

7

8 53. Administrative Action.

9 a. The filing office may place a limited liability company on
10 the inactive list if the company does not:

11 (1) pay, within 60 days after the due date, any fee or penalty due
12 to the filing office under this act or law other than this act;

13 (2) file annual reports for two consecutive years pursuant to
14 section 26 of this act.

15 b. If the filing office determines that a ground exists for
16 placing a company on the inactive list, the filing office shall
17 provide notice of the filing office’s intent to the registered office of
18 the company or the principal office of the company if the mailing
19 address of the principal office appears in the records of the filing
20 office and is different from the mailing address of the registered
21 office.

22 c. If within 60 days after service of the notice pursuant to
23 subsection b. of this section a limited liability company does not
24 correct each ground for being placed on the inactive list or
25 demonstrate to the reasonable satisfaction of the filing office that
26 each ground determined by the filing office does not exist, the filing
27 office shall place the company on the inactive list and file a
28 declaration of the action. The filing office shall send a notice of the
29 action to the registered office of the company or the principal office
30 of the company if the mailing address of the principal office
31 appears in the records of the filing office and is different from the
32 mailing address of the registered office.

33 d. A limited liability company that has been placed on the
34 inactive list continues in existence but, subject to section 54 of this
35 act, may carry on only activities necessary to wind up its activities
36 and liquidate its assets under sections 49 and 56 of this act and to
37 notify claimants under sections 50 and 51 of this act.

38 e. An inactivation of a limited liability company does not
39 terminate the authority of its agent for service of process.

40

41 54. Reinstatement Following Administrative Dissolution.

42 a. A limited liability company that has been placed on the
43 inactive list may apply to the filing office for reinstatement. The
44 application shall be delivered to the filing office for filing and state:

45 (1) the name of the company and such other information as may
46 be required by the filing office to correctly identify the company;
47 and

1 (2) that the company's name satisfies the requirements of
2 section 8 of this act.

3 b. If the filing office determines that an application under
4 subsection a. of this section contains the required information and
5 that the information is correct, the filing office shall reinstate the
6 company and provide notice of the reinstatement to the company.

7 c. When a reinstatement becomes effective, it relates back to
8 and takes effect as of the effective date of the filing office action
9 placing the company on the inactive list, and the limited liability
10 company may resume its activities as if the filing office action had
11 not occurred.

12

13 55. Appeal from Rejection of Reinstatement.

14 a. If the filing office rejects a limited liability company's
15 application for reinstatement, the filing office shall present a notice
16 to the company explaining the reason for rejection.

17 b. Within 30 days after a rejection of reinstatement under
18 subsection a. of this section, a limited liability company may appeal
19 from the rejection by petitioning the court to set aside the filing
20 office action. The petition shall be served on the filing office and
21 contain a copy of the company's application for reinstatement and
22 the filing office's notice of rejection.

23 c. The court may order the filing office to reinstate a limited
24 liability company or take other action the court considers
25 appropriate.

26

27 56. Distribution of Assets in Winding Up Limited Liability
28 Company's Activities.

29 a. In winding up its activities, a limited liability company shall
30 apply its assets to discharge its obligations to creditors, including
31 members that are creditors.

32 b. After a limited liability company complies with subsection a.
33 of this section, any surplus shall be distributed in the following
34 order, subject to any charging order in effect under section 43 of
35 this act:

36 (1) to each person owning a transferable interest that reflects
37 contributions made by a member and not previously returned, an
38 amount equal to the value of the unreturned contributions; and

39 (2) in equal shares among members and dissociated members,
40 except to the extent necessary to comply with any transfer effective
41 under section 42 of this act.

42 c. If a limited liability company does not have sufficient
43 surplus to comply with paragraph (1) of subsection b. of this
44 section, any surplus shall be distributed among the owners of
45 transferable interests in proportion to the value of their respective
46 unreturned contributions.

1 d. All distributions made under subsections b. and c. of this
2 section shall be paid in money.

3
4 ARTICLE 8

5 FOREIGN LIMITED LIABILITY COMPANIES

6 57. Governing Law.

7 a. The law of the state or other jurisdiction under which a
8 foreign limited liability company is formed governs:

9 (1) the internal affairs of the company; and

10 (2) the liability of a member as member and a manager as
11 manager for the debts, obligations, or other liabilities of the
12 company.

13 b. A foreign limited liability company may not be denied a
14 certificate of authority by reason of any difference between the laws
15 of the jurisdiction under which the company is formed and the law
16 of this State.

17 c. A certificate of authority does not authorize a foreign limited
18 liability company to engage in any business or exercise any power
19 that a limited liability company may not engage in or exercise in
20 this State.

21
22 58. Application for Certificate of Authority.

23 A foreign limited liability company may apply for a certificate of
24 authority to transact business in this State by delivering an
25 application to the filing office for filing. The application shall
26 state:

27 a. the name of the company and, if the name does not comply
28 with section 8 of this act, an alternate name adopted pursuant to
29 subsection a. of section 61 of this act;

30 b. the name of the state or other jurisdiction under whose law
31 the company is formed;

32 c. the street and mailing addresses of the company's principal
33 office and, if the law of the jurisdiction under which the company is
34 formed require the company to maintain an office in that
35 jurisdiction, the street and mailing addresses of the required office;
36 and

37 d. the name and street and mailing addresses of the company's
38 initial agent for service of process in this state.

39
40 59. Activities Not Constituting Transacting Business.

41 a. Activities of a foreign limited liability company which do
42 not constitute transacting business in this State within the meaning
43 of this section include:

44 (1) maintaining, defending, or settling an action or proceeding;

45 (2) carrying on any activity concerning its internal affairs,
46 including holding meetings of its members or managers;

47 (3) maintaining accounts in financial institutions;

1 (4) maintaining offices or agencies for the transfer, exchange,
2 and registration of the company's own securities or maintaining
3 trustees or depositories with respect to those securities;

4 (5) selling through independent contractors;

5 (6) soliciting or obtaining orders, whether by mail or electronic
6 means or through employees or agents or otherwise, if the orders
7 require acceptance outside this State before they become contracts;

8 (7) creating or acquiring indebtedness, mortgages, or security
9 interests in real or personal property;

10 (8) securing or collecting debts or enforcing mortgages or other
11 security interests in property securing the debts and holding,
12 protecting, or maintaining property so acquired;

13 (9) conducting an isolated transaction that is completed within
14 30 days and is not in the course of similar transactions; and

15 (10) transacting business in interstate commerce.

16 b. For purposes of this section, the ownership in this State of
17 income-producing real property or tangible personal property, other
18 than property excluded under subsection a. of this section,
19 constitutes transacting business in this State.

20 c. This section does not apply in determining the contacts or
21 activities that may subject a foreign limited liability company to
22 service of process, taxation, or regulation under law of this State
23 other than this act.

24

25 60. Filing of Certificate of Authority. Unless the filing office
26 determines that an application for a certificate of authority does not
27 comply with the filing requirements of this act, the filing office,
28 upon payment of all filing fees, shall file the application of a
29 foreign limited liability company, prepare and file a certificate of
30 authority to transact business in this State, and provide a copy of the
31 filed certificate, together with a receipt for the fees, to the company
32 or its representative.

33

34 61. Noncomplying Name of Foreign Limited Liability Company.

35 a. A foreign limited liability company whose name does not
36 comply with section 8 of this act may not obtain a certificate of
37 authority until it adopts, for the purpose of transacting business in
38 this State, an alternate name that complies with section 8 of this act.
39 A foreign limited liability company that adopts an alternate name
40 under this subsection and obtains a certificate of authority with the
41 alternate name need not comply with R.S.56:1-1 et seq. After
42 obtaining a certificate of authority with an alternate name, a foreign
43 limited liability company shall transact business in this State under
44 the alternate name unless the company is authorized under
45 R.S.56:1-1 et seq. to transact business in this State under another
46 name.

1 b. If a foreign limited liability company authorized to transact
2 business in this State changes its name to one that does not comply
3 with section 8 of this act, it may not thereafter transact business in
4 this State until it complies with subsection a. of this section and
5 obtains an amended certificate of authority.

6
7 62. Revocation of Certificate of Authority.

8 a. A certificate of authority of a foreign limited liability
9 company to transact business in this State may be revoked by the
10 filing office in the manner provided in subsections b. and c. of this
11 section, if the company does not:

12 (1) pay, within 60 days after the due date, any fee or penalty due
13 to the filing office under this act or law other than this act;

14 (2) file annual reports for two consecutive years pursuant to
15 section 26 of this act.

16 b. To revoke a certificate of authority of a foreign limited
17 liability company, the filing office shall provide notice of the filing
18 office's intent to the registered office of the company or the
19 principal office of the company if the mailing address of the
20 principal office appears in the records of the filing office and is
21 different from the mailing address of the registered office.

22 c. If, within 60 days after service of the notice pursuant to
23 subsection b. of this section, a company does not correct each
24 ground for revocation or demonstrate to the reasonable satisfaction
25 of the filing office that each ground determined by the filing office
26 does not exist, the filing office shall revoke the company and file a
27 declaration of the action. The filing office shall send the company a
28 notice of the action to the registered office of the company or the
29 principal office of the company if the mailing address of the
30 principal office appears in the records of the filing office and is
31 different from the mailing address of the registered office.

32 d. The authority of a foreign limited liability company to
33 transact business in this State ceases on the effective date of the
34 notice of revocation unless before that date the company cures each
35 ground for revocation stated in the notice filed under subsection b.
36 of this section

37
38 63. Reinstatement of Certificate of Authority.

39 a. A foreign limited liability company that has been revoked
40 may apply to the filing office for reinstatement. The application
41 shall be delivered to the filing office for filing and state:

42 (1) the name of the company and such other information as may
43 be required by the filing office to correctly identify the company;
44 and

45 (2) that the company's name satisfies the requirements of
46 section 8 of this act.

1 b. If the filing office determines that an application under
2 subsection a. of this section contains the required information and
3 that the information is correct, the filing office shall reinstate the
4 company and provide notice of the reinstatement to the company.

5 c. When a reinstatement becomes effective, it relates back to
6 and takes effect as of the effective date of the filing office
7 revocation action, and the foreign limited liability company may
8 resume its activities as if the filing office action had not occurred.

9
10 64. Cancellation of Certificate of Authority. To cancel its
11 certificate of authority to transact business in this State, a foreign
12 limited liability company shall deliver to the filing office for filing
13 a certificate of cancellation stating the name of the company and
14 such other information as may be required by the filing office to
15 correctly identify the company and that the company desires to
16 cancel its certificate of authority. The certificate of authority is
17 canceled when the certificate of cancellation becomes effective.

18
19 65. Effect of Failure to Have Certificate of Authority.

20 a. A foreign limited liability company transacting business in
21 this State may not maintain an action or proceeding in this State
22 unless it has a certificate of authority to transact business in this
23 State.

24 b. The failure of a foreign limited liability company to have a
25 certificate of authority to transact business in this State does not
26 impair the validity of a contract or act of the company or prevent
27 the company from defending an action or proceeding in this State.

28 c. A member or manager of a foreign limited liability company
29 is not liable for the debts, obligations, or other liabilities of the
30 company solely because the company transacted business in this
31 State without a certificate of authority.

32 d. If a foreign limited liability company transacts business in
33 this State without a certificate of authority or cancels its certificate
34 of authority, it appoints the filing office as its agent for service of
35 process for rights of action arising out of the transaction of business
36 in this State.

37
38 66. Action by Attorney General. The Attorney General of the
39 State of New Jersey may maintain an action to enjoin a foreign
40 limited liability company from transacting business in this State in
41 violation of this act.

42
43 ARTICLE 9

44 ACTIONS BY MEMBERS

45 67. Direct Action by Member.

46 a. Subject to subsection b. of this section, a member may
47 maintain a direct action against another member, a manager, or the

1 limited liability company to enforce the member's rights and
2 otherwise protect the member's interests, including rights and
3 interests under the operating agreement or this act or arising
4 independently of the membership relationship.

5 b. A member maintaining a direct action under this section
6 shall plead and prove an actual or threatened injury that is not
7 solely the result of an injury suffered or threatened to be suffered by
8 the limited liability company.

9

10 68. Derivative Action. A member may maintain a derivative
11 action to enforce a right of a limited liability company if:

12 a. the member first makes a demand on the other members in a
13 member-managed limited liability company, or the managers of a
14 manager-managed limited liability company, requesting that they
15 cause the company to bring an action to enforce the right, and the
16 managers or other members do not bring the action within a
17 reasonable time; or

18 b. A demand under subsection a. of this section would be
19 futile.

20

21 69. Proper Plaintiff.

22 a. Except as otherwise provided in subsection b. of this section,
23 a derivative action under section 68 of this act may be maintained
24 only by a person that is a member at the time the action is
25 commenced and remains a member while the action continues.

26 b. If the sole plaintiff in a derivative action dies while the
27 action is pending, the court may permit another member of the
28 limited liability company to be substituted as plaintiff.

29

30 70. Pleading. In a derivative action under section 68 of this act,
31 the complaint shall state with particularity:

32 a. The date and content of plaintiff's demand and the response
33 to the demand by the managers or other members; or

34 b. If a demand has not been made, the reasons a demand under
35 subsection a. of section 68 of this act would be futile.

36

37 71. Special Litigation Committee.

38 a. If a limited liability company is named as or made a party in
39 a derivative proceeding, the company may appoint a special
40 litigation committee to investigate the claims asserted in the
41 proceeding and determine whether pursuing the action is in the best
42 interests of the company. If the company appoints a special
43 litigation committee, on motion by the committee made in the name
44 of the company, except for good cause shown, the court shall stay
45 discovery for the time reasonably necessary to permit the committee
46 to make its investigation. This subsection shall not prevent the
47 court from enforcing a person's right to information under section

1 40 of this act or, for good cause shown, granting extraordinary
2 relief in the form of a temporary restraining order or preliminary
3 injunction.

4 b. A special litigation committee may be composed of one or
5 more disinterested and independent individuals, who may be
6 members.

7 c. A special litigation committee may be appointed:

8 (1) in a member-managed limited liability company:

9 (a) by the consent of a majority of the members not named as
10 defendants or plaintiffs in the proceeding; and

11 (b) if all members are named as defendants or plaintiffs in the
12 proceeding, by a majority of the members named as defendants; or

13 (2) in a manager-managed limited liability company:

14 (a) by a majority of the managers not named as defendants or
15 plaintiffs in the proceeding; and

16 (b) if all managers are named as defendants or plaintiffs in the
17 proceeding, by a majority of the managers named as defendants.

18 d. After appropriate investigation, a special litigation
19 committee may determine that it is in the best interests of the
20 limited liability company that the proceeding:

21 (1) continue under the control of the plaintiff;

22 (2) continue under the control of the committee;

23 (3) be settled on terms approved by the committee; or

24 (4) be dismissed.

25 e. After making a determination under subsection d. of this
26 section, a special litigation committee shall file with the court a
27 statement of its determination and its report supporting its
28 determination, giving notice to the plaintiff. The court shall
29 determine whether the members of the committee were disinterested
30 and independent and whether the committee conducted its
31 investigation and made its recommendation in good faith,
32 independently, and with reasonable care, with the committee having
33 the burden of proof. If the court finds that the members of the
34 committee were disinterested and independent and that the
35 committee acted in good faith, independently, and with reasonable
36 care, the court shall enforce the determination of the committee.
37 Otherwise, the court shall dissolve the stay of discovery entered
38 under subsection a. of this section and allow the action to proceed
39 under the direction of the plaintiff.

40

41 72. Proceeds and Expenses.

42 a. Except as otherwise provided in subsection b. of this section:

43 (1) any proceeds or other benefits of a derivative action under
44 section 68 of this act, whether by judgment, compromise, or
45 settlement, belong to the limited liability company and not to the
46 plaintiff; and

1 (2) if the plaintiff receives any proceeds, the plaintiff shall remit
2 them immediately to the company.

3 b. If a derivative action under section 68 of this act is
4 successful in whole or in part, the court may award the plaintiff
5 reasonable expenses, including reasonable attorney's fees and costs,
6 from the recovery of the limited liability company.
7

8 ARTICLE 10

9 MERGER, CONVERSION AND DOMESTICATION

10 73. Definitions. As used in this Article 10 (sections 73 through
11 87 of this act):

12 "Constituent limited liability company" means a constituent
13 organization that is a limited liability company.

14 "Constituent organization" means an organization that is party to
15 a merger.

16 "Converted organization" means the organization into which a
17 converting organization converts pursuant to sections 78 through 81
18 of this act.

19 "Converting limited liability company" means a converting
20 organization that is a limited liability company.

21 "Converting organization" means an organization that converts
22 into another organization pursuant to section 78 of this act.

23 "Domesticated company" means the company that exists after a
24 domesticating foreign limited liability company or limited liability
25 company effects a domestication pursuant to sections 82 through 85
26 of this act.

27 "Domesticating company" means the company that effects a
28 domestication pursuant to sections 82 through 85 of this act.

29 "Governing statute" means the statute that governs an
30 organization's internal affairs.

31 "Organization" means a general partnership, including a limited
32 liability partnership, limited partnership, including a limited
33 liability limited partnership, limited liability company, business
34 trust, corporation, or any other person having a governing statute.
35 The term includes a domestic or foreign organization regardless of
36 whether organized for profit.

37 "Organizational documents" means:

38 (1) for a domestic or foreign general partnership, its partnership
39 agreement;

40 (2) for a limited partnership or foreign limited partnership, its
41 certificate of limited partnership and partnership agreement;

42 (3) for a domestic or foreign limited liability company, its
43 certificate or articles of formation and operating agreement, or
44 comparable records as provided in its governing statute;

45 (4) for a business trust, its agreement of trust and declaration of
46 trust;

1 (5) for a domestic or foreign corporation for profit, its articles of
2 incorporation, bylaws, and other agreements among its shareholders
3 which are authorized by its governing statute, or comparable
4 records as provided in its governing statute; and

5 (6) for any other organization, the basic records that create the
6 organization and determine its internal governance and the relations
7 among the persons that own it, have an interest in it, or are
8 members of it.

9 “Personal liability” means liability for a debt, obligation, or other
10 liability of an organization which is imposed on a person that co-
11 owns, has an interest in, or is a member of the organization:

12 (1) by the governing statute solely by reason of the person co-
13 owning, having an interest in, or being a member of the
14 organization; or

15 (2) by the organization’s organizational documents under a
16 provision of the governing statute authorizing those documents to
17 make one or more specified persons liable for all or specified debts,
18 obligations, or other liabilities of the organization solely by reason
19 of the person or persons co-owning, having an interest in, or being a
20 member of the organization.

21 “Surviving organization” means an organization into which one
22 or more other organizations are merged whether the organization
23 preexisted the merger or was created by the merger.

24
25 74. Merger.

26 a. A limited liability company may merge with one or more
27 other constituent organizations pursuant to this section, sections 75
28 through 77 of this act, and a plan of merger, if:

29 (1) the governing statute of each of the other organizations
30 authorizes the merger;

31 (2) the merger is not prohibited by the law of a jurisdiction that
32 enacted any of the governing statutes; and

33 (3) each of the other organizations complies with its governing
34 statute in effecting the merger.

35 b. A plan of merger shall be in a record and shall include:

36 (1) the name and form of each constituent organization;

37 (2) the name and form of the surviving organization and, if the
38 surviving organization is to be created by the merger, a statement to
39 that effect;

40 (3) the terms and conditions of the merger, including the manner
41 and basis for converting the interests in each constituent
42 organization into any combination of money, interests in the
43 surviving organization, and other consideration;

44 (4) if the surviving organization is to be created by the merger,
45 the surviving organization’s organizational documents that are
46 proposed to be in a record; and

1 (5) if the surviving organization is not to be created by the
2 merger, any amendments to be made by the merger to the surviving
3 organization's organizational documents that are, or are proposed to
4 be, in a record.

5
6 75. Action on Plan of Merger by Constituent Limited Liability
7 Company.

8 a. Subject to section 86 of this act, a plan of merger shall be
9 consented to by all the members of a constituent limited liability
10 company.

11 b. Subject to section 86 of this act and any contractual rights,
12 after a merger is approved, and at any time before articles of merger
13 are delivered to the filing office for filing under section 76 of this
14 act, a constituent limited liability company may amend the plan or
15 abandon the merger:

16 (1) as provided in the plan; or

17 (2) except as otherwise prohibited in the plan, with the same
18 consent as was required to approve the plan.

19
20 76. Filings Required for Merger; Effective Date.

21 a. After each constituent organization has approved a merger,
22 articles of merger shall be signed on behalf of:

23 (1) each constituent limited liability company, as provided in
24 subsection a. of section 20 of this act; and

25 (2) each other constituent organization, as provided in its
26 governing statute.

27 b. Articles of merger under this section shall include:

28 (1) the name and form of each constituent organization and the
29 jurisdiction of its governing statute;

30 (2) the name and form of the surviving organization, the
31 jurisdiction of its governing statute, and, if the surviving
32 organization is created by the merger, a statement to that effect;

33 (3) the date the merger is effective under the governing statute
34 of the surviving organization;

35 (4) if the surviving organization is to be created by the merger:

36 (a) if it will be a limited liability company, the company's
37 certificate of formation; or

38 (b) if it will be an organization other than a limited liability
39 company, the organizational document that creates the organization
40 that is in a public record;

41 (5) if the surviving organization preexists the merger, any
42 amendments provided for in the plan of merger for the
43 organizational document that created the organization that are in a
44 public record;

45 (6) a statement as to each constituent organization that the
46 merger was approved as required by the organization's governing
47 statute;

- 1 (7) if the surviving organization is a foreign organization not
2 authorized to transact business in this State, the street and mailing
3 addresses of an office that the filing office may use for the purposes
4 of subsection b. of section 77 of this act; and
5 (8) any additional information required by the governing statute
6 of any constituent organization.
7 c. The surviving organization shall deliver the articles of
8 merger for filing in the office of the filing office.
9 d. A merger becomes effective under this act:
10 (1) if the surviving organization is a limited liability company,
11 upon the later of:
12 (a) compliance with subsection c. of this section; or
13 (b) subject to subsection c. of section 22 of this act, as specified
14 in the articles of merger; or
15 (2) if the surviving organization is not a limited liability
16 company, as provided by the governing statute of the surviving
17 organization.
18
19 77. Effect of Merger.
20 a. When a merger becomes effective:
21 (1) the surviving organization continues or comes into
22 existence;
23 (2) each constituent organization that merges into the surviving
24 organization ceases to exist as a separate entity;
25 (3) all property owned by each constituent organization that
26 ceases to exist vests in the surviving organization;
27 (4) all debts, obligations, or other liabilities of each constituent
28 organization that has ceased to exist continue as debts, obligations,
29 or other liabilities of the surviving organization;
30 (5) an action or proceeding pending by or against any
31 constituent organization that ceases to exist may be continued as if
32 the merger had not occurred;
33 (6) except as prohibited by other law, all of the rights,
34 privileges, immunities, powers, and purposes of each constituent
35 organization that ceases to exist vest in the surviving organization;
36 (7) except as otherwise provided in the plan of merger, the terms
37 and conditions of the plan of merger take effect; and
38 (8) except as otherwise agreed, if a constituent limited liability
39 company ceases to exist, the merger does not dissolve the limited
40 liability company for the purposes of Article 7, Dissolution and
41 Winding Up (sections 48 through 56 of this act);
42 (9) if the surviving organization is created by the merger:
43 (a) if it is a limited liability company, the certificate of
44 formation becomes effective; or
45 (b) if it is an organization other than a limited liability company,
46 the organizational document that creates the organization becomes
47 effective; and

1 (10) if the surviving organization preexisted the merger, any
2 amendments provided for in the articles of merger for the
3 organizational document that created the organization become
4 effective.

5 b. A surviving organization that is a foreign organization
6 consents to the jurisdiction of the courts of this State to enforce any
7 debt, obligation, or other liability owed by a constituent
8 organization, if before the merger the constituent organization was
9 subject to suit in this State on the debt, obligation, or other liability.

10 A surviving organization that is a foreign organization and not
11 authorized to transact business in this State appoints the filing
12 office as its agent for service of process for the purposes of
13 enforcing a debt, obligation, or other liability under this subsection.
14 Service on the filing office under this subsection shall be made in
15 the same manner and shall have the same consequences as in
16 subsections c. and d. of section 17 of this act

17
18 78. Conversion.

19 a. An organization, other than a limited liability company or a
20 foreign limited liability company, may convert to a limited liability
21 company, and a limited liability company may convert to an
22 organization other than a foreign limited liability company pursuant
23 to this section, sections 79 through 81 of this act, and a plan of
24 conversion, if:

25 (1) the other organization's governing statute authorizes the
26 conversion;

27 (2) the conversion is not prohibited by the law of the jurisdiction
28 that enacted the other organization's governing statute; and

29 (3) the other organization complies with its governing statute in
30 effecting the conversion.

31 b. A plan of conversion shall be in a record and shall include:

32 (1) the name and form of the organization before conversion;

33 (2) the name and form of the organization after conversion;

34 (3) the terms and conditions of the conversion, including the
35 manner and basis for converting interests in the converting
36 organization into any combination of money, interests in the
37 converted organization, and other consideration; and

38 (4) the organizational documents of the converted organization
39 that are, or are proposed to be, in a record.

40
41 79. Action on Plan of Conversion by Converting Limited
42 Liability Company.

43 a. Subject to section 86 of this act, a plan of conversion shall
44 be consented to by all the members of a converting limited liability
45 company.

46 b. Subject to section 86 of this act and any contractual rights,
47 after a conversion is approved, and at any time before articles of

1 conversion are delivered to the filing office for filing under section
2 80 of this act, a converting limited liability company may amend
3 the plan or abandon the conversion:

- 4 (1) as provided in the plan; or
5 (2) except as otherwise prohibited in the plan, by the same
6 consent as was required to approve the plan.

7

8 80. Filings Required for Conversion; Effective Date.

9 a. After a plan of conversion is approved:

10 (1) a converting limited liability company shall deliver to the
11 filing office for filing articles of conversion, which shall be signed
12 as provided in subsection a. of section 20 of this act and shall
13 include:

14 (a) a statement that the limited liability company has been
15 converted into another organization;

16 (b) the name and form of the organization and such other
17 information as may be required by the filing office to correctly
18 identify the company and the jurisdiction of its governing statute;

19 (c) the date the conversion is effective under the governing
20 statute of the converted organization;

21 (d) a statement that the conversion was approved as required by
22 this act;

23 (e) a statement that the conversion was approved as required by
24 the governing statute of the converted organization; and

25 (f) if the converted organization is a foreign organization not
26 authorized to transact business in this State, the street and mailing
27 addresses of an office which the filing office may use for the
28 purposes of subsection c. of section 81 of this act; and

29 (2) if the converting organization is not a converting limited
30 liability company, the converting organization shall deliver to the
31 filing office for filing a certificate of formation, which shall
32 include, in addition to the information required by subsection b. of
33 section 18 of this act:

34 (a) a statement that the converted organization was converted
35 from another organization;

36 (b) the name and form of that converting organization and the
37 jurisdiction of its governing statute; and

38 (c) a statement that the conversion was approved in a manner
39 that complied with the converting organization's governing statute.

40 b. A conversion becomes effective:

41 (1) if the converted organization is a limited liability company,
42 when the certificate of formation takes effect; and

43 (2) if the converted organization is not a limited liability
44 company, as provided by the governing statute of the converted
45 organization.

46

47 81. Effect of Conversion.

- 1 a. An organization that has been converted pursuant to this
2 Article 10 (sections 73 through 87 of this act) is for all purposes the
3 same entity that existed before the conversion.
- 4 b. When a conversion takes effect:
- 5 (1) all property owned by the converting organization remains
6 vested in the converted organization;
- 7 (2) all debts, obligations, or other liabilities of the converting
8 organization continue as debts, obligations, or other liabilities of the
9 converted organization;
- 10 (3) an action or proceeding pending by or against the converting
11 organization may be continued as if the conversion had not
12 occurred;
- 13 (4) except as prohibited by law other than this act, all of the
14 rights, privileges, immunities, powers, and purposes of the
15 converting organization remain vested in the converted
16 organization;
- 17 (5) except as otherwise provided in the plan of conversion, the
18 terms and conditions of the plan of conversion take effect; and
- 19 (6) except as otherwise agreed, the conversion does not dissolve
20 a converting limited liability company for the purposes of Article 7,
21 Dissolution and Winding Up (sections 48 through 56 of this act).
- 22 c. A converted organization that is a foreign organization
23 consents to the jurisdiction of the courts of this State to enforce any
24 debt, obligation, or other liability for which the converting limited
25 liability company is liable if, before the conversion, the converting
26 limited liability company was subject to suit in this State on the
27 debt, obligation, or other liability. A converted organization that is
28 a foreign organization and not authorized to transact business in this
29 State appoints the filing office as its agent for service of process for
30 purposes of enforcing a debt, obligation, or other liability under this
31 subsection. Service on the filing office under this subsection shall
32 be made in the same manner and has the same consequences as in
33 subsections c. and d. of section 17 of this act.
- 34
- 35 82. Domestication.
- 36 a. A foreign limited liability company may become a limited
37 liability company pursuant to this section, sections 83 through 85 of
38 this act, and a plan of domestication, if:
- 39 (1) the foreign limited liability company's governing statute
40 authorizes the domestication;
- 41 (2) the domestication is not prohibited by the law of the
42 jurisdiction that enacted the governing statute; and
- 43 (3) the foreign limited liability company complies with its
44 governing statute in effecting the domestication.
- 45 b. A limited liability company may become a foreign limited
46 liability company pursuant to this section, sections 83 through 85 of
47 this act, and a plan of domestication, if:

- 1 (1) the foreign governing statute authorizes the domestication;
2 (2) the domestication is not prohibited by the law of the
3 jurisdiction that enacted the governing statute; and
4 (3) the limited liability company complies with the foreign
5 governing statute in effecting the domestication.
6 c. A plan of domestication shall be in a record and shall
7 include:
8 (1) the name of the domesticating company before
9 domestication and such other information as may be required by the
10 filing office to correctly identify the company and the jurisdiction
11 of its governing statute;
12 (2) the name of the domesticated company after domestication
13 and the jurisdiction of its governing statute;
14 (3) the terms and conditions of the domestication, including the
15 manner and basis for converting interests in the domesticating
16 company into any combination of money, interests in the
17 domesticated company, and other consideration; and
18 (4) the organizational documents of the domesticated company
19 that are, or are proposed to be, in a record.
20

21 83. Action on Plan of Domestication By Domesticating Limited
22 Liability Company.

- 23 a. A plan of domestication shall be consented to:
24 (1) by all the members, subject to section 86 of this act, if the
25 domesticating company is a limited liability company; and
26 (2) as provided in the domesticating company's governing
27 statute, if the company is a foreign limited liability company.
28 b. Subject to any contractual rights, after a domestication is
29 approved, and at any time before articles of domestication are
30 delivered to the filing office for filing under section 84 of this act, a
31 domesticating limited liability company may amend the plan or
32 abandon the domestication:
33 (1) as provided in the plan; or
34 (2) except as otherwise prohibited in the plan, by the same
35 consent as was required to approve the plan.
36

37 84. Filings Required for Domestication; Effective Date.

- 38 a. After a plan of domestication is approved, a domesticating
39 company shall deliver to the filing office for filing articles of
40 domestication, which shall include:
41 (1) a statement, as the case may be, that the company has been
42 domesticated from or into another jurisdiction;
43 (2) the name of the domesticating company and such other
44 information as may be required by the filing office to correctly
45 identify the company and the jurisdiction of its governing statute;
46 (3) the name of the domesticated company and the jurisdiction
47 of its governing statute;

- 1 (4) the date the domestication is effective under the governing
2 statute of the domesticated company;
- 3 (5) if the domesticating company was a limited liability
4 company, a statement that the domestication was approved as
5 required by this act;
- 6 (6) if the domesticating company was a foreign limited liability
7 company, a statement that the domestication was approved as
8 required by the governing statute of the other jurisdiction; and
- 9 (7) if the domesticated company was a foreign limited liability
10 company not authorized to transact business in this State, the street
11 and mailing addresses of an office that the filing office may use for
12 the purposes of subsection b. section 85 of this act.
- 13 b. A domestication becomes effective:
- 14 (1) when the certificate of formation takes effect, if the
15 domesticated company is a limited liability company; and
- 16 (2) according to the governing statute of the domesticated
17 company, if the domesticated organization is a foreign limited
18 liability company.
- 19
- 20 85. Effect of Domestication.
- 21 a. When a domestication takes effect:
- 22 (1) the domesticated company is for all purposes the company
23 that existed before the domestication;
- 24 (2) all property owned by the domesticating company remains
25 vested in the domesticated company;
- 26 (3) all debts, obligations, or other liabilities of the domesticating
27 company continue as debts, obligations, or other liabilities of the
28 domesticated company;
- 29 (4) an action or proceeding pending by or against a
30 domesticating company may be continued as if the domestication
31 had not occurred;
- 32 (5) except as prohibited by other law, all of the rights,
33 privileges, immunities, powers, and purposes of the domesticating
34 company remain vested in the domesticated company;
- 35 (6) except as otherwise provided in the plan of domestication,
36 the terms and conditions of the plan of domestication take effect;
37 and
- 38 (7) except as otherwise agreed, the domestication does not
39 dissolve a domesticating limited liability company for the purposes
40 of Article 7, Dissolution and Winding Up (sections 48 through 56
41 of this act).
- 42 b. A domesticated company that is a foreign limited liability
43 company consents to the jurisdiction of the courts of this State to
44 enforce any debt, obligation, or other liability owed by the
45 domesticating company, if, before the domestication, the
46 domesticating company was subject to suit in this State on the debt,
47 obligation, or other liability. A domesticated company that is a

1 foreign limited liability company and not authorized to transact
2 business in this State appoints the filing office as its agent for
3 service of process for purposes of enforcing a debt, obligation, or
4 other liability under this subsection. Service on the filing office
5 under this subsection shall be made in the same manner and has the
6 same consequences as in subsections c. and d. of section 17 of this
7 act.

8 c. If a limited liability company has adopted and approved a
9 plan of domestication under section 82 of this act providing for the
10 company to be domesticated in a foreign jurisdiction, a statement
11 surrendering the company's certificate of formation shall be
12 delivered to the filing office for filing setting forth:

13 (1) the name of the company and such other information as may
14 be required by the filing office to correctly identify the company;

15 (2) a statement that the certificate of formation is being
16 surrendered in connection with the domestication of the company in
17 a foreign jurisdiction;

18 (3) a statement that the domestication was approved as required
19 by this act; and

20 (4) the jurisdiction of formation of the domesticated foreign
21 limited liability company.

22

23 86. Restrictions on Approval of Mergers, Conversions, and
24 Domestications.

25 a. If a member of a constituent, converting, or domesticating
26 limited liability company will have personal liability with respect to
27 a surviving, converted, or domesticated organization, approval or
28 amendment of a plan of merger, conversion, or domestication are
29 ineffective without the consent of the member, unless:

30 (1) the company's operating agreement provides for approval of
31 a merger, conversion, or domestication with the consent of fewer
32 than all the members; and

33 (2) the member has consented to the provision of the operating
34 agreement.

35 b. A member does not give the consent required by subsection
36 a. of this section merely by consenting to a provision of the
37 operating agreement that permits the operating agreement to be
38 amended with the consent of fewer than all the members.

39

40 87. Article Not Exclusive. This Article 10 (Section 73 through
41 87 of this act) does not preclude an entity from being merged,
42 converted, or domesticated under law other than this act.

43

44

ARTICLE 11

45

MISCELLANEOUS PROVISIONS

46

47

88. Uniformity of Application and Construction. In applying
and construing this uniform act, consideration shall be given to the

1 need to promote uniformity of the law with respect to its subject
2 matter among states that enact it.

3

4 89. Relation to Electronic Signatures In Global and National
5 Commerce Act. This act modifies, limits, and supersedes the
6 federal "Electronic Signatures in Global and National Commerce
7 Act," Pub.L.106-2, 15 U.S.C. s.7001 et seq., but does not modify,
8 limit, or supersede section 101(c) of that act, 15 U.S.C. s.7001(c),
9 or authorize electronic delivery of any of the notices described in
10 section 103(b) of that act, 15 U.S.C. s.7003(b).

11

12 90. Savings Clause. This act does not affect an action
13 commenced, proceeding brought, or right accrued before this act
14 takes effect.

15

16 91. Application to Existing Relationships.

17 a. Before the first day of the 18th month next following the
18 enactment date of this act, this act governs only:

19 (1) a limited liability company formed on or after the effective
20 date of this act; and

21 (2) a limited liability company formed before the effective date
22 of this act, which elects, in the manner provided in its operating
23 agreement or by law for amending the operating agreement, to be
24 subject to this act.

25 b. On and after the first day of the 18th month next following
26 the enactment date of this act, this act governs all limited liability
27 companies.

28

29 92. Tax Classification.

30 a. For all purposes of taxation on income under the laws of this
31 State and only for those purposes, a limited liability company
32 formed under this act or qualified to do business in this State as a
33 foreign limited liability company with two or more members shall
34 be classified as a partnership unless classified otherwise for federal
35 income tax purposes, in which case the limited liability company
36 shall be classified in the same manner as it is classified for federal
37 income tax purposes. For all purposes of taxation under the laws of
38 this State, a member or a transferee of a member of a limited
39 liability company formed under this act or qualified to do business
40 in this State as a foreign limited liability company shall be treated
41 as a partner in a partnership unless the limited liability company is
42 classified otherwise for federal income tax purposes, in which case
43 the member or transferee of a member shall have the same status as
44 the member or transferee of a member has for federal income tax
45 purposes.

46 b. For all purposes of taxation on income under the laws of this
47 State and only for those purposes, a limited liability company

1 formed under this act or qualified to do business in this State as a
2 foreign limited liability company with one member is disregarded
3 as an entity separate from its owner, unless classified otherwise for
4 federal tax purposes, in which case the limited liability company
5 will be classified in the same manner as it is classified for federal
6 income tax purposes. For all purposes of taxation on income under
7 the laws of this State and only for those purposes, the sole member
8 or a transferee of all of the limited liability company interest of the
9 sole member of a limited liability company formed under this act or
10 qualified to do business in this State as a foreign limited liability
11 company is treated as the direct owner of the underlying assets of
12 the limited liability company and of its operations, unless the
13 limited liability company is classified otherwise for federal income
14 tax purposes, in which case the member or transferee of a member
15 will have the same status as the member or transferee of a member
16 has for federal income tax purposes.

17

18 93. Fees.

19 a. No document required to be filed under this act shall be
20 effective until the applicable fee required by this section is paid.
21 The following fees shall be paid to and collected by the State
22 Treasurer for the use of the State:

23 (1) Upon the receipt for filing of a certificate of registration of
24 alternate name or a certificate of renewal pursuant to section 9 of
25 this act, a fee in the amount of \$50.

26 (2) Upon the receipt for filing of an application for reservation
27 of name, an application for renewal of reservation or a notice of
28 transfer or cancellation of reservation pursuant to section 10 of this
29 act, a fee in the amount of \$50.

30 (3) Upon the receipt for filing of a statement under section 15 of
31 this act, a fee in the amount of \$25, upon the receipt for filing of a
32 statement under section 16 of this act, a fee in the amount of \$25
33 and a further fee of \$10 for each limited liability company affected
34 by that statement.

35 (4) Upon the receipt for filing of a certificate of formation under
36 section 18 of this act, a fee in the amount of \$125; and upon receipt
37 for filing, a certificate of correction under section 23 of this act, a
38 certificate of amendment or restatement under section 19 of this act,
39 a certificate of dissolution under section 49 of this act, or articles of
40 merger under section 76 of this act, a fee in the amount of \$100.

41 (5) Upon the filing of articles of conversion under section 80 of
42 this act, a fee in the amount of \$100.

43 (6) Upon filing of an annual report, a fee in the amount of
44 \$50.00.

45 (7) Upon requesting a reinstatement of a certificate of a limited
46 liability company, a late filing fee of \$200.00 and a reinstatement
47 filing fee of \$75.00.

1 (8) For certifying copies of any paper on file as provided for by
2 this act, a fee in the amount of \$25 for each copy certified.

3 (9) The State Treasurer may issue copies of instruments on file
4 as well as other copies, and for all of those copies, whether certified
5 or not, a fee in the amount of \$10 for the first page and \$2 per page
6 thereafter shall be paid.

7 (10) Upon the receipt for filing of an application for certificate
8 of authority as a foreign limited liability company under section 58
9 of this act or a certificate of cancellation under section 64 of this
10 act, a fee in the amount of \$125.

11 (11) For preclearance of any document for filing, a fee in the
12 amount of \$100.

13 (12) For preparing and providing a written report of a record
14 search, a fee in the amount of \$50.

15 (13) For issuing any certificate of the State Treasurer, including
16 but not limited to a certificate of good standing, other than a
17 certification of a copy under paragraph (8) of this subsection, a fee
18 in the amount of \$50, except that for issuing any certificate of the
19 State Treasurer that recites all of a limited liability company's
20 filings with the State Treasurer, a fee of \$100 shall be paid for each
21 such certificate.

22 (14) For receiving and filing or indexing any certificate, affidavit,
23 agreement or any other paper provided for by this act, for which no
24 different fee is specifically prescribed, a fee in the amount of \$75.

25 (15) The State Treasurer may in his discretion charge a fee of
26 \$50 for each check received for payment of any fee that is returned
27 due to insufficient funds or the result of a stop payment order.

28 b. In addition to those fees charged under subsection a. of this
29 section, there shall be collected by and paid to the State Treasurer
30 the following:

31 (1) for all services described in subsection a. of this section that
32 are requested to be completed within the same day as the day of the
33 request, an additional sum of up to \$50; and

34 (2) for all services described in subsection a. of this section that
35 are requested to be completed within a 24-hour period from the time
36 of the request, an additional sum of up to \$25.

37 The State Treasurer shall establish, and may from time to time
38 amend, a schedule of specific fees payable pursuant to this
39 subsection.

40 c. The State Treasurer may in his discretion permit the
41 extension of credit for the fees required by this section upon such
42 terms as he shall deem to be appropriate.

43

44 94. Notices. In computing the period of time for the giving of
45 any notice:

46 a. Required or permitted by this act, or,

1 b. Unless otherwise provided therein, an operating agreement,
2 the day on which the notice is given shall be excluded, and the day
3 on which the matter noticed is to occur shall be included.

4
5 95. Repeals. Effective on the first day of the 18th month next
6 following the enactment date of this act, the following are repealed:

7 P.L.1993, c.210 (C.42:2B-1 et seq.);

8 Section 22 of P.L.1997, c.139 (C.42:2B-8.1);

9 Section 14 of P.L.1997, c.139 (C.42:2B-24.1); and

10 Sections 1 and 2 of P.L.2003, c.12 (C.42:2B-49.1 and 42:2B-
11 49.2).

12
13 96. Effective Date. This act shall take effect on the 180th day
14 next following enactment.

15
16
17 STATEMENT

18
19 This bill, the "Revised Uniform Limited Liability Company
20 Act," repeals the "New Jersey Limited Liability Company Act," and
21 replaces it with a more modern regulatory scheme for the creation
22 and operation of limited liability companies in New Jersey.

23 The limited liability company (LLC) is a relatively new form of
24 unincorporated business organization that provides corporate-style
25 limited liability to its owners, while affording the owners the
26 partnership-like capacity to structure the entity by agreement rather
27 than as prescribed by statute. LLCs began to be widely used after
28 IRS Revenue Ruling 88-76 upheld the taxation of LLCs as
29 partnerships. If the LLC elects to be taxed as a partnership, the
30 LLC does not pay federal income tax on its profits. Rather, its
31 members are taxed on their share of the LLC's income. As a result,
32 LLCs have become the business entity form of choice for new
33 businesses, and far more New Jersey LLCs have been formed in
34 recent years than corporations and limited partnerships combined.

35 The "Revised Uniform Limited Liability Company Act"
36 (RULLCA), as developed by the National Conference of
37 Commissioners on Uniform State Laws (NCCUSL), is a significant
38 advancement in this area of the law. It is a comprehensive, fully
39 integrated "second generation" LLC statute that takes into account
40 the best elements of "first generation" LLC statutes (such as the
41 "New Jersey Limited Liability Company Act" (NJLLCA), which
42 was enacted in 1993 and became effective on January 26, 1994) and
43 two decades of legal developments in the field. Similar to the
44 Revised Uniform Partnership Act (RUPA), RULLCA is largely a
45 series of "default rules" that govern the relations among the
46 members in situations they have not addressed in their operating

1 agreement. Under RULLCA, express provisions of the operating
2 agreement prevail over most statutory norms.

3 RULLCA's structure is similar to RUPA's. Article 1 (General
4 Provisions) contains general provisions, including definitions;
5 Article 2 (Formation; Certificate of Formation and Other Filings)
6 provides for the formation of LLCs and for the filing of the
7 appropriate documents with the Division of Revenue in the
8 Department of the Treasury; Article 3 (Relations of Members and
9 Managers to Persons Dealing with Limited Liability Company)
10 governs the relations of members and managers to third parties;
11 Article 4 (Relations of Members to Each Other and to Limited
12 Liability Company) provides the default rules for the members'
13 relationships with each other and with the LLC; Article 5
14 (Transferable Interests and Rights of Transferees and Creditors)
15 reiterates the "pick your partner" concept that is fundamental to
16 LLCs and sets forth the rights of transferees; Article 6 (Member's
17 Power to Dissociate; Wrongful Dissociation) delineates the causes
18 and consequences of an owner's dissociation from the LLC; Article
19 7 (Dissolution and Winding Up) sets forth the events for dissolution
20 and liquidation of the LLC; Article 8 (Foreign Limited Liability
21 Companies) governs foreign LLCs; Article 9 (Actions by Members)
22 provides for direct and derivative actions by members of an LLC;
23 Article 10 (Merger, Conversion and Domestication) governs
24 domestication, conversion and merger transactions; and Article 11
25 (Miscellaneous Provisions) includes several miscellaneous
26 provisions, including transition rules for existing LLCs.

27 Some of the more significant changes and innovations in
28 RULLCA as compared to NJLLCA are:

- 29 • Perpetual duration. RULLCA eliminates the default (and often
30 overlooked) rule that LLCs have a limited life. As is the case
31 with corporations, RULLCA provides for LLCs to have
32 perpetual duration.
- 33 • Permissible form of operating agreement. RULLCA permits
34 operating agreements to be oral, written or implied based on the
35 way an LLC has operated. This is consistent with the vast
36 majority of states and in line with the organization of many
37 LLCs formed in New Jersey.
- 38 • Distributions. Consistent with RUPA, unless otherwise agreed,
39 distributions are made on a per capita basis.
- 40 • Statements of authority. As is the case under RUPA, RULLCA
41 allows an LLC to file statements of authority with the Division
42 of Revenue in the Department of the Treasury (and in the case
43 of real estate, in the office where real estate records are
44 maintained) authorizing certain people or entities to bind the
45 LLC.
- 46 • Dissociation of a member. RULLCA eliminates a major pitfall
47 for the unwary practitioner or layperson forming an LLC in New

- 1 Jersey. Under RULLCA, a resigning owner is no longer entitled
2 to receive the fair value of his or her LLC interest as of the date
3 of resignation. Rather, upon resignation, the resigning owner is
4 dissociated as a member and only has the rights of an economic
5 interest holder.
- 6 • Remedies for deadlock and oppression. Reflecting case law
7 developments around the country and incorporating some of the
8 best elements of the New Jersey Business Corporation Act,
9 Article 7 (Dissolution and Winding Up) of RULLCA provides
10 remedies for oppressed minority owners. RULLCA permits a
11 member to seek a court order dissolving the company on the
12 grounds that the managers or those members in control of the
13 company have acted or are acting in a manner that is oppressive
14 and was, is, or will be directly harmful to the member.
15 RULLCA also permits a member to seek (or, in its equitable
16 discretion, a court to order in lieu of dissolution) a less drastic
17 remedy such as the appointment of a custodian.
 - 18 • Domestication and conversion. RULLCA provides enhanced
19 ease and flexibility for domesticating, merging and converting
20 an entity other than a domestic limited liability company, if
21 permitted by the law under which it was formed. Its
22 comprehensive provisions offer streamlined methods for
23 domestication (*e.g.*, allowing an LLC formed under the laws of
24 another state to become a New Jersey LLC) and conversion
25 (*e.g.*, allowing a corporation to become an LLC).

26
27 This bill will become effective 180 days after enactment, and
28 will govern all LLCs formed after its effective date. Following the
29 first day of the 18th month following this bill's enactment, it will
30 apply to all New Jersey LLCs, whenever formed.

ASSEMBLY REGULATORY OVERSIGHT AND GAMING
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1543

STATE OF NEW JERSEY

DATED: JANUARY 30, 2012

The Assembly Regulatory Oversight and Gaming Committee reports favorably Assembly Bill No. 1543.

This bill, the "Revised Uniform Limited Liability Company Act," repeals the "New Jersey Limited Liability Company Act," and replaces it with a more modern regulatory scheme for the creation and operation of limited liability companies in New Jersey.

The limited liability company (LLC) is a relatively new form of unincorporated business organization that provides corporate-style limited liability to its owners, while affording the owners the partnership-like capacity to structure the entity by agreement rather than as prescribed by statute. LLCs began to be widely used after IRS Revenue Ruling 88-76 upheld the taxation of LLCs as partnerships. If the LLC elects to be taxed as a partnership, the LLC does not pay federal income tax on its profits. Rather, its members are taxed on their share of the LLC's income. As a result, LLCs have become the business entity form of choice for new businesses, and far more New Jersey LLCs have been formed in recent years than corporations and limited partnerships combined.

The "Revised Uniform Limited Liability Company Act" (RULLCA), as developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL), is a significant advancement in this area of the law. It is a comprehensive, fully integrated "second generation" LLC statute that takes into account the best elements of "first generation" LLC statutes (such as the "New Jersey Limited Liability Company Act" (NJLLCA), which was enacted in 1993 and became effective on January 26, 1994) and two decades of legal developments in the field. Similar to the Revised Uniform Partnership Act (RUPA), RULLCA is largely a series of "default rules" that govern the relations among the members in situations they have not addressed in their operating agreement. Under RULLCA, express provisions of the operating agreement prevail over most statutory norms.

RULLCA's structure is similar to RUPA's. Article 1 (General Provisions) contains general provisions, including definitions; Article 2 (Formation; Certificate of Formation and Other Filings) provides for

the formation of LLCs and for the filing of the appropriate documents with the Division of Revenue in the Department of the Treasury; Article 3 (Relations of Members and Managers to Persons Dealing with Limited Liability Company) governs the relations of members and managers to third parties; Article 4 (Relations of Members to Each Other and to Limited Liability Company) provides the default rules for the members' relationships with each other and with the LLC; Article 5 (Transferable Interests and Rights of Transferees and Creditors) reiterates the "pick your partner" concept that is fundamental to LLCs and sets forth the rights of transferees; Article 6 (Member's Power to Dissociate; Wrongful Dissociation) delineates the causes and consequences of an owner's dissociation from the LLC; Article 7 (Dissolution and Winding Up) sets forth the events for dissolution and liquidation of the LLC; Article 8 (Foreign Limited Liability Companies) governs foreign LLCs; Article 9 (Actions by Members) provides for direct and derivative actions by members of an LLC; Article 10 (Merger, Conversion and Domestication) governs domestication, conversion and merger transactions; and Article 11 (Miscellaneous Provisions) includes several miscellaneous provisions, including transition rules for existing LLCs.

Some of the more significant changes and innovations in RULLCA as compared to NJLLCA are:

- Perpetual duration. RULLCA eliminates the default (and often overlooked) rule that LLCs have a limited life. As is the case with corporations, RULLCA provides for LLCs to have perpetual duration.
- Permissible form of operating agreement. RULLCA permits operating agreements to be oral, written or implied based on the way an LLC has operated. This is consistent with the vast majority of states and in line with the organization of many LLCs formed in New Jersey.
- Distributions. Consistent with RUPA, unless otherwise agreed, distributions are made on a per capita basis.
- Statements of authority. As is the case under RUPA, RULLCA allows an LLC to file statements of authority with the Division of Revenue in the Department of the Treasury (and in the case of real estate, in the office where real estate records are maintained) authorizing certain people or entities to bind the LLC.
- Dissociation of a member. RULLCA eliminates a major pitfall for the unwary practitioner or layperson forming an LLC in New Jersey. Under RULLCA, a resigning owner is no longer entitled to receive the fair value of his or her LLC interest as of the date of resignation. Rather, upon resignation, the resigning owner is dissociated as a member and only has the rights of an economic interest holder.
- Remedies for deadlock and oppression. Reflecting case law developments around the country and incorporating some of the

best elements of the New Jersey Business Corporation Act, Article 7 (Dissolution and Winding Up) of RULLCA provides remedies for oppressed minority owners. RULLCA permits a member to seek a court order dissolving the company on the grounds that the managers or those members in control of the company have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the member. RULLCA also permits a member to seek (or, in its equitable discretion, a court to order in lieu of dissolution) a less drastic remedy such as the appointment of a custodian.

- Domestication and conversion. RULLCA provides enhanced ease and flexibility for domesticating, merging and converting an entity other than a domestic limited liability company, if permitted by the law under which it was formed. Its comprehensive provisions offer streamlined methods for domestication (*e.g.*, allowing an LLC formed under the laws of another state to become a New Jersey LLC) and conversion (*e.g.*, allowing a corporation to become an LLC).

This bill will become effective 180 days after enactment, and will govern all LLCs formed after its effective date. Following the first day of the 18th month following this bill's enactment, it will apply to all New Jersey LLCs, whenever formed.

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO
ASSEMBLY, No. 1543

with Assembly Floor Amendments
(Proposed by Assemblyman BURZICHELLI)

ADOPTED: MARCH 15, 2012

These Assembly amendments:

1) establish, in section 15, a procedure for a registered agent to change the address of the registered office of any domestic or foreign limited liability company for which the registered agent is registered agent and to change the name of any person acting as a registered agent;

2) in section 58, clarify that before doing business in the State, a foreign limited liability company must obtain a certificate of authority to transact business in this State and must promptly correct any false information on the application for a certificate of authority;

3) add to section 66, language mirroring current law at subsection d. of N.J.S.A. 42:2B-57 providing for a fine of \$200 for each year or part thereof during which a foreign limited liability company does business in the State without first obtaining a certificate of authority;

4) amend section 87 to clarify the intent that a limited liability company, whenever formed, that acquires the assets, liabilities and business of a predecessor organization with common ownership is presumed to have the rights, privileges and perquisites of the predecessor organization;

5) amend section 92 to clarify the classification of a limited liability company for the purposes of taxation; and

6) make technical corrections to correct internal references.

SENATE, No. 742

STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

SYNOPSIS

"Revised Uniform Limited Liability Company Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning the creation and operation of limited liability
2 companies, supplementing Title 42 of the Revised Statutes and
3 repealing various parts of the statutory law.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 ARTICLE 1

9 GENERAL PROVISIONS

10 1. Short Title. This act shall be known and may be cited as the
11 "Revised Uniform Limited Liability Company Act."
12

13 2. Definitions. As used in this act:

14 "Certificate of formation" means the certificate required by
15 section 18 of this act. The term includes the certificate as amended
16 or restated.

17 "Contribution" means any benefit provided by a person to a
18 limited liability company:

19 (1) in order to become a member upon formation of the
20 company and in accordance with an agreement between or among
21 the persons who have agreed to become the initial members of the
22 company;

23 (2) in order to become a member after formation of the company
24 and in accordance with an agreement between the person and the
25 company; or

26 (3) in the person's capacity as a member and in accordance with
27 the operating agreement or an agreement between the member and
28 the company.

29 "Debtor in bankruptcy" means a person who is the subject of:

30 (1) an order for relief under Title 11 of the United States Code
31 or a successor statute of general application; or

32 (2) a comparable order under federal, state, or foreign law
33 governing insolvency.

34 "Distribution" except as otherwise provided in subsection g. of
35 section 35 of this act, means a transfer of money or other property
36 from a limited liability company to another person on account of a
37 transferable interest.

38 "Effective" with respect to a record required or permitted to be
39 delivered to the filing office for filing under this act, means
40 effective under subsection c. of section 22 of this act.

41 "Filing office" means the Division of Revenue in the Department
42 of the Treasury, or such other State office designated as such by
43 law.

44 "Foreign limited liability company" means an unincorporated
45 entity formed under the law of a jurisdiction other than this State
46 and denominated by that law as a limited liability company.

1 “Limited liability company” except in the phrase “foreign limited
2 liability company,” means an entity formed under this act.

3 “Manager” means a person that under the operating agreement of
4 a manager-managed limited liability company is responsible, alone
5 or in concert with others, for performing the management functions
6 stated in subsection c. of section 37 of this act.

7 “Manager-managed limited liability company” means a limited
8 liability company that qualifies under subsection a. of section 37 of
9 this act.

10 “Member” means a person that has become a member of a
11 limited liability company pursuant to section 31 of this act and has
12 not dissociated pursuant to section 46 of this act.

13 “Member-managed limited liability company” means a limited
14 liability company that is not a manager-managed limited liability
15 company.

16 “Operating agreement” means the agreement, whether or not
17 referred to as an operating agreement and whether oral, in a record,
18 implied, or in any combination thereof, of all the members of a
19 limited liability company, including a sole member, concerning the
20 matters described in subsection a. of section 11 of this act. The term
21 includes the agreement as amended or restated.

22 “Organizer” means a person that acts to form a limited liability
23 company pursuant to section 18 of this act.

24 “Person” means an individual, corporation, business trust, estate,
25 trust, partnership, limited liability company, association, joint
26 venture, public corporation, government or governmental
27 subdivision, agency, or instrumentality, or any other legal or
28 commercial entity.

29 “Principal office” means the principal executive office of a
30 limited liability company or foreign limited liability company,
31 whether or not the office is located in this State.

32 “Record” means information that is inscribed on a tangible
33 medium or that is stored in an electronic or other medium and is
34 retrievable in perceivable form.

35 “Registered office” means:

36 (1) the office that a limited liability company is required to
37 designate and maintain pursuant to section 14 of this act; or

38 (2) the principal office of a foreign limited liability company.

39 “Sign” means, with the present intent to authenticate or adopt a
40 record:

41 (1) to execute or adopt a tangible symbol; or

42 (2) to attach to or logically associate with the record an
43 electronic symbol, sound, or process.

44 “State” means a state of the United States, the District of
45 Columbia, Puerto Rico, the United States Virgin Islands, or any
46 territory or insular possession subject to the jurisdiction of the
47 United States.

1 “Terminated” means, with respect to a limited liability company,
2 that such company has been dissolved, that all of its affairs have
3 been wound up, and that all of its assets have been either applied to
4 discharge its obligations to creditors, including members that are
5 creditors, or distributed to its members.

6 “Transfer” includes an assignment, conveyance, deed, bill of
7 sale, lease, mortgage, security interest, encumbrance, gift, and
8 transfer by operation of law.

9 “Transferable interest” means the right, as originally associated
10 with a person’s capacity as a member, to receive distributions from
11 a limited liability company in accordance with the operating
12 agreement, whether or not the person remains a member or
13 continues to own any part of the right.

14 “Transferee” means a person to which all or part of a transferable
15 interest has been transferred, whether or not the transferor is a
16 member.

17

18 3. Knowledge; Notice.

19 a. A person knows a fact when the person:

20 (1) has actual knowledge of it; or

21 (2) is deemed to know it under paragraph (1) of subsection d. of
22 this section or law other than this act.

23 b. A person has notice of a fact when the person:

24 (1) has reason to know the fact from all of the facts known to
25 the person at the time in question; or

26 (2) is deemed to have notice of the fact under paragraph (2) of
27 subsection d. of this section;

28 c. A person notifies another of a fact by taking steps
29 reasonably required to inform the other person in ordinary course,
30 whether or not the other person knows the fact.

31 d. A person that is not a member is deemed:

32 (1) to know of a limitation on authority to transfer real property
33 as provided in subsection g. of section 28 of this act; and

34 (2) to have notice of a limited liability company’s:

35 (a) dissolution, 90 days after a certificate of dissolution,
36 pursuant to subparagraph (a) of paragraph (2) of subsection b. of
37 section 49 of this act becomes effective;

38 (b) termination, 90 days after a statement of termination,
39 pursuant to subparagraph (f) of paragraph (2) of subsection b. of
40 section 49 of this act becomes effective; and

41 (c) merger, conversion, or domestication, 90 days after articles
42 of merger, conversion, or domestication under Article 10 (sections
43 73 through 87 of this act) become effective.

44

45 4. Nature, Purpose and Duration of Limited Liability Company.

46 a. A limited liability company is an entity distinct from its
47 members.

- 1 b. A limited liability company may have any lawful purpose,
2 regardless of whether for profit.
- 3 c. A limited liability company has perpetual duration.
4
- 5 5. Powers. A limited liability company has the capacity to sue
6 and be sued in its own name and the power to do all things
7 necessary or convenient to carry on its activities.
8
- 9 6. Governing Law. The law of this State governs:
10 a. The internal affairs of a limited liability company; and
11 b. The liability of a member as member and a manager as
12 manager for the debts, obligations, or other liabilities of a limited
13 liability company.
14
- 15 7. Supplemental Principles of Law. Unless displaced by
16 particular provisions of this act, the principles of law and equity
17 supplement this act.
18
- 19 8. Name.
20 a. The name of a limited liability company shall contain the
21 words “limited liability company” or the abbreviation “L.L.C.” or
22 “LLC”. “Limited” may be abbreviated as “Ltd.”, and “company”
23 may be abbreviated as “Co.”.
24 b. Unless authorized by subsection c. of this section, the name
25 of a limited liability company shall be distinguishable in the records
26 of the filing office from:
27 (1) the name of each person that is not an individual and that is
28 incorporated, organized, or authorized to transact business in this
29 State; and
30 (2) each name reserved under section 10 of this act.
31 c. Furthermore, the name of a limited liability company shall
32 not contain any word or phrase, or any abbreviation or derivative
33 thereof, the use of which is prohibited or restricted by any other
34 statute of this State, unless the limited liability company has
35 complied with the restrictions.
36 d. A limited liability company may apply to the filing office for
37 authorization to use a name that does not comply with subsection b.
38 of this section. The filing office shall authorize use of the name
39 applied for if, as to each noncomplying name:
40 (1) the present user, registrant, or owner of the noncomplying
41 name consents in a signed record to the use and submits an
42 undertaking in a form satisfactory to the filing office to change the
43 noncomplying name to a name that complies with subsection b. of
44 this section and is distinguishable in the records of the filing office
45 from the name applied for; or

1 (2) the applicant delivers to the filing office a certified copy of
2 the final judgment of a court establishing the applicant's right to use
3 in this State the name applied for.

4 e. Subject to section 61, the provisions of this act shall apply to
5 a foreign limited liability company transacting business in this State
6 which has a certificate of authority to transact business in this State
7 or which has applied for a certificate of authority.

8

9 9. Use of Name Other Than Actual Limited Liability Company
10 Name.

11 a. A domestic limited liability company or foreign limited
12 liability company which conducts activities in this State shall not
13 conduct any of those activities using an alternate name, including
14 an abbreviation of its name or an acronym, unless:

15 (1) it also uses its actual name in the transaction of any of its
16 activities in a manner that is not deceptive as to its actual identity;

17 or

18 (2) it has first registered the alternate name as provided in
19 subsection b. of this section.

20 b. Any limited liability company may adopt and use any
21 alternate name, including a name which would be unavailable as the
22 name of a domestic or foreign limited liability company because of
23 the prohibitions of subsection a. or b. of section 8 of this act, but
24 not including any name not permitted as a limited liability company
25 name by subsection c. of section 8 of this act, by filing an original
26 and a copy of a certificate of registration of alternate name with the
27 filing office executed on behalf of the limited liability company.
28 The certificate shall set forth:

29 (1) The name, jurisdiction and date of formation of the limited
30 liability company;

31 (2) The alternate name;

32 (3) A brief statement of the character or nature of the particular
33 activities to be conducted using the alternate name;

34 (4) That the limited liability company intends to use the
35 alternate name in this State;

36 (5) That the limited liability company has not previously used
37 the alternate name in this State in violation of this section or, if it
38 has, the month and year in which it commenced the use.

39 c. The registration shall be effective for five years from the
40 date of filing and may be renewed successively for additional five-
41 year periods by filing an original and a copy of the certificate of
42 renewal executed on behalf of the limited liability company any
43 time within 90 days prior to, but not later than, the date of
44 expiration of the registration. The certificate of renewal shall set
45 forth the information required in paragraphs (1) through (4) of
46 subsection b. of this section, the date of the certificate of

1 registration then in effect and that the limited liability company is
2 continuing to use the alternate name.

3 d. This section shall not:

4 (1) Grant to the registrant of an alternate name any right in the
5 name as against any prior or subsequent use of the name, regardless
6 of whether used as a trademark, trade name, business name or
7 corporate name; or

8 (2) Interfere with the power of any court to enjoin the use of the
9 name on the basis of the law of unfair competition or on any other
10 basis except the identity or similarity of the alternate name to any
11 corporate, limited partnership or limited liability company name.

12 e. A limited liability company which has used an alternate
13 name in this State contrary to the provisions of this section shall,
14 upon filing a certificate of registration of alternate name or an
15 untimely certificate of renewal, pay to the filing office the filing fee
16 prescribed for the certificate plus an additional filing fee equal to
17 the full amount of the regular filing fee multiplied by the number of
18 years it has been using the alternate name in violation of this
19 section. For the purpose of this subsection, any part of a year shall
20 be considered a full year.

21 f. The failure of a limited liability company to file a certificate
22 of registration or renewal of alternate name shall not impair the
23 validity of any contract or act of the limited liability company and
24 shall not prevent the limited liability company from defending any
25 action or proceedings in any court of this State, but the limited
26 liability company shall not maintain any action or proceeding in any
27 court of this State arising out of a contract or act in which it used
28 the alternate name until it has filed the applicable certificate.

29 g. (1) A limited liability company which files a certificate of
30 registration of alternate name which contains a false statement or
31 omission regarding the date it first used an alternate name in this
32 State shall, if the false statement or omission reduces the amount of
33 the additional fee it paid or should have paid as provided in
34 subsection e. of this section, forfeit to the State a penalty of not less
35 than \$200 nor more than \$500.

36 (2) A limited liability company which should have filed a
37 certificate of registration or renewal of alternate name and fails to
38 do so within 60 days after being notified of its obligation to do so
39 by the filing office, by any other governmental officer, or by any
40 person aggrieved by its failure to do so, shall forfeit to the State a
41 penalty of not less than \$200 nor more than \$500.

42 (3) A penalty imposed under this section shall be recovered with
43 costs in an action brought by the Attorney General. The court may
44 proceed on the action in a summary manner.

1 10. Reservation of Name.

2 a. A person may reserve the exclusive use of the name of a
3 limited liability company, including a fictitious or assumed name
4 for a foreign limited liability company whose name is not available,
5 by delivering an application to the filing office for filing. The
6 application must state the name and address of the applicant and the
7 name proposed to be reserved. If the filing office finds that the
8 name applied for is available, it must be reserved for the applicant's
9 exclusive use for a 120-day period.

10 b. The owner of a name reserved for a limited liability
11 company may transfer the reservation to another person by
12 delivering to the filing office for filing a signed notice of the
13 transfer which states the name and address of the transferee.

14

15 11. Operating Agreement; Scope, Function, and Limitations.

16 a. Except as provided in subsections b. and c. of this section,
17 the operating agreement governs:

18 (1) relations among the members as members and between the
19 members and the limited liability company;

20 (2) the rights and duties under this act of a person in the
21 capacity of manager;

22 (3) the activities of the company and the conduct of those
23 activities; and

24 (4) the means and conditions for amending the operating
25 agreement.

26 b. To the extent the operating agreement does not otherwise
27 provide for a matter described in subsection a. of this section, this
28 act governs the matter.

29 c. An operating agreement may not:

30 (1) vary a limited liability company's capacity under section 5
31 of this act to sue and be sued in its own name;

32 (2) vary the law applicable under section 6 of this act;

33 (3) vary the power of the court under section 21 of this act;

34 (4) subject to subsections d. through g. of this section, eliminate
35 the duty of loyalty, the duty of care, or any other fiduciary duty;

36 (5) subject to subsections d. through g. of this section, eliminate
37 the contractual obligation of good faith and fair dealing under
38 subsection d. of section 39 of this act;

39 (6) unreasonably restrict the duties and rights stated in section
40 40 of this act;

41 (7) vary the power of a court to decree dissolution in the
42 circumstances specified in paragraphs (4) and (5) of subsection a. of
43 section 48 of this act;

44 (8) vary the requirement to wind up a limited liability
45 company's business as specified in subsection a. and paragraph (1)
46 of subsection b. of section 49 of this act;

- 1 (9) unreasonably restrict the right of a member to maintain an
2 action under Article 9 (sections 67 through 72 of this act);
- 3 (10) restrict the right to approve a merger, conversion, or
4 domestication under section 85 of this act to a member that will
5 have personal liability with respect to a surviving, converted, or
6 domesticated organization; or
- 7 (11) except as otherwise provided in subsection b. of section 13
8 of this act, restrict the rights under this act of a person other than a
9 member or manager.
- 10 d. If not manifestly unreasonable, the operating agreement
11 may:
- 12 (1) restrict or eliminate the duty:
- 13 (a) as required in paragraph (1) of subsection b. and subsection
14 g. of section 39 of this act, to account to the limited liability
15 company and to hold as trustee for it any property, profit, or benefit
16 derived by the member in the conduct or winding up of the
17 company's business, from a use by the member of the company's
18 property, or from the appropriation of a limited liability company
19 opportunity;
- 20 (b) as required in paragraph (2) of subsection b. and subsection
21 g. of section 39 of this act, to refrain from dealing with the
22 company in the conduct or winding up of the company's business as
23 or on behalf of a party having an interest adverse to the company;
24 and
- 25 (c) as required by paragraph (3) of subsection b. and subsection
26 g. of section 39 of this act, to refrain from competing with the
27 company in the conduct of the company's business before the
28 dissolution of the company;
- 29 (2) identify specific types or categories of activities that do not
30 violate the duty of loyalty;
- 31 (3) alter the duty of care, except to authorize intentional
32 misconduct or knowing violation of law;
- 33 (4) alter any other fiduciary duty, including eliminating
34 particular aspects of that duty; and
- 35 (5) prescribe the standards by which to measure the performance
36 of the contractual obligation of good faith and fair dealing under
37 subsection d. and subsection g. of section 39 of this act.
- 38 e. The operating agreement may specify the method by which a
39 specific act or transaction that would otherwise violate the duty of
40 loyalty may be authorized or ratified by one or more disinterested
41 and independent persons after full disclosure of all material facts.
- 42 f. To the extent the operating agreement of a member-managed
43 limited liability company expressly relieves a member of a
44 responsibility that the member would otherwise have under this act
45 and imposes the responsibility on one or more other members, the
46 operating agreement may, to the benefit of the member that the
47 operating agreement relieves of the responsibility, also eliminate or

1 limit any fiduciary duty that would have pertained to the
2 responsibility.

3 g. The operating agreement may alter or eliminate the
4 indemnification for a member or manager provided by section 38 of
5 this act and may eliminate or limit a member or manager's liability
6 to the limited liability company and members for money damages,
7 except for:

8 (1) breach of the duty of loyalty;

9 (2) a financial benefit received by the member or manager to
10 which the member or manager is not entitled;

11 (3) a breach of a duty under section 36 of this act;

12 (4) intentional infliction of harm on the company or a member;
13 or

14 (5) an intentional violation of criminal law.

15 h. The court shall decide any claim under paragraph (1) of
16 subsection d. of this section that a term of an operating agreement is
17 manifestly unreasonable. The court:

18 (1) shall make its determination as of the time the challenged
19 term became part of the operating agreement and by considering
20 only circumstances existing at that time; and

21 (2) may invalidate the term only if, in light of the purposes and
22 activities of the limited liability company, it is readily apparent that:

23 (a) the objective of the term is unreasonable; or

24 (b) the term is an unreasonable means to achieve the provision's
25 objective.

26

27 12. Operating Agreement; Effect on Limited Liability Company
28 and Persons Becoming Members; Preformation Agreement.

29 a. A limited liability company is bound by and may enforce the
30 operating agreement, whether or not the company has itself
31 manifested assent to the operating agreement.

32 b. A person that becomes a member of a limited liability
33 company is deemed to assent to the operating agreement.

34 c. Two or more persons intending to become the initial
35 members of a limited liability company may make an agreement
36 providing that upon the formation of the company the agreement
37 will become the operating agreement. One person intending to
38 become the initial member of a limited liability company may
39 assent to terms providing that upon the formation of the company
40 the terms will become the operating agreement.

41

42 13. Operating Agreement; Effect on Third Parties and
43 Relationship to Records Effective on Behalf of Limited Liability
44 Company.

45 a. An operating agreement may specify that its amendment
46 requires the approval of a person that is not a party to the operating
47 agreement or the satisfaction of a condition. An amendment is

1 ineffective if its adoption does not include the required approval or
2 satisfy the specified condition.

3 b. The obligations of a limited liability company and its
4 members to a person in the person's capacity as a transferee or
5 dissociated member are governed by the operating agreement.
6 Subject only to any court order issued under paragraph (2) of
7 subsection b. and subsection g. of section 43 of this act to effectuate
8 a charging order, an amendment to the operating agreement made
9 after a person becomes a transferee or dissociated member is
10 effective with regard to any debt, obligation, or other liability of the
11 limited liability company or its members to the person in the
12 person's capacity as a transferee or dissociated member.

13 c. If a record that has been delivered by a limited liability
14 company to the filing office for filing and has become effective
15 under this act contains a provision that would be ineffective under
16 subsection c. of section 11 of this act, if contained in the operating
17 agreement, the provision is likewise ineffective in the record.

18 d. Subject to subsection c. of this section, if a record that has
19 been delivered by a limited liability company to the filing office for
20 filing and has become effective under this act conflicts with a
21 provision of the operating agreement:

22 (1) the operating agreement prevails as to members, dissociated
23 members, transferees, and managers; and

24 (2) the record prevails as to other persons to the extent they
25 reasonably rely on the record.

26

27 14. Office and Agent for Service of Process.

28 a. A limited liability company shall designate and continuously
29 maintain in this State:

30 (1) an office, which need not be a place of its activity in this
31 State; and

32 (2) an agent for service of process.

33 b. A foreign limited liability company that has a certificate of
34 authority under section 58 of this act shall designate and
35 continuously maintain in this State an agent for service of process.

36 c. An agent for service of process of a limited liability
37 company or foreign limited liability company shall be an individual
38 who is a resident of this State or other person with authority to
39 transact business in this State.

40

41 15. Change of Designated Office or Agent For Service of
42 Process.

43 a. A limited liability company or foreign limited liability
44 company may change its registered office, its agent for service of
45 process, or the address of its agent for service of process by
46 delivering to the filing office for filing a statement of change
47 containing:

- 1 (1) the name of the company;
2 (2) the street and mailing addresses of its current registered
3 office;
4 (3) if the current registered office is to be changed, the street
5 and mailing addresses of the new registered office;
6 (4) the name and street and mailing addresses of its current
7 agent for service of process; and
8 (5) if the current agent for service of process or an address of
9 the agent is to be changed, the new information.

10 b. Subject to subsection c. of section 22 of this act, a statement
11 of change is effective when filed by the filing office.

12

13 16. Resignation of Agent for Service of Process.

14 a. To resign as an agent for service of process of a limited
15 liability company or foreign limited liability company, the agent
16 shall deliver to the filing office for filing a statement of resignation
17 containing the company name and stating that the agent is
18 resigning.

19 b. The filing office shall file a statement of resignation
20 delivered under subsection a. of this section and mail or otherwise
21 provide or deliver a copy to the registered office of the company or
22 the principal office of the company if the mailing address of the
23 principal office appears in the records of the filing office and is
24 different from the mailing address of the registered office.

25 c. An agency for service of process terminates on the earlier of:

26 (1) the 31st day after the filing office files the statement of
27 resignation;

28 (2) when a record designating a new agent for service of process
29 is delivered to the filing office for filing on behalf of the limited
30 liability company and becomes effective.

31

32 17. Service of Process.

33 a. An agent for service of process appointed by a limited
34 liability company or foreign limited liability company is an agent of
35 the company for service of any process, notice, or demand required
36 or permitted by law to be served on the company.

37 b. If a limited liability company or foreign limited liability
38 company does not appoint or maintain an agent for service of
39 process in this State or the agent for service of process cannot with
40 reasonable diligence be found at the agent's street address, the
41 filing office is an agent of the company upon whom process, notice,
42 or demand may be served.

43 c. Service of any process, notice, or demand on the filing office
44 as agent for a limited liability company or foreign limited liability
45 company may be made by delivering to the filing office duplicate
46 copies of the process, notice, or demand. If a process, notice, or
47 demand is served on the filing office, the filing office shall forward

1 one of the copies by mail or otherwise provide or deliver a copy to
2 the registered office of the company or the principal office of the
3 company if the mailing address of the principal office appears in the
4 records of the filing office and is different from the mailing address
5 of the registered office.

6 d. Service is effected under subsection c. of this section at the
7 earliest of:

8 (1) the date the limited liability company or foreign limited
9 liability company receives the process, notice, or demand;

10 (2) the date shown on the return receipt, if signed on behalf of
11 the company; or

12 (3) five days after the process, notice, or demand is deposited
13 with the United States Postal Service, if correctly addressed and
14 with sufficient postage.

15 e. The filing office shall keep a record of each process, notice,
16 and demand served pursuant to this section and record the date of,
17 and the action taken regarding, the service.

18 f. This section does not affect the right to serve process,
19 notice, or demand in any other manner provided by law.

20
21 ARTICLE 2

22 FORMATION; CERTIFICATE OF FORMATION AND OTHER
23 FILINGS

24 18. Formation of Limited Liability Company; Certificate of
25 Formation.

26 a. One or more persons may act as organizers to form a limited
27 liability company by signing and delivering to the filing office for
28 filing a certificate of formation.

29 b. A certificate of formation shall state:

30 (1) the name of the limited liability company, which complies
31 with section 8 of this act; and

32 (2) the street and mailing addresses of the initial registered
33 office and the name and street and mailing addresses of the initial
34 agent for service of process of the company.

35 c. Subject to subsection c. of section 12 of this act, a certificate
36 of formation may also contain statements as to matters other than
37 those required by subsection b. of this section. However, a
38 statement in a certificate of formation is not effective as a statement
39 of authority.

40 d. A limited liability company is formed when the filing office
41 has filed the certificate of formation and the company has at least
42 one member, unless the certificate states a delayed effective date
43 pursuant to subsection c. of section 22 of this act.

44 e. If the certificate states a delayed effective date, a limited
45 liability company is not formed if, before the certificate takes
46 effect, a certificate of dissolution is signed and delivered to the
47 filing office for filing and the filing office files the certificate.

1 f. Subject to any delayed effective date and except in a
2 proceeding by this State to dissolve a limited liability company, the
3 filing of the certificate of formation by the filing office is
4 conclusive proof that the organizer satisfied all conditions to the
5 formation of a limited liability company.

6
7 19. Amendment or Restatement of Certificate of Formation.

8 a. A certificate of formation may be amended or restated at any
9 time.

10 b. To amend its certificate of formation, a limited liability
11 company shall deliver to the filing office for filing an amendment
12 stating:

13 (1) the name of the company;

14 (2) the date of filing of its certificate of formation;

15 (3) such other information as may be required by the filing
16 office to correctly identify the company; and

17 (4) the changes the amendment makes to the certificate as most
18 recently amended or restated.

19 c. To restate its certificate of formation, a limited liability
20 company shall deliver to the filing office for filing a restated
21 certificate of formation, designated as such in its heading, stating:

22 (1) in the heading or an introductory paragraph, the company's
23 present name, the date of the filing of the company's initial
24 certificate of formation and such other information as may be
25 required by the filing office to correctly identify the company;

26 (2) if the company's name has been changed at any time since
27 the company's formation, each of the company's former names; and

28 (3) the changes the restated certificate of formation makes to the
29 certificate of formation as most recently amended or restated.

30 d. Subject to subsection c. of section 12 and subsection c. of
31 section 22 of this act, an amendment to or a restated certificate of
32 formation is effective when filed by the filing office.

33 e. If a member of a member-managed limited liability
34 company, or a manager of a manager-managed limited liability
35 company, knows that any information in a filed certificate of
36 formation was inaccurate when the certificate was filed or has
37 become inaccurate owing to changed circumstances, the member or
38 manager shall promptly:

39 (1) cause the certificate to be amended; or

40 (2) if appropriate, deliver to the filing office for filing a
41 statement of change under section 15 or a certificate of correction
42 under section 23 of this act.

43
44 20. Signing of Records to be Delivered for Filing to Filing
45 Office.

46 a. A record delivered to the filing office for filing pursuant to
47 this act shall be signed as follows:

1 (1) Except as otherwise provided in paragraphs (2) and (3) of
2 this subsection, a record signed on behalf of a limited liability
3 company shall be signed by a person authorized by the company.

4 (2) A limited liability company's initial certificate of formation
5 shall be signed by at least one person acting as an organizer.

6 (3) A record filed on behalf of a dissolved limited liability
7 company that has no members shall be signed by the person
8 winding up the company's activities under subsection c. of section
9 49 of this act or a person appointed under subsection d. of section
10 49 of this act to wind up those activities.

11 (4) A certificate of dissolution under subsection e. of section 18
12 of this act shall be signed by each organizer that signed the initial
13 certificate of formation, but a personal representative of a deceased
14 or incompetent organizer may sign in place of the decedent or
15 incompetent.

16 (5) A statement of denial by a person under section 29 of this
17 act shall be signed by that person.

18 (6) Any other record shall be signed by the person on whose
19 behalf the record is delivered to the filing office.

20 b. Any record filed under this act may be signed by an agent,
21 including an attorney in fact.

22

23 21. Signing and Filing Pursuant to Judicial Order.

24 a. If a person required by this act to sign a record or deliver a
25 record to the filing office for filing does not do so, any other person
26 that is aggrieved may petition the Superior Court to order:

27 (1) the person to sign the record;

28 (2) the person to deliver the record to the filing office for filing;

29 or

30 (3) the filing office to file the record unsigned.

31 b. If a petitioner under subsection a. of this section is not the
32 limited liability company or foreign limited liability company to
33 which the record pertains, the petitioner shall make the company a
34 party to the action.

35

36 22. Delivery to and Filing of Records by Filing Office; Effective
37 Time and Date.

38 a. A record authorized or required to be delivered to the filing
39 office for filing under this act shall be captioned to describe the
40 record's purpose, be in a medium permitted by the filing office, and
41 be delivered to the filing office. If the filing fees have been paid,
42 unless the filing office determines that a record does not comply
43 with the filing requirements of this act, the filing office shall file the
44 record and:

45 (1) for a statement of denial under section 29 of this act, send an
46 acknowledgement confirming the filing and a receipt for the fees to
47 the person who submitted the record; and

1 (2) for all other records, send an acknowledgement confirming
2 the filing and a receipt for the fees to the person who submitted the
3 record.

4 b. Upon request and payment of the requisite fee, the filing
5 office shall send to the requester a certified copy of a requested
6 record.

7 c. Except as otherwise provided in sections 15 and 23 of this
8 act, a record delivered to the filing office for filing under this act
9 may specify a delayed effective date. Subject to section 15,
10 subsection d. of section 18 and section 23 of this act, a record filed
11 by the filing office is effective:

12 (1) if the record does not specify a delayed effective date, on
13 the date the record is filed as evidenced by the filing office's
14 endorsement of the date on the record; and

15 (2) if the record specifies a delayed effective date after the date
16 the record is filed as evidenced by the filing office's endorsement of
17 the date on the record, on the delayed effective date.

18

19 23. Correcting Filed Record.

20 a. A limited liability company or foreign limited liability
21 company may deliver to the filing office for filing a certificate of
22 correction to correct a record previously delivered by the company
23 to the filing office and filed by the filing office, if at the time of
24 filing the record contained inaccurate information or was
25 defectively signed.

26 b. A certificate of correction under subsection a. of this section
27 may not state a delayed effective date and shall:

28 (1) describe the record to be corrected, including its filing date,
29 or attach a copy of the record as filed;

30 (2) specify the inaccurate information and the reason it is
31 inaccurate or the manner in which the signing was defective; and

32 (3) correct the defective signature or inaccurate information.

33 c. When filed by the filing office, a certificate of correction
34 under subsection a. of this section is effective retroactively as of the
35 effective date of the record the certificate corrects, but the
36 certificate is effective when filed:

37 (1) for the purposes of subsection d. of section 3 of this act; and

38 (2) as to persons that previously relied on the uncorrected record
39 and would be adversely affected by the retroactive effect.

40

41 24. Liability for Inaccurate Information in Filed Record.

42 a. If a record delivered to the filing office for filing under this
43 act and filed by the filing office contains inaccurate information, a
44 person that suffers a loss by reliance on the information may
45 recover damages for the loss from:

- 1 (1) a person that signed the record, or caused another to sign it
2 on the person's behalf, and knew the information to be inaccurate at
3 the time the record was signed; and
- 4 (2) subject to subsection b. of this section, a member of a
5 member-managed limited liability company or the manager of a
6 manager-managed limited liability company, if:
- 7 (a) the record was delivered for filing on behalf of the company;
8 and
- 9 (b) the member or manager had notice of the inaccuracy for a
10 reasonably sufficient time before the information was relied upon so
11 that, before the reliance, the member or manager reasonably could
12 have:
- 13 (i) effected an amendment under section 19 of this act;
14 (ii) filed a petition under section 21 of this act; or
15 (iii) delivered to the filing office for filing a certificate of change
16 under section 15 or a certificate of correction under section 23 of
17 this act.
- 18 b. To the extent that the operating agreement of a member-
19 managed limited liability company expressly relieves a member of
20 responsibility for maintaining the accuracy of information contained
21 in records delivered on behalf of the company to the filing office for
22 filing under this act and imposes that responsibility on one or more
23 other members, the liability stated in paragraph (2) of subsection a.
24 of this section applies to those other members and not to the
25 member that the operating agreement relieves of the responsibility.
- 26 c. An individual who signs a record authorized or required to
27 be filed under this act affirms under penalty of perjury that the
28 information stated in the record is accurate.
29
- 30 25. Certificate of Standing or Authorization.
- 31 a. The filing office, upon request and payment of the requisite
32 fee, shall furnish to any person a certificate of standing for a limited
33 liability company if the records filed in the filing office show that
34 the company has been formed under section 18 of this act. A
35 certificate of standing must state:
- 36 (1) the company's name;
37 (2) that the company was duly formed under the laws of this
38 State and the date of formation;
39 (3) whether all fees and penalties due under this act or other law
40 to the filing office have been paid;
41 (4) whether the company's most recent annual report required
42 by section 26 of this act has been filed in the filing office;
43 (5) whether the filing office has administratively revoked the
44 company; and
45 (6) whether the filing office has filed a certificate of dissolution.
- 46 b. The filing office, upon request and payment of the requisite
47 fee, shall furnish to any person a certificate of registration for a

1 foreign limited liability company if the records filed in the office of
2 the filing office show that the filing office has filed a certificate of
3 authority, has not revoked the certificate of authority, and has not
4 filed a notice of cancellation. A certificate of registration shall
5 state:

6 (1) the company's name and any alternate name adopted under
7 subsection a. of section 61 of this act for use in this State;

8 (2) that the company is authorized to transact business in this
9 State;

10 (3) whether all fees and penalties due to the filing office under
11 this act or other law have been paid;

12 (4) whether the company's most recent annual report required
13 by section 26 of this act has been filed in the filing office;

14 (5) that the filing office has not revoked the company's
15 certificate of authority and has not filed a certificate of cancellation;
16 and

17 (6) other facts of record in the office of the filing office which
18 are specified by the person requesting the certificate.

19 c. Subject to any qualification stated in the certificate, a
20 certificate of standing or certificate of registration issued by the
21 filing office is conclusive evidence that the limited liability
22 company is in existence or the foreign limited liability company is
23 authorized to transact business in this State.
24

25 26. Annual Report for Filing Office.

26 a. Each domestic and foreign limited liability company shall
27 file an annual report with the filing office, setting forth:

28 (1) the name and address of the limited liability company;

29 (2) the name and address of the registered agent of the limited
30 liability company; and

31 (3) the name and addresses of the managing members or
32 managers, as the case may be.

33 b. If no annual report is filed as required by this section for two
34 consecutive years:

35 (1) the certificate of a domestic limited liability company shall
36 be transferred to an inactive list maintained by the filing office. A
37 limited liability company on the inactive list shall remain a limited
38 liability company and the limited liability of its members and
39 managers shall not be affected by its transfer to this list. The name
40 of a limited liability company on the inactive list shall, subject to
41 any other rights that limited liability company may have to its
42 name, be available for use by any other limited liability company,
43 including a newly-formed limited liability company.

44 (2) the certificate of a foreign limited liability company may be
45 revoked by the filing office.

46 (3) if the certificate of a domestic limited liability company has
47 been transferred to the inactive list or if the certificate of a foreign

1 limited liability company has been revoked, the certificate shall be
2 reinstated by proclamation of the filing office upon payment of all
3 fees due to the filing office, consisting of a reinstatement filing fee,
4 current annual report fee, all delinquent annual report fees, and a
5 late filing fee. The reinstatement relates back to the date of transfer
6 of the certificate of a domestic limited liability company to the
7 inactive list or to the date of revocation of the certificate of a
8 foreign limited liability company, as the case may be, and shall
9 validate all actions taken in the interim. In the event that in the
10 interim the name of the limited liability company has become
11 unavailable, the filing office shall reinstate the certificate upon, in
12 the case of a domestic limited liability company, the filing of an
13 amendment to its certificate of formation to change the name to an
14 available name, and in the case of a foreign limited liability
15 company, the filing of an amended certificate of registration
16 changing the name to an available name. The filing office shall
17 provide the forms necessary to effect annual report reinstatements.
18

19 ARTICLE 3

20 RELATIONS OF MEMBERS AND MANAGERS TO PERSONS

21 DEALING WITH LIMITED LIABILITY COMPANY

22 27. No Agency Power or Member as Member.

23 a. A member is not an agent of a limited liability company
24 solely by reason of being a member.

25 b. A person's status as a member does not prevent or restrict
26 law other than this act from imposing liability on a limited liability
27 company because of the person's conduct.

28
29 28. Statement of Authority.

30 a. A limited liability company may deliver to the filing office
31 for filing a statement of authority. The statement:

32 (1) shall include the name of the company, the street and
33 mailing addresses of its registered office and such other information
34 as may be required by the filing office to correctly identify the
35 company;

36 (2) with respect to any position that exists in or with respect to
37 the company, may state the authority, or limitations on the
38 authority, of all persons holding the position to:

39 (a) execute an instrument transferring real property held in the
40 name of the company; or

41 (b) enter into other transactions on behalf of, or otherwise act
42 for or bind, the company; and

43 (3) may state the authority, or limitations on the authority, of a
44 specific person to:

45 (a) execute an instrument transferring real property held in the
46 name of the company; or

- 1 (b) enter into other transactions on behalf of, or otherwise act
2 for or bind, the company.
- 3 b. To amend or cancel a statement of authority filed with the
4 filing office under subsection a. of section 22 of this act, a limited
5 liability company shall deliver to the filing office for filing an
6 amendment or cancellation stating:
- 7 (1) the name of the company;
- 8 (2) the street and mailing addresses of the company's registered
9 office;
- 10 (3) such other information as may be required by the filing
11 office to correctly identify the company;
- 12 (4) the caption of the statement being amended or canceled and
13 the date the statement being affected became effective; and
- 14 (5) the contents of the amendment or a declaration that the
15 statement being affected is canceled.
- 16 c. A statement of authority affects only the power of a person
17 to bind a limited liability company to persons that are not members.
- 18 d. Subject to subsection c. of this section and subsection d. of
19 section 3 of this act, and except as otherwise provided in
20 subsections f., g. and h. of this section, a limitation on the authority
21 of a person or a position contained in an effective statement of
22 authority is not by itself evidence of knowledge or notice of the
23 limitation by any person.
- 24 e. Subject to subsection c. of this section, a grant of authority
25 not pertaining to transfers of real property and contained in an
26 effective statement of authority is conclusive in favor of a person
27 that gives value in reliance on the grant, except to the extent that
28 when the person gives value:
- 29 (1) the person has knowledge to the contrary;
- 30 (2) the statement has been canceled or restrictively amended
31 under subsection b. of this section; or
- 32 (3) a limitation on the grant is contained in another statement of
33 authority that became effective after the statement containing the
34 grant became effective.
- 35 f. Subject to subsection c. of this section, an effective
36 statement of authority that grants authority to transfer real property
37 held in the name of the limited liability company and that is
38 recorded by certified copy in the office for recording transfers of
39 the real property is conclusive in favor of a person that gives value
40 in reliance on the grant without knowledge to the contrary, except
41 to the extent that when the person gives value:
- 42 (1) the statement has been canceled or restrictively amended
43 under subsection b. of this section and a certified copy of the
44 cancellation or restrictive amendment has been recorded in the
45 office for recording transfers of the real property; or
- 46 (2) a limitation on the grant is contained in another statement of
47 authority that became effective after the statement containing the

1 grant became effective and a certified copy of the later-effective
2 statement is recorded in the office for recording transfers of the real
3 property.

4 g. Subject to subsection c. of this section, if a certified copy of
5 an effective statement containing a limitation on the authority to
6 transfer real property held in the name of a limited liability
7 company is recorded in the office for recording transfers of that real
8 property, all persons are deemed to know of the limitation.

9 h. Subject to subsection i. of this section, an effective
10 certificate of dissolution is a cancellation of any filed statement of
11 authority for the purposes of subsection f. of this section and is a
12 limitation on authority for the purposes of subsection g. of this
13 section.

14 i. After a certificate of dissolution becomes effective, a limited
15 liability company may deliver to the filing office for filing and, if
16 appropriate, may record a statement of authority that is designated
17 as a post-dissolution statement of authority. The statement operates
18 as provided in subsections f. and g. of this section.

19 j. An effective statement of denial operates as a restrictive
20 amendment under this section and may be recorded by certified
21 copy for the purposes of paragraph (1) of subsection f. of this
22 section.

23

24 29. Statement of Denial. A person named in a filed statement of
25 authority granting that person authority may deliver to the filing
26 office for filing a statement of denial that:

27 a. Provides the name of the limited liability company and such
28 other information as may be required by the filing office to
29 correctly identify the company and the caption of the statement of
30 authority to which the statement of denial pertains; and

31 b. Denies the grant of authority.

32

33 30. Liability of Members and Managers.

34 a. The debts, obligations, or other liabilities of a limited
35 liability company, whether arising in contract, tort, or otherwise:

36 (1) are solely the debts, obligations, or other liabilities of the
37 company; and

38 (2) do not become the debts, obligations, or other liabilities of a
39 member or manager solely by reason of the member acting as a
40 member or manager acting as a manager.

41 b. The failure of a limited liability company to observe any
42 particular formalities relating to the exercise of its powers or
43 management of its activities is not a ground for imposing liability
44 on the members or managers for the debts, obligations, or other
45 liabilities of the company.

1 ARTICLE 4
2 RELATIONS OF MEMBERS TO EACH OTHER AND TO
3 LIMITED LIABILITY COMPANY

4 31. Becoming a Member.

5 a. If a limited liability company is to have only one member
6 upon formation, the person becomes a member as agreed by that
7 person and the organizer of the company. That person and the
8 organizer may be, but need not be, different persons. If different,
9 the organizer acts on behalf of the initial member.

10 b. If a limited liability company is to have more than one
11 member upon formation, those persons become members as agreed
12 by the persons before the formation of the company. The organizer
13 acts on behalf of the persons in forming the company and may be,
14 but need not be, one of the persons.

15 c. After formation of a limited liability company, a person
16 becomes a member:

- 17 (1) as provided in the operating agreement;
18 (2) as the result of a transaction effective under Article 10
19 (sections 73 through 87 of this act);
20 (3) with the consent of all the members; or
21 (4) if, within 90 consecutive days after the company ceases to
22 have any members:

23 (a) the last person to have been a member, or the legal
24 representative of that person, designates a person to become a
25 member; and

26 (b) the designated person consents to become a member.

27 d. A person may become a member without acquiring a
28 transferable interest and without making or being obligated to make
29 a contribution to the limited liability company.

30

31 32. Form of Contribution. A contribution may consist of
32 tangible or intangible property or other benefit to a limited liability
33 company, including money, services performed, promissory notes,
34 other agreements to contribute money or property, and contracts for
35 services to be performed.

36

37 33. Liability for Contributions.

38 a. A person's obligation to make a contribution to a limited
39 liability company is not excused by the person's death, disability, or
40 other inability to perform personally. If a person does not make a
41 required contribution of property or services, the person or the
42 person's estate is obligated, at the option of the company, to
43 contribute money equal to the value of the part of the contribution
44 which has not been made.

45 b. A creditor of a limited liability company which extends
46 credit or otherwise acts in reliance on an obligation described in
47 subsection a. of this section may enforce the obligation.

1 34. Sharing of and Right to Distributions before Dissolution.

2 a. Any distributions made by a limited liability company before
3 its dissolution and winding up shall be in equal shares among
4 members and dissociated members, except to the extent necessary
5 to comply with any transfer effective under section 42 and any
6 charging order in effect under section 43 of this act.

7 b. A person has a right to a distribution before the dissolution
8 and winding up of a limited liability company only if the company
9 decides to make an interim distribution. A person's dissociation
10 does not entitle the person to a distribution.

11 c. A person does not have a right to demand or receive a
12 distribution from a limited liability company in any form other than
13 money. Except as otherwise provided in subsection c. of section 56
14 of this act, a limited liability company may distribute an asset in
15 kind if each part of the asset is fungible with each other part and
16 each person receives a percentage of the asset equal in value to the
17 person's share of distributions.

18 d. If a member or transferee becomes entitled to receive a
19 distribution, the member or transferee has the status of, and is
20 entitled to all remedies available to, a creditor of the limited
21 liability company with respect to the distribution.

22

23 35. Limitations on Distribution.

24 a. A limited liability company may not make a distribution if
25 after the distribution:

26 (1) the company would not be able to pay its debts as they
27 become due in the ordinary course of the company's activities; or

28 (2) the company's total assets would be less than the sum of its
29 total liabilities plus the amount that would be needed, if the
30 company were to be dissolved, wound up, and terminated at the
31 time of the distribution, to satisfy the preferential rights upon
32 dissolution, winding up, and termination of members whose
33 preferential rights are superior to those of persons receiving the
34 distribution.

35 b. A limited liability company may base a determination that a
36 distribution is not prohibited under subsection a. of this section on
37 financial statements prepared on the basis of accounting practices
38 and principles that are reasonable in the circumstances or on a fair
39 valuation or other method that is reasonable under the
40 circumstances.

41 c. Except as otherwise provided in subsection f. of this section,
42 the effect of a distribution under subsection a. of this section is
43 measured:

44 (1) in the case of a distribution by purchase, redemption, or
45 other acquisition of a transferable interest in the company, as of the
46 date money or other property is transferred or debt incurred by the
47 company; and

1 (2) in all other cases, as of the date:

2 (a) the distribution is authorized, if the payment occurs within
3 120 days after that date; or

4 (b) the payment is made, if the payment occurs more than 120
5 days after the distribution is authorized.

6 d. A limited liability company's indebtedness to a member
7 incurred by reason of a distribution made in accordance with this
8 section is at parity with the company's indebtedness to its general,
9 unsecured creditors.

10 e. A limited liability company's indebtedness, including
11 indebtedness issued in connection with or as part of a distribution,
12 is not a liability for purposes of subsection a. of this section if the
13 terms of the indebtedness provide that payment of principal and
14 interest are made only to the extent that a distribution could be
15 made to members under this section.

16 f. If indebtedness is issued as a distribution, each payment of
17 principal or interest on the indebtedness is treated as a distribution,
18 the effect of which is measured on the date the payment is made.

19 g. As used in this section, "distribution" does not include
20 amounts constituting reasonable compensation for present or past
21 services or reasonable payments made in the ordinary course of
22 business under a bona fide retirement plan or other benefits
23 program.

24

25 36. Liability for Improper Distributions.

26 a. Except as otherwise provided in subsection b. of this section,
27 if a member of a member-managed limited liability company or
28 manager of a manager-managed limited liability company consents
29 to a distribution made in violation of section 35 of this act and in
30 consenting to the distribution fails to comply with section 39 of this
31 act, the member or manager is personally liable to the company for
32 the amount of the distribution that exceeds the amount that could
33 have been distributed without the violation of section 35 of this act.

34 b. To the extent the operating agreement of a member-managed
35 limited liability company expressly relieves a member of the
36 authority and responsibility to consent to distributions and imposes
37 that authority and responsibility on one or more other members, the
38 liability stated in subsection a. of this section applies to the other
39 members and not the member that the operating agreement relieves
40 of authority and responsibility.

41 c. A person that receives a distribution knowing that the
42 distribution to that person was made in violation of section 35 of
43 this act is personally liable to the limited liability company but only
44 to the extent that the distribution received by the person exceeded
45 the amount that could have been properly paid under section 35 of
46 this act.

1 d. A person against which an action is commenced because the
2 person is liable under subsection a. of this section may:

3 (1) implead any other person that is subject to liability under
4 subsection a. of this section and seek to compel contribution from
5 the person; and

6 (2) implead any person that received a distribution in violation
7 of subsection c. of this section and seek to compel contribution
8 from the person in the amount the person received in violation of
9 subsection c. of this section.

10 e. An action under this section is barred if not commenced
11 within two years after the distribution.

12

13 37. Management of Limited Liability Company.

14 a. A limited liability company is a member-managed limited
15 liability company unless the operating agreement:

16 (1) expressly provides that:

17 (a) the company is or will be “manager-managed;”

18 (b) the company is or will be “managed by managers;” or

19 (c) management of the company is or will be “vested in
20 managers;” or

21 (2) includes words of similar import.

22 b. In a member-managed limited liability company, the
23 following rules shall apply:

24 (1) The management and conduct of the company are vested in
25 the members.

26 (2) Each member has equal rights in the management and
27 conduct of the company’s activities.

28 (3) A difference arising among members as to a matter in the
29 ordinary course of the activities of the company may be decided by
30 a majority of the members.

31 (4) An act outside the ordinary course of the activities of the
32 company may be undertaken only with the consent of all members.

33 (5) The operating agreement may be amended only with the
34 consent of all members.

35 c. In a manager-managed limited liability company, the
36 following rules apply:

37 (1) Except as otherwise expressly provided in this act, any
38 matter relating to the activities of the company is decided
39 exclusively by the managers.

40 (2) Each manager has equal rights in the management and
41 conduct of the activities of the company.

42 (3) A difference arising among managers as to a matter in the
43 ordinary course of the activities of the company may be decided by
44 a majority of the managers.

45 (4) The consent of all members is required to:

1 (a) sell, lease, exchange, or otherwise dispose of all, or
2 substantially all, of the company's property, with or without the
3 good will, outside the ordinary course of the company's activities;

4 (b) approve a merger, conversion, or domestication under
5 Article 10 (section 73 through 87 of this act);

6 (c) undertake any other act outside the ordinary course of the
7 company's activities; and

8 (d) amend the operating agreement.

9 (5) A manager may be chosen at any time by the consent of a
10 majority of the members and remains a manager until a successor
11 has been chosen, unless the manager at an earlier time resigns, is
12 removed, or dies, or, in the case of a manager that is not an
13 individual, terminates. A manager may be removed at any time by
14 the consent of a majority of the members without notice or cause.

15 (6) A person need not be a member to be a manager, but the
16 dissociation of a member that is also a manager removes the person
17 as a manager. If a person that is both a manager and a member
18 ceases to be a manager, that cessation does not by itself dissociate
19 the person as a member.

20 (7) A person's ceasing to be a manager does not discharge any
21 debt, obligation, or other liability to the limited liability company or
22 members which the person incurred while a manager.

23 d. An action requiring the consent of members under this act
24 may be taken without a meeting, and a member may appoint a
25 proxy or other agent to consent or otherwise act for the member by
26 signing an appointing record, personally or by the member's agent.

27 e. The dissolution of a limited liability company does not affect
28 the applicability of this section. However, a person that wrongfully
29 causes dissolution of the company loses the right to participate in
30 management as a member and a manager.

31 f. This act does not entitle a member to remuneration for
32 services performed for a member-managed limited liability
33 company, except for reasonable compensation for services rendered
34 in winding up the activities of the company.

35

36 38. Indemnification and Insurance.

37 a. As used in this section:

38 (1) "Company agent" means any person who is or was a
39 member of a member-managed company, a manager of a manager-
40 managed company, an officer, employee or agent of the
41 indemnifying company or of any constituent company absorbed by
42 the indemnifying company in a consolidation or merger and any
43 person who is or was a member, manager, officer, director, trustee,
44 employee or agent of any other enterprise, serving as such at the
45 request of the indemnifying company, or any such constituent
46 company, or the legal representatives of any such member,
47 manager, officer, director, trustee, employee or agent.

1 (2) "Other enterprise" and "another enterprise" mean any
2 domestic or foreign limited liability company other than the
3 company, and any corporation, partnership, joint venture, sole
4 proprietorship, trust or other enterprise, whether or not for profit,
5 served by a company agent;

6 (3) "Expenses" means reasonable costs, disbursements and
7 attorney's fees;

8 (4) "Liabilities" means amounts paid or incurred in satisfaction
9 of settlements, judgments, fines and penalties; and

10 (5) "Proceeding" means any pending, threatened or completed
11 civil, criminal, administrative or arbitrative action, suit or
12 proceeding, and any appeal therein, and any inquiry or investigation
13 which could lead to that action or proceeding.

14 (6) References to an "other enterprise" or "another enterprise"
15 include employee benefit plans; references to "fines" include any
16 excise taxes assessed on a person with respect to an employee
17 benefit plan; and references to "serving at the request of the
18 indemnifying company" include any service as a company agent
19 which imposes duties on, or involves services by, the company
20 agent with respect to an employee benefit plan, its participants and
21 beneficiaries.

22 b. A limited liability company shall indemnify a company
23 agent against expenses to the extent that such company agent has
24 been successful on the merits or otherwise in any proceeding
25 brought against the company agent by reason of the company agent
26 serving as a company agent or serving another enterprise at the
27 request of the limited liability company. If the company agent is
28 successful on the merits or otherwise in defense of any claim, issue
29 or matter in any such proceeding, indemnification shall be provided
30 under this subsection with respect to the claim, issue or matter.

31 c. A limited liability company shall indemnify a company
32 agent against any debt, obligation, expense or other liability
33 incurred by that company agent in the course of the company
34 agent's activities on behalf of the limited liability company or
35 another enterprise at the request of the limited liability company, if,
36 in making the payment or incurring the debt, obligation, expense or
37 other liability, the company agent complied with the duties stated in
38 sections 35 and 39 of this act.

39 d. A limited liability company may purchase and maintain
40 insurance on behalf of any company agent against any expenses
41 incurred in any proceeding and any liabilities asserted against the
42 company agent in his or her capacity as a company agent, whether
43 or not the limited liability company could eliminate or limit the
44 person's liability to the company for the conduct giving rise to the
45 liability under subsection g. of section 11 of this act. The limited
46 liability company may purchase such insurance from, or such
47 insurance may be reinsured in whole or in part by, an insurer owned

1 by or otherwise affiliated with the limited liability company,
2 whether or not such insurer does business with other insureds.

3

4 39. Standards of Conduct for Members and Managers.

5 a. A member of a member-managed limited liability company
6 owes to the company and, subject to subsection b. of section 67 of
7 this act, the other members, the duties of loyalty and care stated in
8 subsections b. and c. of this section.

9 b. The fiduciary duty of loyalty of a member in a member-
10 managed limited liability company includes the duties:

11 (1) to account to the company and to hold as trustee for it any
12 property, profit, or benefit derived by the member:

13 (a) in the conduct or winding up of the company's activities;

14 (b) from a use by the member of the company's property; or

15 (c) from the appropriation of a company opportunity;

16 (2) to refrain from dealing with the company in the conduct or
17 winding up of the company's activities as or on behalf of a person
18 having an interest adverse to the company; and

19 (3) to refrain from competing with the company in the conduct
20 of the company's activities before the dissolution of the company.

21 c. The duty of care of a member of a member-managed limited
22 liability company in the conduct and winding up of the company's
23 activities is to refrain from engaging in grossly negligent or reckless
24 conduct, intentional misconduct, or a knowing violation of law.

25 d. A member shall discharge the duties under this act or under
26 the operating agreement and exercise any rights consistently with
27 the contractual obligation of good faith and fair dealing.

28 e. A member does not violate a duty or obligation under this
29 act or under the operating agreement merely because the member's
30 conduct furthers the member's own interest.

31 f. All of the members of a member-managed limited liability
32 company or a manager-managed limited liability company may
33 authorize or ratify, after full disclosure of all material facts, a
34 specific act or transaction that otherwise would violate the duty of
35 loyalty.

36 g. It is a defense to a claim under paragraph (2) of subsection
37 b. of this section and any comparable claim in equity or at common
38 law that the transaction was fair to the limited liability company.

39 h. If, as permitted by subsection f. of this section or the
40 operating agreement, a member enters into a transaction with the
41 company that would otherwise be prohibited by paragraph (2) of
42 subsection b. of this section, the member's rights and obligations are
43 the same as those of a person not a member.

44 i. In a manager-managed limited liability company, the
45 following rules apply:

46 (1) Subsections a., b., c. and g. of this section apply to the
47 manager or managers and not the members, and the duty stated

1 under paragraph (3) of subsection b. of this section continues until
2 winding up is completed.

3 (2) Subsections d. and e. of this section apply to the managers as
4 well as the members and, subject to subsection d. of this section, a
5 member does not have any duty to the company or any other
6 member solely by reason of being a member.

7 (3) The power to ratify stated in subsection f. of this section
8 pertains only to the members.

9

10 40. Right of Members, Managers, and Dissociated Members to
11 Information.

12 a. In a member-managed limited liability company, the
13 following rules shall apply:

14 (1) On reasonable notice, a member may inspect and copy
15 during regular business hours, at a reasonable location specified by
16 the company, any record maintained by the company regarding the
17 company's activities, financial condition, and other circumstances,
18 to the extent the information is material to the member's rights and
19 duties under the operating agreement or this act.

20 (2) The company shall furnish to each member:

21 (a) without demand, any information concerning the company's
22 activities, financial condition, and other circumstances which the
23 company knows and is material to the proper exercise of the
24 member's rights and duties under the operating agreement or this
25 act, except to the extent the company can establish that it
26 reasonably believes the member already knows the information; and

27 (b) on demand, any other information concerning the company's
28 activities, financial condition, and other circumstances, except to
29 the extent the demand or information demanded is unreasonable or
30 otherwise improper under the circumstances.

31 (3) The duty to furnish information under paragraph (2) of this
32 subsection also applies to each member to the extent the member
33 knows any of the information described in paragraph (2).

34 b. In a manager-managed limited liability company, the
35 following rules shall apply:

36 (1) The informational rights stated in subsection a. of this
37 section and the duty stated in paragraph (3) of subsection a. of this
38 section apply to the managers and not the members.

39 (2) During regular business hours and at a reasonable location
40 specified by the company, a member may obtain from the company
41 and inspect and copy full information regarding the activities,
42 financial condition, and other circumstances of the company as is
43 just and reasonable if:

44 (a) the member seeks the information for a purpose material to
45 the member's interest as a member;

- 1 (b) the member makes a demand in a record received by the
2 company, describing with reasonable particularity the information
3 sought and the purpose for seeking the information; and
- 4 (c) the information sought is directly connected to the member's
5 purpose.
- 6 (3) Within 10 days after receiving a demand pursuant to
7 subparagraph (b) of paragraph (2) of this subsection, the company
8 shall in a record inform the member that made the demand:
- 9 (a) of the information that the company will provide in response
10 to the demand and when and where the company will provide the
11 information; and
- 12 (b) if the company declines to provide any demanded
13 information, the company's reasons for declining.
- 14 (4) Whenever this act or an operating agreement provides for a
15 member to give or withhold consent to a matter, before the consent
16 is given or withheld, the company shall, without demand, provide
17 the member with all information that is known to the company and
18 is material to the member's decision.
- 19 c. On 10 days' demand made in a record received by a limited
20 liability company, a dissociated member may have access to
21 information to which the person was entitled while a member if the
22 information pertains to the period during which the person was a
23 member, the person seeks the information in good faith, and the
24 person satisfies the requirements imposed on a member by
25 paragraph (2) of subsection b. of this section. The company shall
26 respond to a demand made pursuant to this subsection in the manner
27 provided in paragraph (3) of subsection b. of this section.
- 28 d. A limited liability company may charge a person that makes
29 a demand under this section the reasonable costs of copying, limited
30 to the costs of labor and material.
- 31 e. A member or dissociated member may exercise rights under
32 this section through an agent or, in the case of an individual under
33 legal disability, a legal representative. Any restriction or condition
34 imposed by the operating agreement or under subsection g. of this
35 section applies both to the agent or legal representative and the
36 member or dissociated member.
- 37 f. The rights under this section do not extend to a person as
38 transferee.
- 39 g. In addition to any restriction or condition stated in its
40 operating agreement, a limited liability company, as a matter within
41 the ordinary course of its activities, may impose reasonable
42 restrictions and conditions on access to and use of information to be
43 furnished under this section, including designating information
44 confidential and imposing nondisclosure and safeguarding
45 obligations on the recipient. In a dispute concerning the
46 reasonableness of a restriction under this subsection, the company
47 has the burden of proving reasonableness.

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ARTICLE 5
TRANSFERABLE INTERESTS AND RIGHTS OF
TRANSFEREES AND CREDITORS

41. Nature of Transferable Interest.

A transferable interest shall be personal property.

42. Transfer of Transferable Interest.

a. A transfer, in whole or in part, of a transferable interest:

(1) is permissible;

(2) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities; and

(3) subject to section 44 of this act, does not entitle the transferee to:

(a) participate in the management or conduct of the company's activities; or

(b) except as otherwise provided in subsection c. of this section, have access to records or other information concerning the company's activities.

b. A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

c. In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

d. A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

e. A limited liability company need not give effect to a transferee's rights under this section until the company has notice of the transfer.

f. A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having notice of the restriction at the time of transfer.

g. Except as otherwise provided in paragraph (2) of subsection d. of section 46 of this act, when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

h. When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under section 43 and subsection c. of section 36 of this act known to the transferee when the transferee becomes a member.

1 43. Charging Order.

2 a. On application by a judgment creditor of a member or
3 transferee, a court may enter a charging order against the
4 transferable interest of the judgment debtor for the unsatisfied
5 amount of the judgment. A charging order constitutes a lien on a
6 judgment debtor's transferable interest and requires the limited
7 liability company to pay over to the person to which the charging
8 order was issued any distribution that would otherwise be paid to
9 the judgment debtor.

10 b. To the extent necessary to effectuate the collection of
11 distributions pursuant to a charging order in effect under subsection
12 a. of this section, the court may:

13 (1) appoint a receiver of the distributions subject to the charging
14 order, with the power to make all inquiries the judgment debtor
15 might have made; and

16 (2) make all other orders necessary to give effect to the charging
17 order.

18 c. Upon a showing that distributions under a charging order
19 will not pay the judgment debt within a reasonable time, the court
20 may foreclose the lien and order the sale of the transferable interest.
21 The purchaser at the foreclosure sale only obtains the transferable
22 interest, does not thereby become a member, and is subject to
23 section 42 of this act.

24 d. At any time before foreclosure under subsection c. of this
25 section, the member or transferee whose transferable interest is
26 subject to a charging order under subsection a. of this section may
27 extinguish the charging order by satisfying the judgment and filing
28 a certified copy of the satisfaction with the court that issued the
29 charging order.

30 e. At any time before foreclosure under subsection c. of this
31 section, a limited liability company or one or more members whose
32 transferable interests are not subject to the charging order may pay
33 to the judgment creditor the full amount due under the judgment
34 and thereby succeed to the rights of the judgment creditor,
35 including the charging order.

36 f. This act shall not deprive any member or transferee of the
37 benefit of any exemption laws applicable to the member's or
38 transferee's transferable interest.

39 g. This section provides the exclusive remedy by which a
40 person seeking to enforce a judgment against a member or
41 transferee may, in the capacity of judgment creditor, satisfy the
42 judgment from the judgment debtor's transferable interest.

43

44 44. Power of Personal Representative of Deceased Member. If a
45 member dies, the deceased member's personal representative or
46 other legal representative may exercise the rights of a transferee
47 provided in subsection c. of section 42 of this act and, for the

1 purposes of settling the estate, the rights of a current member under
2 section 40 of this act.

3

4

ARTICLE 6

5

MEMBER'S POWER TO DISSOCIATE; WRONGFUL

6

DISSOCIATION

7

45. Member's Power to Dissociate; Wrongful Dissociation.

8

a. A person has the power to dissociate as a member at any
9 time, rightfully or wrongfully, by withdrawing as a member by
10 express will under section 46 of this act.

11

b. A person's dissociation from a limited liability company is
12 wrongful only if the dissociation:

13

(1) is in breach of an express provision of the operating
14 agreement; or

15

(2) occurs before the termination of the company and:

16

(a) the person is expelled as a member by judicial order under
17 subsection e. of section 46 of this act;

18

(b) the person is dissociated under paragraph (1) of subsection
19 g. of section 46 of this act, by becoming a debtor in bankruptcy; or

20

(c) in the case of a person that is not a trust other than a
21 business trust, an estate, or an individual, the person is expelled or
22 otherwise dissociated as a member because it willfully dissolved or
23 terminated; or

24

(3) in the case of a company for a definite term or particular
25 undertaking, by withdrawing as a member by express will under
26 section 46 of this act before the expiration of the term or the
27 completion of the undertaking.

28

c. A person that wrongfully dissociates as a member is liable to
29 the limited liability company and, subject to section 67 of this act,
30 to the other members for damages caused by the dissociation. The
31 liability is in addition to any other debt, obligation, or other liability
32 of the member to the company or the other members.

33

34

46. Events Causing Dissociation. A person is dissociated as a
35 member from a limited liability company when:

36

a. The company has notice of the person's express will to
37 withdraw as a member, but, if the person specified a withdrawal
38 date later than the date the company had notice, on that later date;

39

b. An event stated in the operating agreement as causing the
40 person's dissociation occurs;

41

c. The person is expelled as a member pursuant to the
42 operating agreement;

43

d. The person is expelled as a member by the unanimous
44 consent of the other members if:

45

(1) it is unlawful to carry on the company's activities with the
46 person as a member;

- 1 (2) there has been a transfer of all of the person's transferable
2 interest in the company, other than:
- 3 (a) a transfer for security purposes; or
4 (b) a charging order in effect under section 43 of this act which
5 has not been foreclosed;
- 6 (3) the person is a corporation and, within 90 days after the
7 company notifies the person that it will be expelled as a member
8 because the person has filed a certificate of dissolution or the
9 equivalent, its charter has been revoked, or its right to conduct
10 business has been suspended by the jurisdiction of its incorporation,
11 the certificate of dissolution has not been revoked or its charter or
12 right to conduct business has not been reinstated; or
- 13 (4) the person is a limited liability company or partnership that
14 has been dissolved and whose business is being wound up;
- 15 e. On application by the company, the person is expelled as a
16 member by judicial order because the person:
- 17 (1) has engaged, or is engaging, in wrongful conduct that has
18 adversely and materially affected, or will adversely and materially
19 affect, the company's activities;
- 20 (2) has willfully or persistently committed, or is willfully and
21 persistently committing, a material breach of the operating
22 agreement or the person's duties or obligations under section 39 of
23 this act; or
- 24 (3) has engaged, or is engaging, in conduct relating to the
25 company's activities which makes it not reasonably practicable to
26 carry on the activities with the person as a member;
- 27 f. In the case of a person who is an individual:
- 28 (1) the person dies; or
29 (2) in a member-managed limited liability company:
- 30 (a) a guardian or general conservator for the person is
31 appointed; or
32 (b) there is a judicial order that the person has otherwise become
33 incapable of performing the person's duties as a member under this
34 act or the operating agreement;
- 35 g. In a member-managed limited liability company, the person:
- 36 (1) becomes a debtor in bankruptcy;
37 (2) executes an assignment for the benefit of creditors; or
38 (3) seeks, consents to, or acquiesces in the appointment of a
39 trustee, receiver, or liquidator of the person or of all or substantially
40 all of the person's property;
- 41 h. In the case of a person that is a trust or is acting as a member
42 by virtue of being a trustee of a trust, the trust's entire transferable
43 interest in the company is distributed;
- 44 i. In the case of a person that is an estate or is acting as a
45 member by virtue of being a personal representative of an estate,
46 the estate's entire transferable interest in the company is distributed;

1 j. In the case of a member that is not an individual,
2 partnership, limited liability company, corporation, trust, or estate,
3 the termination of the member;

4 k. The company participates in a merger under Article 10
5 (sections 73 through 87 of this act) if:

6 (1) the company is not the surviving entity; or,

7 (2) otherwise as a result of the merger, the person ceases to be a
8 member;

9 l. The company participates in a conversion under Article 10
10 (sections 73 through 87 of this act);

11 m. The company participates in a domestication under Article
12 10 (sections 73 through 87 of this act), if, as a result of the
13 domestication, the person ceases to be a member; or

14 n. The company terminates.

15

16 47. Effect of Person's Dissociation as Member.

17 a. When a person is dissociated as a member of a limited
18 liability company:

19 (1) the person's right to participate as a member in the
20 management and conduct of the company's activities terminates;

21 (2) if the company is member-managed, the person's fiduciary
22 duties as a member end with regard to matters arising and events
23 occurring after the person's dissociation; and

24 (3) subject to section 44 and Article 10 (sections 73 through 87
25 of this act), any transferable interest owned by the person
26 immediately before dissociation in the person's capacity as a
27 member is owned by the person solely as a transferee.

28 b. A person's dissociation as a member of a limited liability
29 company does not of itself discharge the person from any debt,
30 obligation, or other liability to the company or the other members
31 which the person incurred while a member.

32 c. A court that expels a member from a company pursuant to
33 subsection e. of section 46 of this act may order the sale of the
34 interests held by such person immediately before dissociation to
35 either the company or to any other persons who are parties to the
36 action if the court determines, in its discretion, that such an order is
37 required by any other law, rule or regulation, or that such an order
38 would be fair and equitable to all parties under all of the
39 circumstances of the case.

40

41

ARTICLE 7

42

DISSOLUTION AND WINDING UP

43

48. Events Causing Dissolution.

44

a. A limited liability company is dissolved, and its activities
45 shall be wound up, upon the occurrence of any of the following:

46

(1) an event or circumstance that the operating agreement states
47 causes dissolution;

- 1 (2) the consent of all the members;
- 2 (3) the passage of 90 consecutive days during which the
3 company has no members;
- 4 (4) on application by a member, the entry by the Superior Court
5 of an order dissolving the company on the grounds that:
- 6 (a) the conduct of all or substantially all of the company's
7 activities is unlawful; or
- 8 (b) it is not reasonably practicable to carry on the company's
9 activities in conformity with one or both of the certificate of
10 formation and the operating agreement; or
- 11 (5) on application by a member, the entry by the Superior Court
12 of an order dissolving the company on the grounds that the
13 managers or those members in control of the company:
- 14 (a) have acted, are acting, or will act in a manner that is illegal
15 or fraudulent; or
- 16 (b) have acted or are acting in a manner that is oppressive and
17 was, is, or will be directly harmful to the applicant.
- 18 (6) A certificate of dissolution is filed before the delayed
19 effective date of a certificate of formation pursuant to subsection e.
20 of section 18 of this act.
- 21 b. In a proceeding brought under paragraph (4) or (5) of
22 subsection a. of this section, the court may order or a party may
23 seek a remedy other than dissolution, including, but not limited to,
24 the appointment of a custodian or one or more provisional
25 managers. The court shall appoint a custodian or one or more
26 provisional managers if it appears to the court that such an
27 appointment may be in the best interests of the limited liability
28 company and its members. In any proceeding under this section,
29 the court shall allow reasonable compensation to any custodian or
30 provisional manager for his or her services and reimbursement or
31 direct payment of all his or her reasonable costs and expenses,
32 which amounts shall be paid by the limited liability company. The
33 court may appoint a custodian or one or more provisional managers
34 in a summary proceeding or otherwise; or order the sale of all
35 interests held by a member who is a party to the proceeding to
36 either the limited liability company or any other member who is a
37 party to the proceeding, if the court determines in its discretion that
38 such an order would be fair and equitable to all parties under all of
39 the circumstances of the case.
- 40 c. If the court determines that any party to a proceeding
41 brought under paragraph (4) or (5) of subsection a. of this section
42 has acted vexatiously, or otherwise not in good faith, it may in its
43 discretion award reasonable expenses, including counsel fees
44 incurred in connection with the action, to the injured party or
45 parties.

- 1 49. Winding Up.
- 2 a. A dissolved limited liability company shall wind up its
3 activities, and the company continues after dissolution only for the
4 purpose of winding up.
- 5 b. In winding up its activities, a limited liability company:
6 (1) shall discharge the company's debts, obligations, or other
7 liabilities, settle and close the company's activities, and marshal
8 and distribute the assets of the company; and
9 (2) shall:
10 (a) deliver to the filing office for filing a certificate of
11 dissolution stating the name of the company and such other
12 information as may be required by the filing office to correctly
13 identify the company and that the company is dissolved;
14 (b) preserve the company activities and property as a going
15 concern for a reasonable time;
16 (c) prosecute and defend actions and proceedings, whether civil,
17 criminal, or administrative;
18 (d) transfer the company's property;
19 (e) settle disputes by mediation or arbitration;
20 (f) deliver to the filing office for filing a statement of
21 termination stating the name of the company and that the company
22 is terminated; and
23 (g) perform other acts necessary or appropriate to the winding
24 up.
- 25 c. If a dissolved limited liability company has no members, the
26 legal representative of the last person to have been a member may
27 wind up the activities of the company. If the person does so, the
28 person has the powers of a sole manager under subsection c. of
29 section 37 of this act and is deemed to be a manager for the
30 purposes of paragraph (2) of subsection a. of section 30 of this act.
- 31 d. If the legal representative under subsection c. of this section
32 declines or fails to wind up the company's activities, a person may
33 be appointed to do so by the consent of transferees owning a
34 majority of the rights to receive distributions as transferees at the
35 time the consent is to be effective. A person appointed under this
36 subsection:
37 (1) has the powers of a sole manager under subsection c. of
38 section 37 of this act and is deemed to be a manager for the
39 purposes of paragraph (2) of subsection a. of section 30 of this act;
40 and
41 (2) shall promptly deliver to the filing office for filing an
42 amendment to the company's certificate of formation to:
43 (a) state that the company has no members;
44 (b) state that the person has been appointed pursuant to this
45 subsection to wind up the company; and
46 (c) provide the street and mailing addresses of the person.

- 1 e. The Superior Court may order judicial supervision of the
2 winding up of a dissolved limited liability company, including the
3 appointment of a person to wind up the company's activities:
- 4 (1) on application of a member, if the applicant establishes good
5 cause;
- 6 (2) on the application of a transferee, if:
- 7 (a) the company does not have any members;
- 8 (b) the legal representative of the last person to have been a
9 member declines or fails to wind up the company's activities; and
- 10 (c) within a reasonable time following the dissolution a person
11 has not been appointed pursuant to subsection d. of this section; or
- 12 (3) in connection with a proceeding under paragraph (4) or (5)
13 of subsection a. of section 48 of this act.
- 14
- 15 50. Known Claims Against Dissolved Limited Liability
16 Company.
- 17 a. Except as otherwise provided in subsection d. of this section,
18 a dissolved limited liability company may give notice of a known
19 claim under subsection b. of this section, which has the effect as
20 provided in subsection c. of this section.
- 21 b. A dissolved limited liability company may in a record notify
22 its known claimants of the dissolution. The notice shall:
- 23 (1) specify the information required to be included in a claim;
- 24 (2) provide a mailing address to which the claim is to be sent;
- 25 (3) state the deadline for receipt of the claim, which may not be
26 less than 120 days after the date the notice is received by the
27 claimant; and
- 28 (4) state that the claim will be barred if not received by the
29 deadline.
- 30 c. A claim against a dissolved limited liability company is
31 barred if the requirements of subsection b. of this section are met
32 and:
- 33 (1) the claim is not received by the specified deadline; or
- 34 (2) if the claim is timely received but rejected by the company:
- 35 (a) the company causes the claimant to receive a notice in a
36 record stating that the claim is rejected and will be barred unless the
37 claimant commences an action against the company to enforce the
38 claim within 90 days after the claimant receives the notice; and
- 39 (b) the claimant does not commence the required action within
40 the 90 days.
- 41 d. This section does not apply to a claim based on an event
42 occurring after the effective date of dissolution or a liability that on
43 that date is contingent.

1 51. Other Claims Against Dissolved Limited Liability Company.

2 a. A dissolved limited liability company may publish notice of
3 its dissolution and request persons having claims against the
4 company to present them in accordance with the notice.

5 b. The notice authorized by subsection a. of this section shall:

6 (1) be published at least once in a newspaper of general
7 circulation in the county in this State in which the dissolved limited
8 liability company's principal office is located or, if it has none in
9 this State, in the county in which the company's registered office is
10 or was last located;

11 (2) describe the information required to be contained in a claim
12 and provide a mailing address to which the claim is to be sent; and

13 (3) state that a claim against the company is barred unless an
14 action to enforce the claim is commenced within five years after
15 publication of the notice.

16 c. If a dissolved limited liability company publishes a notice in
17 accordance with subsection b. of this section, unless the claimant
18 commences an action to enforce the claim against the company
19 within five years after the publication date of the notice, the claim
20 of each of the following claimants is barred:

21 (1) a claimant that did not receive notice in a record under
22 section 50 of this act;

23 (2) a claimant whose claim was timely sent to the company but
24 not acted on; and

25 (3) a claimant whose claim is contingent at, or based on an
26 event occurring after, the effective date of dissolution.

27 d. A claim not barred under this section may be enforced:

28 (1) against a dissolved limited liability company, to the extent of
29 its undistributed assets; and

30 (2) if assets of the company have been distributed after
31 dissolution, against a member or transferee to the extent of that
32 person's proportionate share of the claim or of the assets distributed
33 to the member or transferee after dissolution, whichever is less, but
34 a person's total liability for all claims under this paragraph does not
35 exceed the total amount of assets distributed to the person after
36 dissolution.

37

38 52. Claims Against Member or Transferee Barred Unless Filed
39 Within Five Years After Limited Liability Company Dissolved.

40 a. A claimant, and all those claiming through or under the
41 claimant, shall be forever barred from suing a member or transferee
42 on any claim, or otherwise realizing upon or enforcing any claim
43 against a member or transferee, unless an action is commenced
44 against the member or transferee, pursuant to paragraph (2) of
45 subsection d. of section 51 of this act, or otherwise, within five
46 years after the limited liability company was dissolved.

47 b. This section shall not:

1 (1) apply to claims against members or transferees which are in
2 litigation on the effective date of this section;

3 (2) operate to extend any otherwise applicable statute of
4 limitations; or

5 (3) affect any rights of creditors under the “Uniform Fraudulent
6 Transfer Act,” R.S.25:2-20 et seq.

7

8 53. Administrative Action.

9 a. The filing office may place a limited liability company on
10 the inactive list if the company does not:

11 (1) pay, within 60 days after the due date, any fee or penalty due
12 to the filing office under this act or law other than this act;

13 (2) file annual reports for two consecutive years pursuant to
14 section 26 of this act.

15 b. If the filing office determines that a ground exists for
16 placing a company on the inactive list, the filing office shall
17 provide notice of the filing office’s intent to the registered office of
18 the company or the principal office of the company if the mailing
19 address of the principal office appears in the records of the filing
20 office and is different from the mailing address of the registered
21 office.

22 c. If within 60 days after service of the notice pursuant to
23 subsection b. of this section a limited liability company does not
24 correct each ground for being placed on the inactive list or
25 demonstrate to the reasonable satisfaction of the filing office that
26 each ground determined by the filing office does not exist, the filing
27 office shall place the company on the inactive list and file a
28 declaration of the action. The filing office shall send a notice of the
29 action to the registered office of the company or the principal office
30 of the company if the mailing address of the principal office
31 appears in the records of the filing office and is different from the
32 mailing address of the registered office.

33 d. A limited liability company that has been placed on the
34 inactive list continues in existence but, subject to section 54 of this
35 act, may carry on only activities necessary to wind up its activities
36 and liquidate its assets under sections 49 and 56 of this act and to
37 notify claimants under sections 50 and 51 of this act.

38 e. An inactivation of a limited liability company does not
39 terminate the authority of its agent for service of process.

40

41 54. Reinstatement Following Administrative Dissolution.

42 a. A limited liability company that has been placed on the
43 inactive list may apply to the filing office for reinstatement. The
44 application shall be delivered to the filing office for filing and state:

45 (1) the name of the company and such other information as may
46 be required by the filing office to correctly identify the company;
47 and

1 (2) that the company's name satisfies the requirements of
2 section 8 of this act.

3 b. If the filing office determines that an application under
4 subsection a. of this section contains the required information and
5 that the information is correct, the filing office shall reinstate the
6 company and provide notice of the reinstatement to the company.

7 c. When a reinstatement becomes effective, it relates back to
8 and takes effect as of the effective date of the filing office action
9 placing the company on the inactive list, and the limited liability
10 company may resume its activities as if the filing office action had
11 not occurred.

12

13 55. Appeal from Rejection of Reinstatement.

14 a. If the filing office rejects a limited liability company's
15 application for reinstatement, the filing office shall present a notice
16 to the company explaining the reason for rejection.

17 b. Within 30 days after a rejection of reinstatement under
18 subsection a. of this section, a limited liability company may appeal
19 from the rejection by petitioning the court to set aside the filing
20 office action. The petition shall be served on the filing office and
21 contain a copy of the company's application for reinstatement and
22 the filing office's notice of rejection.

23 c. The court may order the filing office to reinstate a limited
24 liability company or take other action the court considers
25 appropriate.

26

27 56. Distribution of Assets in Winding Up Limited Liability
28 Company's Activities.

29 a. In winding up its activities, a limited liability company shall
30 apply its assets to discharge its obligations to creditors, including
31 members that are creditors.

32 b. After a limited liability company complies with subsection a.
33 of this section, any surplus shall be distributed in the following
34 order, subject to any charging order in effect under section 43 of
35 this act:

36 (1) to each person owning a transferable interest that reflects
37 contributions made by a member and not previously returned, an
38 amount equal to the value of the unreturned contributions; and

39 (2) in equal shares among members and dissociated members,
40 except to the extent necessary to comply with any transfer effective
41 under section 42 of this act.

42 c. If a limited liability company does not have sufficient
43 surplus to comply with paragraph (1) of subsection b. of this
44 section, any surplus shall be distributed among the owners of
45 transferable interests in proportion to the value of their respective
46 unreturned contributions.

1 d. All distributions made under subsections b. and c. of this
2 section shall be paid in money.

3

4

ARTICLE 8

5

FOREIGN LIMITED LIABILITY COMPANIES

6

57. Governing Law.

7

a. The law of the state or other jurisdiction under which a
8 foreign limited liability company is formed governs:

9

(1) the internal affairs of the company; and

10

(2) the liability of a member as member and a manager as
11 manager for the debts, obligations, or other liabilities of the
12 company.

13

b. A foreign limited liability company may not be denied a
14 certificate of authority by reason of any difference between the laws
15 of the jurisdiction under which the company is formed and the law
16 of this State.

17

c. A certificate of authority does not authorize a foreign limited
18 liability company to engage in any business or exercise any power
19 that a limited liability company may not engage in or exercise in
20 this State.

21

22

58. Application for Certificate of Authority.

23

A foreign limited liability company may apply for a certificate of
24 authority to transact business in this State by delivering an
25 application to the filing office for filing. The application shall
26 state:

27

a. the name of the company and, if the name does not comply
28 with section 8 of this act, an alternate name adopted pursuant to
29 subsection a. of section 61 of this act;

30

b. the name of the state or other jurisdiction under whose law
31 the company is formed;

32

c. the street and mailing addresses of the company's principal
33 office and, if the law of the jurisdiction under which the company is
34 formed require the company to maintain an office in that
35 jurisdiction, the street and mailing addresses of the required office;
36 and

37

d. the name and street and mailing addresses of the company's
38 initial agent for service of process in this state.

39

40

59. Activities Not Constituting Transacting Business.

41

a. Activities of a foreign limited liability company which do
42 not constitute transacting business in this State within the meaning
43 of this section include:

44

(1) maintaining, defending, or settling an action or proceeding;

45

(2) carrying on any activity concerning its internal affairs,
46 including holding meetings of its members or managers;

47

(3) maintaining accounts in financial institutions;

1 (4) maintaining offices or agencies for the transfer, exchange,
2 and registration of the company's own securities or maintaining
3 trustees or depositories with respect to those securities;

4 (5) selling through independent contractors;

5 (6) soliciting or obtaining orders, whether by mail or electronic
6 means or through employees or agents or otherwise, if the orders
7 require acceptance outside this State before they become contracts;

8 (7) creating or acquiring indebtedness, mortgages, or security
9 interests in real or personal property;

10 (8) securing or collecting debts or enforcing mortgages or other
11 security interests in property securing the debts and holding,
12 protecting, or maintaining property so acquired;

13 (9) conducting an isolated transaction that is completed within
14 30 days and is not in the course of similar transactions; and

15 (10) transacting business in interstate commerce.

16 b. For purposes of this section, the ownership in this State of
17 income-producing real property or tangible personal property, other
18 than property excluded under subsection a. of this section,
19 constitutes transacting business in this State.

20 c. This section does not apply in determining the contacts or
21 activities that may subject a foreign limited liability company to
22 service of process, taxation, or regulation under law of this State
23 other than this act.

24

25 60. Filing of Certificate of Authority. Unless the filing office
26 determines that an application for a certificate of registration does
27 not comply with the filing requirements of this act, the filing office,
28 upon payment of all filing fees, shall file the application of a
29 foreign limited liability company, prepare and file a certificate of
30 authority to transact business in this State, and provide a copy of the
31 filed certificate, together with a receipt for the fees, to the company
32 or its representative.

33

34 61. Noncomplying Name of Foreign Limited Liability Company.

35 a. A foreign limited liability company whose name does not
36 comply with section 8 of this act may not obtain a certificate of
37 authority until it adopts, for the purpose of transacting business in
38 this State, an alternate name that complies with section 8 of this act.
39 A foreign limited liability company that adopts an alternate name
40 under this subsection and obtains a certificate of authority with the
41 alternate name need not comply with R.S.56:1-1 et seq. After
42 obtaining a certificate of authority with an alternate name, a foreign
43 limited liability company shall transact business in this State under
44 the alternate name unless the company is authorized under
45 R.S.56:1-1 et seq. to transact business in this State under another
46 name.

1 b. If a foreign limited liability company authorized to transact
2 business in this State changes its name to one that does not comply
3 with section 8 of this act, it may not thereafter transact business in
4 this State until it complies with subsection a. of this section and
5 obtains an amended certificate of authority.

6
7 62. Revocation of Certificate of Authority.

8 a. A certificate of registration of a foreign limited liability
9 company to transact business in this State may be revoked by the
10 filing office in the manner provided in subsections b. and c. of this
11 section, if the company does not:

12 (1) pay, within 60 days after the due date, any fee or penalty due
13 to the filing office under this act or law other than this act;

14 (2) file annual reports for two consecutive years pursuant to
15 section 26 of this act.

16 b. To revoke a certificate of registration of a foreign limited
17 liability company, the filing office shall provide notice of the filing
18 office's intent to the registered office of the company or the
19 principal office of the company if the mailing address of the
20 principal office appears in the records of the filing office and is
21 different from the mailing address of the registered office.

22 c. If, within 60 days after service of the notice pursuant to
23 subsection b. of this section, a company does not correct each
24 ground for revocation or demonstrate to the reasonable satisfaction
25 of the filing office that each ground determined by the filing office
26 does not exist, the filing office shall revoke the company and file a
27 declaration of the action. The filing office shall send the company a
28 notice of the action to the registered office of the company or the
29 principal office of the company if the mailing address of the
30 principal office appears in the records of the filing office and is
31 different from the mailing address of the registered office.

32 d. The authority of a foreign limited liability company to
33 transact business in this State ceases on the effective date of the
34 notice of revocation unless before that date the company cures each
35 ground for revocation stated in the notice filed under subsection b.
36 of this section

37
38 63. Reinstatement of Certificate of Authority.

39 a. A foreign limited liability company that has been revoked
40 may apply to the filing office for reinstatement. The application
41 shall be delivered to the filing office for filing and state:

42 (1) the name of the company and such other information as may
43 be required by the filing office to correctly identify the company;
44 and

45 (2) that the company's name satisfies the requirements of
46 section 8 of this act.

1 b. If the filing office determines that an application under
2 subsection a. of this section contains the required information and
3 that the information is correct, the filing office shall reinstate the
4 company and provide notice of the reinstatement to the company.

5 c. When a reinstatement becomes effective, it relates back to
6 and takes effect as of the effective date of the filing office
7 revocation action, and the foreign limited liability company may
8 resume its activities as if the filing office action had not occurred.

9
10 64. Cancellation of Certificate of Authority. To cancel its
11 certificate of authority to transact business in this State, a foreign
12 limited liability company shall deliver to the filing office for filing
13 a certificate of cancellation stating the name of the company and
14 such other information as may be required by the filing office to
15 correctly identify the company and that the company desires to
16 cancel its certificate of authority. The certificate of authority is
17 canceled when the certificate of cancellation becomes effective.

18
19 65. Effect of Failure to Have Certificate of Authority.

20 a. A foreign limited liability company transacting business in
21 this State may not maintain an action or proceeding in this State
22 unless it has a certificate of authority to transact business in this
23 State.

24 b. The failure of a foreign limited liability company to have a
25 certificate of authority to transact business in this State does not
26 impair the validity of a contract or act of the company or prevent
27 the company from defending an action or proceeding in this State.

28 c. A member or manager of a foreign limited liability company
29 is not liable for the debts, obligations, or other liabilities of the
30 company solely because the company transacted business in this
31 State without a certificate of authority.

32 d. If a foreign limited liability company transacts business in
33 this State without a certificate of authority or cancels its certificate
34 of authority, it appoints the filing office as its agent for service of
35 process for rights of action arising out of the transaction of business
36 in this State.

37
38 66. Action by Attorney General. The Attorney General of the
39 State of New Jersey may maintain an action to enjoin a foreign
40 limited liability company from transacting business in this State in
41 violation of this act.

42
43 ARTICLE 9

44 ACTIONS BY MEMBERS

45 67. Direct Action by Member.

46 a. Subject to subsection b. of this section, a member may
47 maintain a direct action against another member, a manager, or the

1 limited liability company to enforce the member's rights and
2 otherwise protect the member's interests, including rights and
3 interests under the operating agreement or this act or arising
4 independently of the membership relationship.

5 b. A member maintaining a direct action under this section
6 shall plead and prove an actual or threatened injury that is not
7 solely the result of an injury suffered or threatened to be suffered by
8 the limited liability company.

9

10 68. Derivative Action. A member may maintain a derivative
11 action to enforce a right of a limited liability company if:

12 a. the member first makes a demand on the other members in a
13 member-managed limited liability company, or the managers of a
14 manager-managed limited liability company, requesting that they
15 cause the company to bring an action to enforce the right, and the
16 managers or other members do not bring the action within a
17 reasonable time; or

18 b. A demand under subsection a. of this section would be
19 futile.

20

21 69. Proper Plaintiff.

22 a. Except as otherwise provided in subsection b. of this section,
23 a derivative action under section 68 of this act may be maintained
24 only by a person that is a member at the time the action is
25 commenced and remains a member while the action continues.

26 b. If the sole plaintiff in a derivative action dies while the
27 action is pending, the court may permit another member of the
28 limited liability company to be substituted as plaintiff.

29

30 70. Pleading. In a derivative action under section 68 of this act,
31 the complaint shall state with particularity:

32 a. The date and content of plaintiff's demand and the response
33 to the demand by the managers or other members; or

34 b. If a demand has not been made, the reasons a demand under
35 subsection a. of section 68 of this act would be futile.

36

37 71. Special Litigation Committee.

38 a. If a limited liability company is named as or made a party in
39 a derivative proceeding, the company may appoint a special
40 litigation committee to investigate the claims asserted in the
41 proceeding and determine whether pursuing the action is in the best
42 interests of the company. If the company appoints a special
43 litigation committee, on motion by the committee made in the name
44 of the company, except for good cause shown, the court shall stay
45 discovery for the time reasonably necessary to permit the committee
46 to make its investigation. This subsection shall not prevent the
47 court from enforcing a person's right to information under section

1 40 of this act or, for good cause shown, granting extraordinary
2 relief in the form of a temporary restraining order or preliminary
3 injunction.

4 b. A special litigation committee may be composed of one or
5 more disinterested and independent individuals, who may be
6 members.

7 c. A special litigation committee may be appointed:

8 (1) in a member-managed limited liability company:

9 (a) by the consent of a majority of the members not named as
10 defendants or plaintiffs in the proceeding; and

11 (b) if all members are named as defendants or plaintiffs in the
12 proceeding, by a majority of the members named as defendants; or

13 (2) in a manager-managed limited liability company:

14 (a) by a majority of the managers not named as defendants or
15 plaintiffs in the proceeding; and

16 (b) if all managers are named as defendants or plaintiffs in the
17 proceeding, by a majority of the managers named as defendants.

18 d. After appropriate investigation, a special litigation
19 committee may determine that it is in the best interests of the
20 limited liability company that the proceeding:

21 (1) continue under the control of the plaintiff;

22 (2) continue under the control of the committee;

23 (3) be settled on terms approved by the committee; or

24 (4) be dismissed.

25 e. After making a determination under subsection d. of this
26 section, a special litigation committee shall file with the court a
27 statement of its determination and its report supporting its
28 determination, giving notice to the plaintiff. The court shall
29 determine whether the members of the committee were disinterested
30 and independent and whether the committee conducted its
31 investigation and made its recommendation in good faith,
32 independently, and with reasonable care, with the committee having
33 the burden of proof. If the court finds that the members of the
34 committee were disinterested and independent and that the
35 committee acted in good faith, independently, and with reasonable
36 care, the court shall enforce the determination of the committee.
37 Otherwise, the court shall dissolve the stay of discovery entered
38 under subsection a. of this section and allow the action to proceed
39 under the direction of the plaintiff.

40

41 72. Proceeds and Expenses.

42 a. Except as otherwise provided in subsection b. of this section:

43 (1) any proceeds or other benefits of a derivative action under
44 section 68 of this act, whether by judgment, compromise, or
45 settlement, belong to the limited liability company and not to the
46 plaintiff; and

1 (2) if the plaintiff receives any proceeds, the plaintiff shall remit
2 them immediately to the company.

3 b. If a derivative action under section 68 of this act is
4 successful in whole or in part, the court may award the plaintiff
5 reasonable expenses, including reasonable attorney's fees and costs,
6 from the recovery of the limited liability company.
7

8 ARTICLE 10

9 MERGER, CONVERSION AND DOMESTICATION

10 73. Definitions. As used in this Article 10 (sections 73 through
11 87 of this act):

12 "Constituent limited liability company" means a constituent
13 organization that is a limited liability company.

14 "Constituent organization" means an organization that is party to
15 a merger.

16 "Converted organization" means the organization into which a
17 converting organization converts pursuant to sections 78 through 81
18 of this act.

19 "Converting limited liability company" means a converting
20 organization that is a limited liability company.

21 "Converting organization" means an organization that converts
22 into another organization pursuant to section 78 of this act.

23 "Domesticated company" means the company that exists after a
24 domesticating foreign limited liability company or limited liability
25 company effects a domestication pursuant to sections 82 through 85
26 of this act.

27 "Domesticating company" means the company that effects a
28 domestication pursuant to sections 82 through 85 of this act.

29 "Governing statute" means the statute that governs an
30 organization's internal affairs.

31 "Organization" means a general partnership, including a limited
32 liability partnership, limited partnership, including a limited
33 liability limited partnership, limited liability company, business
34 trust, corporation, or any other person having a governing statute.
35 The term includes a domestic or foreign organization regardless of
36 whether organized for profit.

37 "Organizational documents" means:

38 (1) for a domestic or foreign general partnership, its partnership
39 agreement;

40 (2) for a limited partnership or foreign limited partnership, its
41 certificate of limited partnership and partnership agreement;

42 (3) for a domestic or foreign limited liability company, its
43 certificate or articles of formation and operating agreement, or
44 comparable records as provided in its governing statute;

45 (4) for a business trust, its agreement of trust and declaration of
46 trust;

1 (5) for a domestic or foreign corporation for profit, its articles of
2 incorporation, bylaws, and other agreements among its shareholders
3 which are authorized by its governing statute, or comparable
4 records as provided in its governing statute; and

5 (6) for any other organization, the basic records that create the
6 organization and determine its internal governance and the relations
7 among the persons that own it, have an interest in it, or are
8 members of it.

9 “Personal liability” means liability for a debt, obligation, or other
10 liability of an organization which is imposed on a person that co-
11 owns, has an interest in, or is a member of the organization:

12 (1) by the governing statute solely by reason of the person co-
13 owning, having an interest in, or being a member of the
14 organization; or

15 (2) by the organization’s organizational documents under a
16 provision of the governing statute authorizing those documents to
17 make one or more specified persons liable for all or specified debts,
18 obligations, or other liabilities of the organization solely by reason
19 of the person or persons co-owning, having an interest in, or being a
20 member of the organization.

21 “Surviving organization” means an organization into which one
22 or more other organizations are merged whether the organization
23 preexisted the merger or was created by the merger.

24
25 74. Merger.

26 a. A limited liability company may merge with one or more
27 other constituent organizations pursuant to this section, sections 75
28 through 77 of this act, and a plan of merger, if:

29 (1) the governing statute of each of the other organizations
30 authorizes the merger;

31 (2) the merger is not prohibited by the law of a jurisdiction that
32 enacted any of the governing statutes; and

33 (3) each of the other organizations complies with its governing
34 statute in effecting the merger.

35 b. A plan of merger shall be in a record and shall include:

36 (1) the name and form of each constituent organization;

37 (2) the name and form of the surviving organization and, if the
38 surviving organization is to be created by the merger, a statement to
39 that effect;

40 (3) the terms and conditions of the merger, including the manner
41 and basis for converting the interests in each constituent
42 organization into any combination of money, interests in the
43 surviving organization, and other consideration;

44 (4) if the surviving organization is to be created by the merger,
45 the surviving organization’s organizational documents that are
46 proposed to be in a record; and

1 (5) if the surviving organization is not to be created by the
2 merger, any amendments to be made by the merger to the surviving
3 organization's organizational documents that are, or are proposed to
4 be, in a record.

5
6 75. Action on Plan of Merger by Constituent Limited Liability
7 Company.

8 a. Subject to section 86 of this act, a plan of merger shall be
9 consented to by all the members of a constituent limited liability
10 company.

11 b. Subject to section 86 of this act and any contractual rights,
12 after a merger is approved, and at any time before articles of merger
13 are delivered to the filing office for filing under section 76 of this
14 act, a constituent limited liability company may amend the plan or
15 abandon the merger:

16 (1) as provided in the plan; or

17 (2) except as otherwise prohibited in the plan, with the same
18 consent as was required to approve the plan.

19
20 76. Filings Required for Merger; Effective Date.

21 a. After each constituent organization has approved a merger,
22 articles of merger shall be signed on behalf of:

23 (1) each constituent limited liability company, as provided in
24 subsection a. of section 20 of this act; and

25 (2) each other constituent organization, as provided in its
26 governing statute.

27 b. Articles of merger under this section shall include:

28 (1) the name and form of each constituent organization and the
29 jurisdiction of its governing statute;

30 (2) the name and form of the surviving organization, the
31 jurisdiction of its governing statute, and, if the surviving
32 organization is created by the merger, a statement to that effect;

33 (3) the date the merger is effective under the governing statute
34 of the surviving organization;

35 (4) if the surviving organization is to be created by the merger:

36 (a) if it will be a limited liability company, the company's
37 certificate of formation; or

38 (b) if it will be an organization other than a limited liability
39 company, the organizational document that creates the organization
40 that is in a public record;

41 (5) if the surviving organization preexists the merger, any
42 amendments provided for in the plan of merger for the
43 organizational document that created the organization that are in a
44 public record;

45 (6) a statement as to each constituent organization that the
46 merger was approved as required by the organization's governing
47 statute;

- 1 (7) if the surviving organization is a foreign organization not
2 authorized to transact business in this State, the street and mailing
3 addresses of an office that the filing office may use for the purposes
4 of subsection b. of section 77 of this act; and
- 5 (8) any additional information required by the governing statute
6 of any constituent organization.
- 7 c. The surviving organization shall deliver the articles of
8 merger for filing in the office of the filing office.
- 9 d. A merger becomes effective under this act:
- 10 (1) if the surviving organization is a limited liability company,
11 upon the later of:
- 12 (a) compliance with subsection c. of this section; or
13 (b) subject to subsection c. of section 22 of this act, as specified
14 in the articles of merger; or
- 15 (2) if the surviving organization is not a limited liability
16 company, as provided by the governing statute of the surviving
17 organization.
- 18
- 19 77. Effect of Merger.
- 20 a. When a merger becomes effective:
- 21 (1) the surviving organization continues or comes into
22 existence;
- 23 (2) each constituent organization that merges into the surviving
24 organization ceases to exist as a separate entity;
- 25 (3) all property owned by each constituent organization that
26 ceases to exist vests in the surviving organization;
- 27 (4) all debts, obligations, or other liabilities of each constituent
28 organization that has ceased to exist continue as debts, obligations,
29 or other liabilities of the surviving organization;
- 30 (5) an action or proceeding pending by or against any
31 constituent organization that ceases to exist may be continued as if
32 the merger had not occurred;
- 33 (6) except as prohibited by other law, all of the rights,
34 privileges, immunities, powers, and purposes of each constituent
35 organization that ceases to exist vest in the surviving organization;
- 36 (7) except as otherwise provided in the plan of merger, the terms
37 and conditions of the plan of merger take effect; and
- 38 (8) except as otherwise agreed, if a constituent limited liability
39 company ceases to exist, the merger does not dissolve the limited
40 liability company for the purposes of Article 7, Dissolution and
41 Winding Up (sections 48 through 56 of this act);
- 42 (9) if the surviving organization is created by the merger:
- 43 (a) if it is a limited liability company, the certificate of
44 formation becomes effective; or
- 45 (b) if it is an organization other than a limited liability company,
46 the organizational document that creates the organization becomes
47 effective; and

1 (10) if the surviving organization preexisted the merger, any
2 amendments provided for in the articles of merger for the
3 organizational document that created the organization become
4 effective.

5 b. A surviving organization that is a foreign organization
6 consents to the jurisdiction of the courts of this State to enforce any
7 debt, obligation, or other liability owed by a constituent
8 organization, if before the merger the constituent organization was
9 subject to suit in this State on the debt, obligation, or other liability.

10 A surviving organization that is a foreign organization and not
11 authorized to transact business in this State appoints the filing
12 office as its agent for service of process for the purposes of
13 enforcing a debt, obligation, or other liability under this subsection.
14 Service on the filing office under this subsection shall be made in
15 the same manner and shall have the same consequences as in
16 subsections c. and d. of section 17 of this act

17
18 78. Conversion.

19 a. An organization, other than a limited liability company or a
20 foreign limited liability company, may convert to a limited liability
21 company, and a limited liability company may convert to an
22 organization other than a foreign limited liability company pursuant
23 to this section, sections 79 through 81 of this act, and a plan of
24 conversion, if:

25 (1) the other organization's governing statute authorizes the
26 conversion;

27 (2) the conversion is not prohibited by the law of the jurisdiction
28 that enacted the other organization's governing statute; and

29 (3) the other organization complies with its governing statute in
30 effecting the conversion.

31 b. A plan of conversion shall be in a record and shall include:

32 (1) the name and form of the organization before conversion;

33 (2) the name and form of the organization after conversion;

34 (3) the terms and conditions of the conversion, including the
35 manner and basis for converting interests in the converting
36 organization into any combination of money, interests in the
37 converted organization, and other consideration; and

38 (4) the organizational documents of the converted organization
39 that are, or are proposed to be, in a record.

40
41 79. Action on Plan of Conversion by Converting Limited
42 Liability Company.

43 a. Subject to section 86 of this act, a plan of conversion shall
44 be consented to by all the members of a converting limited liability
45 company.

46 b. Subject to section 86 of this act and any contractual rights,
47 after a conversion is approved, and at any time before articles of

1 conversion are delivered to the filing office for filing under section
2 80 of this act, a converting limited liability company may amend
3 the plan or abandon the conversion:

- 4 (1) as provided in the plan; or
5 (2) except as otherwise prohibited in the plan, by the same
6 consent as was required to approve the plan.

7

8 80. Filings Required for Conversion; Effective Date.

9 a. After a plan of conversion is approved:

10 (1) a converting limited liability company shall deliver to the
11 filing office for filing articles of conversion, which shall be signed
12 as provided in subsection a. of section 20 of this act and shall
13 include:

14 (a) a statement that the limited liability company has been
15 converted into another organization;

16 (b) the name and form of the organization and such other
17 information as may be required by the filing office to correctly
18 identify the company and the jurisdiction of its governing statute;

19 (c) the date the conversion is effective under the governing
20 statute of the converted organization;

21 (d) a statement that the conversion was approved as required by
22 this act;

23 (e) a statement that the conversion was approved as required by
24 the governing statute of the converted organization; and

25 (f) if the converted organization is a foreign organization not
26 authorized to transact business in this State, the street and mailing
27 addresses of an office which the filing office may use for the
28 purposes of subsection c. of section 81 of this act; and

29 (2) if the converting organization is not a converting limited
30 liability company, the converting organization shall deliver to the
31 filing office for filing a certificate of formation, which shall
32 include, in addition to the information required by subsection b. of
33 section 18 of this act:

34 (a) a statement that the converted organization was converted
35 from another organization;

36 (b) the name and form of that converting organization and the
37 jurisdiction of its governing statute; and

38 (c) a statement that the conversion was approved in a manner
39 that complied with the converting organization's governing statute.

40 b. A conversion becomes effective:

41 (1) if the converted organization is a limited liability company,
42 when the certificate of formation takes effect; and

43 (2) if the converted organization is not a limited liability
44 company, as provided by the governing statute of the converted
45 organization.

1 81. Effect of Conversion.

2 a. An organization that has been converted pursuant to this
3 Article 10 (sections 73 through 87 of this act) is for all purposes the
4 same entity that existed before the conversion.

5 b. When a conversion takes effect:

6 (1) all property owned by the converting organization remains
7 vested in the converted organization;

8 (2) all debts, obligations, or other liabilities of the converting
9 organization continue as debts, obligations, or other liabilities of the
10 converted organization;

11 (3) an action or proceeding pending by or against the converting
12 organization may be continued as if the conversion had not
13 occurred;

14 (4) except as prohibited by law other than this act, all of the
15 rights, privileges, immunities, powers, and purposes of the
16 converting organization remain vested in the converted
17 organization;

18 (5) except as otherwise provided in the plan of conversion, the
19 terms and conditions of the plan of conversion take effect; and

20 (6) except as otherwise agreed, the conversion does not dissolve
21 a converting limited liability company for the purposes of Article 7,
22 Dissolution and Winding Up (sections 48 through 56 of this act).

23 c. A converted organization that is a foreign organization
24 consents to the jurisdiction of the courts of this State to enforce any
25 debt, obligation, or other liability for which the converting limited
26 liability company is liable if, before the conversion, the converting
27 limited liability company was subject to suit in this State on the
28 debt, obligation, or other liability. A converted organization that is
29 a foreign organization and not authorized to transact business in this
30 State appoints the filing office as its agent for service of process for
31 purposes of enforcing a debt, obligation, or other liability under this
32 subsection. Service on the filing office under this subsection shall
33 be made in the same manner and has the same consequences as in
34 subsections c. and d. of section 17 of this act.

35

36 82. Domestication.

37 a. A foreign limited liability company may become a limited
38 liability company pursuant to this section, sections 83 through 85 of
39 this act, and a plan of domestication, if:

40 (1) the foreign limited liability company's governing statute
41 authorizes the domestication;

42 (2) the domestication is not prohibited by the law of the
43 jurisdiction that enacted the governing statute; and

44 (3) the foreign limited liability company complies with its
45 governing statute in effecting the domestication.

1 b. A limited liability company may become a foreign limited
2 liability company pursuant to this section, sections 83 through 85 of
3 this act, and a plan of domestication, if:

4 (1) the foreign limited liability company's governing statute
5 authorizes the domestication;

6 (2) the domestication is not prohibited by the law of the
7 jurisdiction that enacted the governing statute; and

8 (3) the foreign limited liability company complies with its
9 governing statute in effecting the domestication.

10 c. A plan of domestication shall be in a record and shall
11 include:

12 (1) the name of the domesticating company before
13 domestication and such other information as may be required by the
14 filing office to correctly identify the company and the jurisdiction
15 of its governing statute;

16 (2) the name of the domesticated company after domestication
17 and the jurisdiction of its governing statute;

18 (3) the terms and conditions of the domestication, including the
19 manner and basis for converting interests in the domesticating
20 company into any combination of money, interests in the
21 domesticated company, and other consideration; and

22 (4) the organizational documents of the domesticated company
23 that are, or are proposed to be, in a record.
24

25 83. Action on Plan of Domestication By Domesticating Limited
26 Liability Company.

27 a. A plan of domestication shall be consented to:

28 (1) by all the members, subject to section 86 of this act, if the
29 domesticating company is a limited liability company; and

30 (2) as provided in the domesticating company's governing
31 statute, if the company is a foreign limited liability company.

32 b. Subject to any contractual rights, after a domestication is
33 approved, and at any time before articles of domestication are
34 delivered to the filing office for filing under section 84 of this act, a
35 domesticating limited liability company may amend the plan or
36 abandon the domestication:

37 (1) as provided in the plan; or

38 (2) except as otherwise prohibited in the plan, by the same
39 consent as was required to approve the plan.
40

41 84. Filings Required for Domestication; Effective Date.

42 a. After a plan of domestication is approved, a domesticating
43 company shall deliver to the filing office for filing articles of
44 domestication, which shall include:

45 (1) a statement, as the case may be, that the company has been
46 domesticated from or into another jurisdiction;

1 (2) the name of the domesticating company and such other
2 information as may be required by the filing office to correctly
3 identify the company and the jurisdiction of its governing statute;

4 (3) the name of the domesticated company and the jurisdiction
5 of its governing statute;

6 (4) the date the domestication is effective under the governing
7 statute of the domesticated company;

8 (5) if the domesticating company was a limited liability
9 company, a statement that the domestication was approved as
10 required by this act;

11 (6) if the domesticating company was a foreign limited liability
12 company, a statement that the domestication was approved as
13 required by the governing statute of the other jurisdiction; and

14 (7) if the domesticated company was a foreign limited liability
15 company not authorized to transact business in this State, the street
16 and mailing addresses of an office that the filing office may use for
17 the purposes of subsection b. section 85 of this act.

18 b. A domestication becomes effective:

19 (1) when the certificate of formation takes effect, if the
20 domesticated company is a limited liability company; and

21 (2) according to the governing statute of the domesticated
22 company, if the domesticated organization is a foreign limited
23 liability company.

24

25 85. Effect of Domestication.

26 a. When a domestication takes effect:

27 (1) the domesticated company is for all purposes the company
28 that existed before the domestication;

29 (2) all property owned by the domesticating company remains
30 vested in the domesticated company;

31 (3) all debts, obligations, or other liabilities of the domesticating
32 company continue as debts, obligations, or other liabilities of the
33 domesticated company;

34 (4) an action or proceeding pending by or against a
35 domesticating company may be continued as if the domestication
36 had not occurred;

37 (5) except as prohibited by other law, all of the rights,
38 privileges, immunities, powers, and purposes of the domesticating
39 company remain vested in the domesticated company;

40 (6) except as otherwise provided in the plan of domestication,
41 the terms and conditions of the plan of domestication take effect;
42 and

43 (7) except as otherwise agreed, the domestication does not
44 dissolve a domesticating limited liability company for the purposes
45 of Article 7, Dissolution and Winding Up (sections 48 through 56
46 of this act).

1 b. A domesticated company that is a foreign limited liability
2 company consents to the jurisdiction of the courts of this State to
3 enforce any debt, obligation, or other liability owed by the
4 domesticating company, if, before the domestication, the
5 domesticating company was subject to suit in this State on the debt,
6 obligation, or other liability. A domesticated company that is a
7 foreign limited liability company and not authorized to transact
8 business in this State appoints the filing office as its agent for
9 service of process for purposes of enforcing a debt, obligation, or
10 other liability under this subsection. Service on the filing office
11 under this subsection shall be made in the same manner and has the
12 same consequences as in subsections c. and d. of section 17 of this
13 act.

14 c. If a limited liability company has adopted and approved a
15 plan of domestication under section 82 of this act providing for the
16 company to be domesticated in a foreign jurisdiction, a statement
17 surrendering the company's certificate of formation shall be
18 delivered to the filing office for filing setting forth:

19 (1) the name of the company and such other information as may
20 be required by the filing office to correctly identify the company;

21 (2) a statement that the certificate of formation is being
22 surrendered in connection with the domestication of the company in
23 a foreign jurisdiction;

24 (3) a statement that the domestication was approved as required
25 by this act; and

26 (4) the jurisdiction of formation of the domesticated foreign
27 limited liability company.

28

29 86. Restrictions on Approval of Mergers, Conversions, and
30 Domestications.

31 a. If a member of a constituent, converting, or domesticating
32 limited liability company will have personal liability with respect to
33 a surviving, converted, or domesticated organization, approval or
34 amendment of a plan of merger, conversion, or domestication are
35 ineffective without the consent of the member, unless:

36 (1) the company's operating agreement provides for approval of
37 a merger, conversion, or domestication with the consent of fewer
38 than all the members; and

39 (2) the member has consented to the provision of the operating
40 agreement.

41 b. A member does not give the consent required by subsection
42 a. of this section merely by consenting to a provision of the
43 operating agreement that permits the operating agreement to be
44 amended with the consent of fewer than all the members.

1 87. Article Not Exclusive. This Article 10 (Section 73 through
2 87 of this act) does not preclude an entity from being merged,
3 converted, or domesticated under law other than this act.
4

5 ARTICLE 11

6 MISCELLANEOUS PROVISIONS

7 88. Uniformity of Application and Construction. In applying
8 and construing this uniform act, consideration shall be given to the
9 need to promote uniformity of the law with respect to its subject
10 matter among states that enact it.
11

12 89. Relation to Electronic Signatures In Global and National
13 Commerce Act. This act modifies, limits, and supersedes the
14 federal "Electronic Signatures in Global and National Commerce
15 Act," Pub.L.106-2, 15 U.S.C. s.7001 et seq., but does not modify,
16 limit, or supersede section 101(c) of that act, 15 U.S.C. s.7001(c),
17 or authorize electronic delivery of any of the notices described in
18 section 103(b) of that act, 15 U.S.C. s.7003(b).
19

20 90. Savings Clause. This act does not affect an action
21 commenced, proceeding brought, or right accrued before this act
22 takes effect.
23

24 91. Application to Existing Relationships.

25 a. Before the first day of the 18th month next following the
26 enactment date of this act, this act governs only:

27 (1) a limited liability company formed on or after the effective
28 date of this act; and

29 (2) except as otherwise provided in subsection c. of this section,
30 a limited liability company formed before the effective date of this
31 act, which elects, in the manner provided in its operating agreement
32 or by law for amending the operating agreement, to be subject to
33 this act.

34 b. Except as otherwise provided in subsection c. of this section,
35 on and after the first day of the 18th month next following the
36 enactment date of this act, this act governs all limited liability
37 companies.
38

39 92. Tax Classification.

40 a. For all purposes of taxation under the laws of this State, a
41 limited liability company formed under this act or qualified to do
42 business in this State as a foreign limited liability company with
43 two or more members shall be classified as a partnership unless
44 classified otherwise for federal income tax purposes, in which case
45 the limited liability company shall be classified in the same manner
46 as it is classified for federal income tax purposes. For all purposes
47 of taxation under the laws of this State, a member or an assignee of

1 a member of a limited liability company formed under this act or
2 qualified to do business in this State as a foreign limited liability
3 company shall be treated as a partner in a partnership unless the
4 limited liability company is classified otherwise for federal income
5 tax purposes, in which case the member or assignee of a member
6 shall have the same status as the member or assignee of a member
7 has for federal income tax purposes.

8 b. For all purposes of taxation on income under the laws of this
9 State and only for those purposes, a limited liability company
10 formed under this act or qualified to do business in this State as a
11 foreign limited liability company with one member is disregarded
12 as an entity separate from its owner, unless classified otherwise for
13 federal tax purposes, in which case the limited liability company
14 will be classified in the same manner as it is classified for federal
15 income tax purposes. For all purposes of taxation on income under
16 the laws of this State and only for those purposes, the sole member
17 or an assignee of all of the limited liability company interest of the
18 sole member of a limited liability company formed under this act or
19 qualified to do business in this State as a foreign limited liability
20 company is treated as the direct owner of the underlying assets of
21 the limited liability company and of its operations, unless the
22 limited liability company is classified otherwise for federal income
23 tax purposes, in which case the member or assignee of a member
24 will have the same status as the member or assignee of a member
25 has for federal income tax purposes.

26

27 93. Fees.

28 a. No document required to be filed under this act shall be
29 effective until the applicable fee required by this section is paid.
30 The following fees shall be paid to and collected by the State
31 Treasurer for the use of the State:

32 (1) Upon the receipt for filing of a certificate of registration of
33 alternate name or a certificate of renewal pursuant to section 9 of
34 this act, a fee in the amount of \$50.

35 (2) Upon the receipt for filing of an application for reservation
36 of name, an application for renewal of reservation or a notice of
37 transfer or cancellation of reservation pursuant to section 10 of this
38 act, a fee in the amount of \$50.

39 (3) Upon the receipt for filing of a statement under section 15 of
40 this act, a fee in the amount of \$25, upon the receipt for filing of a
41 statement under section 16 of this act, a fee in the amount of \$25
42 and a further fee of \$10 for each limited liability company affected
43 by that statement.

44 (4) Upon the receipt for filing of a certificate of formation under
45 section 18 of this act, a fee in the amount of \$125; and upon receipt
46 for filing, a certificate of correction under section 23 of this act, a
47 certificate of amendment or restatement under section 19 of this act,

- 1 a certificate of dissolution under section 49 of this act, or articles of
2 merger under section 76 of this act, a fee in the amount of \$100.
- 3 (5) Upon the filing of articles of conversion under section 80 of
4 this act, a fee in the amount of \$100.
- 5 (6) Upon filing of an annual report, a fee in the amount of
6 \$50.00.
- 7 (7) Upon requesting a reinstatement of a certificate of a limited
8 liability company, a late filing fee of \$200.00 and a reinstatement
9 filing fee of \$75.00.
- 10 (8) For certifying copies of any paper on file as provided for by
11 this act, a fee in the amount of \$25 for each copy certified.
- 12 (9) The State Treasurer may issue copies of instruments on file
13 as well as other copies, and for all of those copies, whether certified
14 or not, a fee in the amount of \$10 for the first page and \$2 per page
15 thereafter shall be paid.
- 16 (10) Upon the receipt for filing of an application for certificate
17 of authority as a foreign limited liability company under section 58
18 of this act or a certificate of cancellation under section 64 of this
19 act, a fee in the amount of \$125.
- 20 (11) For preclearance of any document for filing, a fee in the
21 amount of \$100.
- 22 (12) For preparing and providing a written report of a record
23 search, a fee in the amount of \$50.
- 24 (13) For issuing any certificate of the State Treasurer, including
25 but not limited to a certificate of good standing, other than a
26 certification of a copy under paragraph (8) of this subsection, a fee
27 in the amount of \$50, except that for issuing any certificate of the
28 State Treasurer that recites all of a limited liability company's
29 filings with the State Treasurer, a fee of \$100 shall be paid for each
30 such certificate.
- 31 (14) For receiving and filing or indexing any certificate, affidavit,
32 agreement or any other paper provided for by this act, for which no
33 different fee is specifically prescribed, a fee in the amount of \$75.
- 34 (15) The State Treasurer may in his discretion charge a fee of \$50
35 for each check received for payment of any fee that is returned due
36 to insufficient funds or the result of a stop payment order.
- 37 b. In addition to those fees charged under subsection a. of this
38 section, there shall be collected by and paid to the State Treasurer
39 the following:
- 40 (1) for all services described in subsection a. of this section that
41 are requested to be completed within the same day as the day of the
42 request, an additional sum of up to \$50; and
- 43 (2) for all services described in subsection a. of this section that
44 are requested to be completed within a 24-hour period from the time
45 of the request, an additional sum of up to \$25.

1 The State Treasurer shall establish, and may from time to time
2 amend, a schedule of specific fees payable pursuant to this
3 subsection.

4 c. The State Treasurer may in his discretion permit the
5 extension of credit for the fees required by this section upon such
6 terms as he shall deem to be appropriate.

7
8 94. Notices. In computing the period of time for the giving of
9 any notice:

10 a. Required or permitted by this act, or,

11 b. Unless otherwise provided therein, an operating agreement,
12 the day on which the notice is given shall be excluded, and the day
13 on which the matter noticed is to occur shall be included.

14
15 95. Repeals. Effective on the first day of the 18th month next
16 following the enactment date of this act, the following are repealed:

17 P.L.1993, c.210 (C.42:2B-1 et seq.)

18 Section 22 of P.L.1997, c.139 (C.42:2B-8.1)

19 Section 14 of P.L.1997, c.139 (C.42:2B-24.1)

20 Sections 1 and 2 of P.L.2003, c.12 (C.42:2B-49.1 and 42:2B-
21 49.2)

22
23 96. Effective Date. This act shall take effect on the 180th day
24 next following enactment.

25

26

27

STATEMENT

28

29 This bill, the "Revised Uniform Limited Liability Company
30 Act," repeals the "New Jersey Limited Liability Company Act," and
31 replaces it with a more modern regulatory scheme for the creation
32 and operation of limited liability companies in New Jersey.

33 The limited liability company (LLC) is a relatively new form of
34 unincorporated business organization that provides corporate-style
35 limited liability to its owners, while affording the owners the
36 partnership-like capacity to structure the entity by agreement rather
37 than as prescribed by statute. LLCs began to be widely used after
38 IRS Revenue Ruling 88-76 upheld the taxation of LLCs as
39 partnerships. If the LLC elects to be taxed as a partnership, the
40 LLC does not pay federal income tax on its profits. Rather, its
41 members are taxed on their share of the LLC's income. As a result,
42 LLCs have become the business entity form of choice for new
43 businesses, and far more New Jersey LLCs have been formed in
44 recent years than corporations and limited partnerships combined.

45 The "Revised Uniform Limited Liability Company Act"
46 (RULLCA), as developed by the National Conference of
47 Commissioners on Uniform State Laws (NCCUSL), is a significant

1 advancement in this area of the law. It is a comprehensive, fully
2 integrated “second generation” LLC statute that takes into account
3 the best elements of “first generation” LLC statutes (such as the
4 "New Jersey Limited Liability Company Act" (NJLLCA), which
5 was enacted in 1993 and became effective on January 26, 1994) and
6 two decades of legal developments in the field. Similar to the
7 Revised Uniform Partnership Act (RUPA), RULLCA is largely a
8 series of “default rules” that govern the relations among the
9 members in situations they have not addressed in their operating
10 agreement. Under RULLCA, express provisions of the operating
11 agreement prevail over most statutory norms.

12 RULLCA’s structure is similar to RUPA’s. Article 1 (General
13 Provisions) contains general provisions, including definitions;
14 Article 2 (Formation; Certificate of Formation and Other Filings)
15 provides for the formation of LLCs and for the filing of the
16 appropriate documents with the Division of Revenue in the
17 Department of the Treasury; Article 3 (Relations of Members and
18 Managers to Persons Dealing with Limited Liability Company)
19 governs the relations of members and managers to third parties;
20 Article 4 (Relations of Members to Each Other and to Limited
21 Liability Company) provides the default rules for the members’
22 relationships with each other and with the LLC; Article 5
23 (Transferable Interests and Rights of Transferees and Creditors)
24 reiterates the “pick your partner” concept that is fundamental to
25 LLCs and sets forth the rights of transferees; Article 6 (Member’s
26 Power to Dissociate; Wrongful Dissociation) delineates the causes
27 and consequences of an owner’s dissociation from the LLC; Article
28 7 (Dissolution and Winding Up) sets forth the events for dissolution
29 and liquidation of the LLC; Article 8 (Foreign Limited Liability
30 Companies) governs foreign LLCs; Article 9 (Actions by Members)
31 provides for direct and derivative actions by members of an LLC;
32 Article 10 (Merger, Conversion and Domestication) governs
33 domestication, conversion and merger transactions; Article 11
34 (Miscellaneous Provisions) includes several miscellaneous
35 provisions, including transition rules for existing LLCs.

36 RULLCA makes meaningful changes in the NJLLCA. Here are
37 some of the more significant changes and innovations in RULLCA
38 as compared to NJLLCA:

- 39 • Perpetual duration. RULLCA eliminates the default (and often
40 overlooked) rule that LLCs have a limited life. As is the case
41 with corporations, RULLCA provides for LLCs to have
42 perpetual duration.
- 43 • Permissible form of operating agreement. RULLCA permits
44 operating agreements to be oral, written or implied based on the
45 way an LLC has operated. This is consistent with the vast
46 majority of states and in line with the organization of many
47 LLCs formed in New Jersey.

- 1 • Profits, losses and distributions. Consistent with RUPA, unless
2 otherwise agreed, allocations of profits and losses under
3 RULLCA are per capita. Distributions also are made on a per
4 capita basis.
- 5 • Statements of authority. As is the case under RUPA, RULLCA
6 allows an LLC to file statements of authority with the Division
7 of Revenue in the Department of the Treasury (and in the case
8 of real estate, in the office where real estate records are
9 maintained) authorizing certain people or entities to bind the
10 LLC.
- 11 • Dissociation of a member. RULLCA eliminates a major pitfall
12 for the unwary practitioner or layperson forming an LLC in New
13 Jersey. Under RULLCA, a resigning owner is no longer entitled
14 to receive the fair value of his or her LLC interest as of the date
15 of resignation. Rather, upon resignation, the resigning owner is
16 dissociated as a member and only has the rights of an economic
17 interest holder.
- 18 • Remedies for deadlock and oppression. Reflecting case law
19 developments around the country and incorporating some of the
20 best elements of the New Jersey Business Corporation Act,
21 Article 7 (Dissolution and Winding Up) of RULLCA provides
22 remedies for oppressed minority owners. RULLCA permits a
23 member to seek a court order dissolving the company on the
24 grounds that the managers or those members in control of the
25 company have acted or are acting in a manner that is oppressive
26 and was, is, or will be directly harmful to the member.
27 RULLCA also permits a member to seek (or, in its equitable
28 discretion, a court to order in lieu of dissolution) a less drastic
29 remedy such as the appointment of a custodian.
- 30 • Domestication and conversion. RULLCA provides enhanced
31 ease and flexibility for domesticating, merging and converting
32 an entity other than a domestic limited liability company, if
33 permitted by the law under which it was formed. Its
34 comprehensive provisions offer streamlined methods for
35 domestication (*e.g.*, allowing an LLC formed under the laws of
36 another state to become a New Jersey LLC) and conversion
37 (*e.g.*, allowing a corporation to become an LLC).

38
39 This bill will become effective 180 days after enactment, and
40 will govern all LLCs formed after its effective date. Following the
41 first day of the 18th month following this bill's enactment, it will
42 apply to all New Jersey LLCs, whenever formed.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 742

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 9, 2012

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 742.

This bill, the "Revised Uniform Limited Liability Company Act," repeals the "New Jersey Limited Liability Company Act," and replaces it with a more modern regulatory scheme for the creation and operation of limited liability companies in New Jersey.

The limited liability company (LLC) is a relatively new form of unincorporated business organization that provides corporate-style limited liability to its owners, while affording the owners the partnership-like capacity to structure the entity by agreement rather than as prescribed by statute. LLCs began to be widely used after IRS Revenue Ruling 88-76 upheld the taxation of LLCs as partnerships. If the LLC elects to be taxed as a partnership, the LLC does not pay federal income tax on its profits. Rather, its members are taxed on their share of the LLC's income. As a result, LLCs have become the business entity form of choice for new businesses, and far more New Jersey LLCs have been formed in recent years than corporations and limited partnerships combined.

The "Revised Uniform Limited Liability Company Act" (RULLCA), as developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL), is a significant advancement in this area of the law. It is a comprehensive, fully integrated "second generation" LLC statute that takes into account the best elements of "first generation" LLC statutes (such as the "New Jersey Limited Liability Company Act" (NJLLCA), which was enacted in 1993 and became effective on January 26, 1994) and two decades of legal developments in the field. Similar to the Revised Uniform Partnership Act (RUPA), RULLCA is largely a series of "default rules" that govern the relations among the members in situations they have not addressed in their operating agreement. Under RULLCA, express provisions of the operating agreement prevail over most statutory norms.

RULLCA's structure is similar to RUPA's. Article 1 (General Provisions) contains general provisions, including definitions; Article 2 (Formation; Certificate of Formation and Other Filings) provides for

the formation of LLCs and for the filing of the appropriate documents with the Division of Revenue in the Department of the Treasury; Article 3 (Relations of Members and Managers to Persons Dealing with Limited Liability Company) governs the relations of members and managers to third parties; Article 4 (Relations of Members to Each Other and to Limited Liability Company) provides the default rules for the members' relationships with each other and with the LLC; Article 5 (Transferable Interests and Rights of Transferees and Creditors) reiterates the "pick your partner" concept that is fundamental to LLCs and sets forth the rights of transferees; Article 6 (Member's Power to Dissociate; Wrongful Dissociation) delineates the causes and consequences of an owner's dissociation from the LLC; Article 7 (Dissolution and Winding Up) sets forth the events for dissolution and liquidation of the LLC; Article 8 (Foreign Limited Liability Companies) governs foreign LLCs; Article 9 (Actions by Members) provides for direct and derivative actions by members of an LLC; Article 10 (Merger, Conversion and Domestication) governs domestication, conversion and merger transactions; Article 11 (Miscellaneous Provisions) includes several miscellaneous provisions, including transition rules for existing LLCs.

Here are some of the more significant changes and innovations in RULLCA as compared to NJLLCA:

- Perpetual duration. RULLCA eliminates the default (and often overlooked) rule that LLCs have a limited life. As is the case with corporations, RULLCA provides for LLCs to have perpetual duration.
- Permissible form of operating agreement. RULLCA permits operating agreements to be oral, written or implied based on the way an LLC has operated. This is consistent with the vast majority of states and in line with the organization of many LLCs formed in New Jersey.
- Distributions. Consistent with RUPA, unless otherwise agreed, distributions are made on a per capita basis.
- Statements of authority. As is the case under RUPA, RULLCA allows an LLC to file statements of authority with the Division of Revenue in the Department of the Treasury (and in the case of real estate, in the office where real estate records are maintained) authorizing certain people or entities to bind the LLC.
- Dissociation of a member. RULLCA eliminates a major pitfall for the unwary practitioner or layperson forming an LLC in New Jersey. Under RULLCA, a resigning owner is no longer entitled to receive the fair value of his or her LLC interest as of the date of resignation. Rather, upon resignation, the resigning owner is dissociated as a member and only has the rights of an economic interest holder.

- Remedies for deadlock and oppression. Reflecting case law developments around the country and incorporating some of the best elements of the New Jersey Business Corporation Act, Article 7 (Dissolution and Winding Up) of RULLCA provides remedies for oppressed minority owners. RULLCA permits a member to seek a court order dissolving the company on the grounds that the managers or those members in control of the company have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the member. RULLCA also permits a member to seek (or, in its equitable discretion, a court to order in lieu of dissolution) a less drastic remedy, such as the appointment of a custodian.
- Domestication and conversion. RULLCA provides enhanced ease and flexibility for domesticating, merging and converting an entity other than a domestic limited liability company, if permitted by the law under which it was formed. Its comprehensive provisions offer streamlined methods for domestication (*e.g.*, allowing an LLC formed under the laws of another state to become a New Jersey LLC) and conversion (*e.g.*, allowing a corporation to become an LLC).

This bill will become effective 180 days after enactment, and will govern all LLCs formed after its effective date. Following the first day of the 18th month following this bill's enactment, it will apply to all New Jersey LLCs, whenever formed.

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

Committee Amendments:

The committee amendments to the bill:

- 1) add a new subsection to section 11, mirroring language in current law at N.J.S.A.42:2B-66 to provide that the act is to be liberally construed to give the maximum effect to the principle of freedom of contract and to the enforceability of LLC operating agreements;
- 2) require, in section 14, a foreign limited liability company that has a certificate of authority under section 58 of the bill to designate and continuously maintain in this State an office and an agent for service of process, rather than just an agent;
- 3) establish, in section 15, a procedure for a registered agent to change the address of the registered office of any domestic or foreign limited liability company for which the registered agent is registered agent and to change the name of any person acting as a registered agent;
- 4) require, in section 18, a certificate of formation to contain the street and mailing addresses of the initial registered office and the

name of the initial agent at that office for service of process of the company;

5) revise references (in sections 25, 26, 60, and 62) to “certificate of registration,” “certificate of standing,” and “certificate of authority,” as appropriate;

6) delete, in section 38, the definition for “serving at the request of the indemnifying company”;

7) in section 58, clarify that before doing business in the State, a foreign limited liability company must obtain a certificate of authority to transact business in this State and must promptly correct any false information on the application for a certificate of authority;

8) add to section 66, language mirroring current law at subsection d. of N.J.S.A. 42:2B-57 providing for a fine of \$200 for each year or part thereof during which a foreign limited liability company does business in the State without first obtaining a certificate of authority;

9) amend section 82 concerning domestication; and

10) make technical corrections to correct internal references and to make certain other provisions permissive, rather than directive.

STATEMENT TO

[First Reprint]

SENATE, No. 742

with Senate Floor Amendments
(Proposed by Senator SARLO)

ADOPTED: MARCH 15, 2012

These Senate amendments amend section 87 to clarify the intent that a limited liability company, whenever formed, that acquires the assets, liabilities and business of a predecessor organization with common ownership is presumed to have the rights, privileges and perquisites of the predecessor organization.