

**LEGISLATIVE HISTORY CHECKLIST**  
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"New Jersey Limited Liability Company Act"

NJSA: 42:2B-1 to 42:2B-70

LAWS OF: 1993 CHAPTER: 210

BILL NO: S890

SPONSOR(S) Sinagra and others

DATE INTRODUCED: June 1, 1992

COMMITTEE: ASSEMBLY: \_\_\_\_\_  
 SENATE: Commerce

AMENDED DURING PASSAGE: No Senate Committee Substitute  
 Enacted

DATE OF PASSAGE: ASSEMBLY: June 17, 1993  
 SENATE: June 17, 1993

DATE OF APPROVAL: July 30, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No  
 SENATE: Yes

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

Kanigo, Jeffrey, "New Jersey catches the limited liability wave," 134  
NJLJ 1495 (August 23, 1993)  
 See newspaper clippings-attached:  
 "The limited liability company makes its New Jersey debut," 7-31-93,  
Trenton Times.

:pp

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SENATE, No. 890

STATE OF NEW JERSEY

INTRODUCED JUNE 1, 1992

By Senators SINAGRA, INVERSO and Cardinale

1 AN ACT providing for the creation of limited liability companies,  
2 supplementing Title 42 of the Revised Statutes and amending  
3 N.J.S.54A:5-4.

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

7 1. (New section) This act shall be known and may be cited as  
8 the "New Jersey Limited Liability Company Act."

9 2. (New section) As used in this act, unless the context  
10 otherwise requires:

11 "Bankrupt" means bankrupt or debtor under the federal  
12 bankruptcy code of 1978, Title 11 of the United States Code (11  
13 U.S.C. §101 et seq.), or an insolvent under any State insolvency  
14 act.

15 "Business" means any trade, occupation, profession, or other  
16 commercial activity engaged in for gain, profit, or livelihood.

17 "Certificate of organization" means the certificate of  
18 organization filed with the Secretary of State for the purpose of  
19 forming a limited liability company as specified in sections 10  
20 through 12 of this act.

21 "Contribution" means anything of value which a person  
22 contributes to the limited liability company as a prerequisite for  
23 or in connection with membership, including cash, property, or a  
24 promissory note or other binding obligation to contribute cash or  
25 property.

26 "Court" includes every court and judge having jurisdiction in a  
27 case.

28 "Foreign limited liability company" means a limited liability  
29 company formed under the laws of any jurisdiction other than this  
30 State.

31 "Limited liability company" or "company" means a limited  
32 liability company organized and existing under this act and having  
33 two or more members.

34 "Manager" means a person elected by the members of a limited  
35 liability company to manage the company pursuant to sections 22  
36 and 23 of this act.

37 "Member" means a person with an ownership interest in a  
38 limited liability company with the rights and obligations specified  
39 in this act.

40 "Membership interest" means a member's share of the profits  
41 and losses of a limited liability company and the right to receive  
42 distributions of the company's assets.

43 "Operating agreement" means a valid written agreement of the

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.

1 members as to the affairs of a limited liability company and the  
2 conduct of its business. The operating agreement may contain  
3 any provisions for the affairs of a limited liability company and  
4 the conduct of its business to the extent that the provisions are  
5 not inconsistent with law or the certificate of organization.

6 "Person" means an individual, corporation, government or  
7 governmental subdivision or agency, business trust, estate, trust,  
8 partnership, or association, or any other legal entity.

9 "Registered office" means the business address of the  
10 registered agent of the company on file with the Secretary of  
11 State.

12 3. (New section) A limited liability company may conduct any  
13 business that a partnership or limited partnership may lawfully  
14 conduct and may not conduct any business that is prohibited by  
15 law to those partnerships.

16 4. (New section) Each limited liability company organized and  
17 existing under this act may:

18 a. Sue and be sued, and participate in administrative or other  
19 proceedings, in its name;

20 b. Purchase, take, receive, lease or otherwise acquire, own,  
21 hold, improve, use, and otherwise deal in and with real or  
22 personal property, or an interest in it, wherever situated;

23 c. Sell, convey, assign, encumber, mortgage, pledge, lease,  
24 exchange, transfer, and otherwise dispose of all or any part of its  
25 property and assets;

26 d. Lend money to and otherwise assist its members and  
27 employees, except as otherwise provided in the operating  
28 agreement;

29 e. Purchase, take, receive, subscribe for or otherwise acquire,  
30 own, hold, vote, use, employ, sell, mortgage, lend, pledge, or  
31 otherwise dispose of, and otherwise use and deal in and with,  
32 shares or other interests in or obligations of other limited  
33 liability companies, domestic or foreign corporations,  
34 associations, general or limited partnerships, or individuals or  
35 direct or indirect obligations of the United States or of any  
36 government, state, territory, governmental district, or  
37 municipality or of any instrumentality of any of them;

38 f. Make contracts and guarantees and incur liabilities, borrow  
39 money at rates of interest that the limited liability company may  
40 determine, issue its notes, bonds, and other obligations, and  
41 secure any of its obligations by mortgage or pledge of all or any  
42 part of its property, franchises, and income;

43 g. Lend money for its proper purposes, invest and reinvest its  
44 funds, and take and hold real property and personal property for  
45 the payment of funds so loaned or invested;

46 h. Conduct its business, carry on its operations, and have and  
47 exercise the powers granted by this act in any state, territory,  
48 district, or possession of the United States or in any foreign  
49 country;

50 i. Elect managers and appoint agents of the limited liability  
51 company and define their duties and fix their compensation;

52 j. Make and alter operating agreements, not inconsistent with  
53 its certificate of organization or with the laws of this State, for  
54 the administration and regulation of the affairs of the limited

1 liability company;

2 k. Indemnify a member or manager or former member or  
3 manager of the limited liability company as provided in section  
4 29 of this act;

5 l. Cease its activities and surrender its certificate of  
6 organization;

7 m. Have and exercise all powers necessary or convenient to  
8 effect any or all of the purposes for which the limited liability  
9 company is organized; and

10 n. Become a member of a general partnership, limited  
11 partnership, joint venture, or similar association or any other  
12 limited liability company.

13 5. (New section) All persons who assume to act as a limited  
14 liability company without authority to do so and without good  
15 faith belief that they have that authority shall be jointly and  
16 severally liable for all debts and liabilities incurred by such  
17 persons so acting.

18 6. (New section) It is the intention of the Legislature by the  
19 enactment of this act that the legal existence of limited liability  
20 companies formed under this act be recognized beyond the limits  
21 of this State and that, subject to any reasonable registration  
22 requirements, any limited liability company transacting business  
23 outside this State be granted the protection of full faith and  
24 credit under Section 1 of Article IV of the Constitution of the  
25 United States.

26 7. (New section) In any case in which a party seeks to hold the  
27 members of a limited liability company personally responsible for  
28 the alleged improper actions of the limited liability company, the  
29 court shall apply the case law which interprets the conditions and  
30 circumstances under which the shareholders of a corporation may  
31 be held liable under New Jersey law.

32 8. (New section) a. The words "limited liability company"  
33 shall be included in the name of every limited liability company  
34 formed under the provisions of this act, but the word "limited"  
35 may be abbreviated as "Ltd.", and the word "company" may be  
36 abbreviated as "Co."

37 b. The name of a limited liability company shall not contain  
38 any word or phrase, or abbreviation or derivative thereof, which  
39 indicates or implies that it is organized for any purposes other  
40 than those permitted by this act and as limited by its certificate  
41 of organization.

42 c. The name of a limited liability company shall be such as to  
43 distinguish it upon the records in the office of the Secretary of  
44 State from the names of other domestic and foreign limited  
45 liability companies, for profit and nonprofit domestic  
46 corporations and for profit and nonprofit foreign corporations  
47 qualified to do business in this State and from the names of  
48 domestic limited partnerships and foreign limited partnerships  
49 and from names subject to a current name reservation or a  
50 current name registration.

51 d. The provisions of subsection c. of this section shall not  
52 apply if the organizer files with the Secretary of State either:

53 (1) The written consent of the other corporation, limited  
54 partnership, limited liability company or holder of a reserved or

1 registered name to use the same or a deceptively similar name if  
2 one or more words are added, altered, or deleted to make the  
3 name distinguishable from the reserved or registered name; or

4 (2) A certified copy of a final decree of a court of competent  
5 jurisdiction establishing the prior right of the applicant to the use  
6 of the name in this State.

7 e. A limited liability company which acquires, upon a sale,  
8 lease, or other disposition to or exchange with a domestic limited  
9 liability company, all or substantially all the assets of another  
10 domestic or foreign limited liability company, including its name,  
11 may have a deceptively similar name if one or more words are  
12 added, altered, or deleted to make the name distinguishable from  
13 another name used in this State by any other limited liability  
14 company if the other limited liability company was organized  
15 under the laws of, or is authorized to transact business in, this  
16 State.

17 f. The name of a limited liability company shall not contain  
18 any word or phrase, or any abbreviation thereof, the use of which  
19 is prohibited or restricted by any other statute of this State,  
20 unless those restrictions have been complied with.

21 9. (New section) a. The exclusive right to the use of a name  
22 of a limited liability company may be reserved by:

23 (1) Any person intending to organize a limited liability  
24 company under this act and to adopt that name;

25 (2) Any domestic limited liability company or any foreign  
26 limited liability company registered in this State which, in either  
27 case, intends to adopt that name;

28 (3) Any foreign limited liability company intending to register  
29 in this State and adopt that name; and

30 (4) Any person intending to organize a foreign limited liability  
31 company and intending to have it registered in this State and  
32 adopt that name.

33 b. To reserve a specified name, a person shall submit an  
34 application to the Secretary of State, in the form and manner he  
35 shall designate. If the Secretary of State finds that the name is  
36 available for use by a domestic or foreign limited liability  
37 company, he shall reserve the name for the exclusive use of the  
38 applicant for a period of 120 days. A reservation may be renewed  
39 for additional periods not to exceed 120 days from the date of the  
40 renewals. The right to the exclusive use of a reserved name may  
41 be transferred to any other person by delivering to the office of  
42 the Secretary of State a notice of the transfer, executed by the  
43 applicant for whom the name was reserved, and specifying the  
44 name and address of the transferee.

45 10. (New section) a. One or more natural persons 18 years of  
46 age or older may organize a limited liability company by  
47 executing and delivering a certificate of organization to the  
48 Secretary of State as specified in sections 11 and 12 of this act.  
49 The persons executing and delivering the certificate of  
50 organization need not be members of the limited liability  
51 company after formation has occurred. Any person who has  
52 executed the certificate of organization is deemed to have  
53 affirmed, under penalty of perjury, that the facts stated therein  
54 are true. A person may sign the certificate of organization by an

- 1 attorney-in-fact duly authorized by a written power of attorney.
- 2 b. A limited liability company shall have two or more members  
3 at the time of its formation.
- 4 11. (New section) The certificate of organization shall set  
5 forth:
- 6 a. The name of the limited liability company and, if known, its  
7 principal place of business;
- 8 b. The period of its duration, which may not exceed thirty  
9 years from the date of the formation of the limited liability  
10 company pursuant to section 14 of this act;
- 11 c. The name and business address of the registered agent for  
12 service of process as required by section 16 of this act.
- 13 d. The names and business addresses of the initial manager or  
14 managers who are to serve until the first annual meeting of  
15 members or until their successors are elected and qualified;
- 16 e. Any other provision, not inconsistent with law, which the  
17 members elect to set forth in the certificate of organization for  
18 the regulation of the internal affairs of the limited liability  
19 company, including any provision which under this act is required  
20 or permitted to be set forth in the operating agreement of the  
21 limited liability company.
- 22 12. (New section) a. The organizers shall execute and deliver  
23 duplicate originals of the certificate of organization to the  
24 Secretary of State with a filing fee in an amount to be  
25 determined by the Secretary of State.
- 26 b. The Secretary of State shall review the certificate of  
27 organization, and, upon receipt of all filing fees, and unless he  
28 finds they do not conform to law, shall:
- 29 (1) Endorse each of the duplicate originals with the word  
30 "Filed" and the date of the filing;
- 31 (2) File one duplicate original in his office; and
- 32 (3) Return one duplicate copy to the principal place of business  
33 of the limited liability company or to its representative.
- 34 13. (New section) a. If the Secretary of State fails to approve  
35 any certificate of organization, amendment, or dissolution or any  
36 document required by this act and declines to file it, he shall,  
37 within 10 days of its delivery to him, give written notice of his  
38 disapproval to the person or limited liability company delivering  
39 the same, specifying the reasons therefor.
- 40 b. A person or limited liability company may appeal the  
41 disapproval to the Superior Court by filing with the clerk of the  
42 court a petition setting forth a copy of the certificate or other  
43 documents sought to be filed and a copy of the written  
44 disapproval thereof by the Secretary of State. The matter shall  
45 be tried de novo by the court, and the court shall either sustain  
46 the action of the Secretary of State or direct him to take any  
47 action that the court deems proper.
- 48 c. Appeals from all final orders and judgments entered by the  
49 Superior Court pursuant to this section in review of any ruling or  
50 decision of the Secretary of State may be taken as in other civil  
51 actions.
- 52 14. (New section) a. A limited liability company is formed  
53 upon the filing of the certificate of organization, or, as specified  
54 in the certificate, upon a later date, not more than 90 days after

1 the date of filing with the Secretary of State; except that, if the  
2 Secretary of State reviews the certificate of organization as  
3 delivered and finds that it conforms to this act, the date of filing  
4 shall relate back to the date of delivery, unless the certificate  
5 specifies a later date. If, for any reason, the Secretary of State  
6 finds that the delivered certificate does not conform to this act,  
7 including, but not limited to, a failure to enclose the filing fee,  
8 there shall be no relation back to the date of delivery. The  
9 earliest filing date shall be the date that the certificate is  
10 delivered to the Secretary of State in a form which conforms to  
11 this act.

12 b. Each of the duplicate copies stamped "Filed" and marked  
13 with the filing date shall be conclusive evidence that all  
14 conditions precedent required to be performed by the organizers  
15 have been met and that the limited liability company has been or  
16 shall be, on a later date as specified in the certificate, legally  
17 organized and formed under this act.

18 c. If a later date is specified, the certificate may be prevented  
19 from becoming effective by a certificate of withdrawal, executed  
20 in the same manner as the certificate of organization and filed  
21 with the Secretary of State on or before the specified effective  
22 date.

23 d. Nothing in this section shall affect the right of this State to  
24 institute a proceeding to cancel or revoke the certificate of  
25 organization or for involuntary dissolution of the limited liability  
26 company or the right of any aggrieved person to maintain an  
27 action to enjoin or obtain other relief for a violation of, or failure  
28 to comply with, the provisions of subsection c. or d. of section 8  
29 of this act.

30 15. (New section) a. The certificate of organization shall be  
31 amended when:

32 (1) There is a change in the name of the limited liability  
33 company;

34 (2) There is a false or erroneous statement in the certificate  
35 of organization;

36 (3) There is a change in the time as stated in the certificate of  
37 organization for the dissolution of the limited liability company;  
38 or

39 (4) The members desire to make a change in any other  
40 statement in the certificate of organization in order that it shall  
41 accurately represent the agreement between them.

42 b. An amendment to the certificate of organization of a  
43 limited liability company shall be in the form and manner  
44 designated by the Secretary of State. The amendment shall be  
45 signed by a manager and may be signed on a manager's behalf by  
46 an attorney-in-fact, duly authorized by a written power of  
47 attorney. Duplicate originals of the amendment shall be  
48 delivered to the Secretary of State for filing accompanied by the  
49 requisite filing fee. The execution of an amendment constitutes  
50 an affirmation under the penalties of perjury that the facts  
51 stated therein are true.

52 c. Unless the Secretary of State finds that any amendment  
53 does not conform to law, upon receipt of all filing fees required  
54 by law, he shall:

- 1 (1) Endorse on each duplicate original the word "Filed" and the  
2 date of the filing;
- 3 (2) File one duplicate original in his office; and
- 4 (3) Return the other duplicate original to the person who filed  
5 it or the person's representative.
- 6 d. Upon the filing of an amendment in the office of the  
7 Secretary of State, the certificate of organization shall be  
8 amended as set forth therein.
- 9 16. (New section) Each limited liability company shall appoint  
10 and continuously maintain in this State a registered agent for  
11 service of process on the limited liability company. The limited  
12 liability company shall register the name and business address of  
13 the registered agent with the Secretary of State in the form and  
14 manner he shall designate.
- 15 17. (New section) a. Within 15 days of any change in the  
16 name or business address of the registered agent, a limited  
17 liability company shall file a report of that change with the  
18 Secretary of State, in the form and manner he shall designate.
- 19 b. The report shall be executed by a manager and delivered to  
20 the Secretary of State. If the Secretary of State finds that the  
21 report conforms to the provisions of this act and if the filing fee  
22 is paid, he shall file the report in his office, and, upon the filing,  
23 any change specified in the report shall become effective.
- 24 c. Any registered agent of a limited liability company may  
25 resign as agent by delivering an original and one copy of a written  
26 notice thereof to the Secretary of State. The Secretary of State  
27 shall transmit one copy to the principal office of the limited  
28 liability company. The appointment of the agent shall terminate  
29 upon the expiration of 30 days after receipt of the notice by the  
30 Secretary of State. Upon the expiration of 30 days after the  
31 mailing by the Secretary of State of the notice to the limited  
32 liability company, any limited liability company that has not filed  
33 a report replacing the registered agent who resigned shall be  
34 deemed suspended and inoperative and shall be notified pursuant  
35 to section 20 of this act and be subject to the provisions of that  
36 subsection regarding suspension. In addition to any other  
37 obligations under this act, reinstatement after action under this  
38 section shall include the filing of a report to designate a new  
39 registered agent.
- 40 d. If a registered agent changes his registered business  
41 address, he shall, within 15 days of the change, file a report with  
42 the Secretary of State in the form and manner he shall designate  
43 and shall pay a fee in an amount to be determined by the  
44 secretary. He shall submit a report for each limited liability  
45 company for which he is a registered agent and shall mail a copy  
46 of the appropriate report to each limited liability company so  
47 affected. If a registered agent provides a report to the Secretary  
48 of State as provided in this subsection, the limited liability  
49 company need not file a report to indicate the change in the  
50 business address of the registered agent; except that nothing in  
51 this section shall relieve the limited liability company from the  
52 responsibility of assuring that a report is filed.
- 53 e. Limited liability companies which have been suspended for  
54 the preceding three-year period pursuant to this section and



1 section 20 of this act shall be dissolved without the necessity of  
2 any other action under the provisions of sections 56 and 57 of this  
3 act.

4 18. (New section) a. Each domestic limited liability company  
5 and each foreign limited liability company authorized to transact  
6 business in this State shall file, within the time prescribed by this  
7 section, a limited liability company report setting forth:

8 (1) The name of the limited liability company and, if a foreign  
9 company, the state where it is organized;

10 (2) The name and business address of the registered agent of  
11 the limited liability company in this State, and, in the case of a  
12 foreign company, the address of its principal office in the state  
13 where it is organized; and

14 (3) The name and address of each manager of the limited  
15 liability company.

16 b. (1) The Secretary of State shall issue a report form to the  
17 limited liability company each year on or before the last day of  
18 the month in which the limited liability company was organized.  
19 The limited liability company shall return the report to the  
20 Secretary of State, hand-delivered or post-marked on or before  
21 the 60th day following the last day of the month in which the  
22 report form was mailed to the limited liability company by the  
23 Secretary of State.

24 (2) The information required shall be reported as of the date of  
25 the execution of the report, and it shall be executed by a  
26 manager of the limited liability company, or, for a foreign  
27 limited liability company without a manager, by an authorized  
28 agent, or, if the limited liability company is in the hands of a  
29 receiver or trustee, by the receiver or trustee on behalf of the  
30 limited liability company. This report shall be accompanied by a  
31 written declaration that it is made under the penalties of perjury.

32 19. (New section) If the Secretary of State finds that a report  
33 conforms to the requirements of this act, he shall file it. If he  
34 finds that it does not so conform, he shall promptly return it to  
35 the limited liability company for any necessary corrections. No  
36 penalty fee for late filing shall be assessed if the report was  
37 timely delivered, is corrected to conform to the requirements of  
38 this act, and is returned to the Secretary of State no later than  
39 30 days from the date the report was mailed back to the limited  
40 liability company.

41 20. (New section) a. If any domestic limited liability company  
42 has failed to pay the fees required by law or to file any report or  
43 statement required by this act, the Secretary of State shall give  
44 notice by first-class mail to the limited liability company of the  
45 failure to pay or file, or both. Thirty days after the date of  
46 mailing of the notice, unless the report or statement with the fee  
47 and penalty, if any, has been delivered and paid to the Secretary  
48 of State, the limited liability company shall be suspended.

49 b. Any domestic limited liability company which is suspended  
50 under the provisions of this section or section 17 of this act shall  
51 be inoperative and no longer competent to transact business in  
52 this State; except that the members of the suspended limited  
53 liability company may hold their annual or special meetings of  
54 members for the election of managers, and the limited liability

1 company may hold or continue to hold, encumber, sell, or convey  
2 real estate and make any reports as are required by the laws of  
3 the United States or this State. The suspension of the limited  
4 liability company shall not take away any remedy against the  
5 limited liability company, its members, or its managers for any  
6 liability incurred prior thereto.

7 c. If the members' meetings have been regularly called and  
8 due notice has been given to the members, as required by this  
9 act, of any suspended limited liability company and a quorum is  
10 not present at any members' meeting, an election of managers  
11 may be held pursuant to the provisions of the operating  
12 agreement or, if the operating agreement does not so provide, by  
13 a majority vote of the members present and entitled to vote at  
14 the meeting, if not less than 30 percent of all members entitled  
15 to vote for the election of the managers is present at the meeting  
16 in person or by written proxy.

17 d. Until dissolved pursuant to subsection e. of section 17 of  
18 this act or otherwise, any suspended domestic limited liability  
19 company may become reinstated, and operative by:

20 (1) Paying a reinstatement fee as determined by the Secretary  
21 of State;

22 (2) Making and delivering a limited liability company report  
23 and paying the fee due upon filing the report for the year in  
24 which it is to be reinstated;

25 (3) Paying a late filing penalty for the current year's report if  
26 filed after the required reporting date;

27 (4) Paying an amount equal to the fee charged and collected  
28 for filing of corporate reports for domestic limited liability  
29 companies, plus a late filing penalty for each year a required  
30 limited liability report was not filed; and

31 (5) If the limited liability company has been suspended under  
32 subsection c. of section 17 of this act, making and delivering the  
33 report replacing a registered agent and paying the fee due upon  
34 filing that report.

35 e. Upon the filing of any required report, and the payment of  
36 all sums due, a suspended limited liability company shall  
37 thereupon become reinstated, and operative.

38 21. (New section) a. Any process, notice, or demand required  
39 or permitted by law may be served upon any domestic or foreign  
40 limited liability company by delivering a copy thereof to the  
41 registered agent required by section 16 or 65 of this act.

42 b. If a limited liability company fails to appoint or maintain a  
43 registered agent in this State as required by section 16 or 65 of  
44 this act, or, if having been appointed, the agent's authority has  
45 been revoked, or if the agent cannot, with reasonable diligence,  
46 be found at the registered office, the Secretary of State shall  
47 become agent of the limited liability company upon whom any  
48 process, notice, or demand may be served. Service on the  
49 Secretary of State of any process, notice, or demand shall be  
50 made by:

51 (1) Personally serving him or any deputy or his designee that  
52 process, notice, or demand or by mailing a copy of the process,  
53 notice, or demand, by prepaid registered or certified mail, return  
54 receipt requested, to the Secretary of State; and

1 (2) Mailing a notice of the service to the Secretary of State  
2 and a copy of the process, notice, or demand by prepaid  
3 registered or certified mail, return receipt requested, to the  
4 limited liability company at its office or, if it has no office, to  
5 any other address, if any, as may be known to the person.

6 c. The service on the limited liability company by service upon  
7 the Secretary of State shall be complete upon the later of:

8 (1) Personal service upon the Secretary of State or his  
9 designee or receipt of the return receipt requested of the mailing  
10 to the Secretary of State; or

11 (2) Receipt of the return receipt requested of the mailing to  
12 the limited liability company, whether or not the receipt is signed.

13 d. The Secretary of State shall keep a record of all processes,  
14 notices, and demands served upon him under this section and shall  
15 record therein the time of the service and his action with  
16 reference thereto.

17 e. Nothing contained in this section shall limit or affect the  
18 right to serve any process, notice, or demand required or  
19 permitted by law to be served upon the limited liability company  
20 in any other manner now or hereafter permitted by law or  
21 applicable rules of procedure.

22 22. (New section) a. Except as provided in this act,  
23 management of the limited liability company's business shall be  
24 vested in a manager or managers. The certificate of organization  
25 or the operating agreement of the limited liability company may  
26 apportion management responsibility or voting power among the  
27 several managers, if there are two or more, in any manner or  
28 upon any basis not inconsistent with this act.

29 b. Managers shall be natural persons 18 years of age or older  
30 but need not be residents of this State or members of the limited  
31 liability company unless the certificate of organization or the  
32 operating agreement so require. The certificate of organization  
33 or the operating agreement may prescribe other qualifications for  
34 managers.

35 23. (New section) a. The number of managers shall be fixed  
36 by or in the manner provided in the certificate of organization or  
37 the operating agreement, except as to the number constituting  
38 the initial manager or group of managers, which number shall be  
39 fixed by the certificate of organization. The number of managers  
40 may be increased or decreased by amendment to or in the manner  
41 provided in the certificate of organization or the operating  
42 agreement, but no decrease shall have the effect of shortening  
43 the term of any incumbent manager. In the absence of an  
44 operating agreement provision providing for the number of  
45 managers, the number shall be the same as that provided for in  
46 the certificate of organization. The initial managers shall hold  
47 office until the first annual meeting of members and until their  
48 successors have been elected and qualified. In the absence of a  
49 provision in the operating agreement with respect to the rights of  
50 members to vote for managers, managers shall be elected by a  
51 majority of the members.

52 b. At the first annual meeting of members and at each annual  
53 meeting thereafter, the members shall elect managers to hold  
54 office until the next succeeding annual meeting, except as

1 provided in section 24 of this act with respect to classification of  
2 managers. Each manager shall hold office for the term for which  
3 the manager is elected and until the manager's successor has  
4 been elected and qualified.

5 24. (New section) a. When there are six or more managers, in  
6 lieu of electing all the managers annually, the certificate of  
7 organization may provide that the managers be divided into  
8 either two or three classes, each class to be as nearly equal in  
9 number as possible, the term of office of managers of the first  
10 class to expire at the first annual meeting of members after their  
11 election, that of managers of the second class to expire at the  
12 second annual meeting after their election, and that of managers  
13 of the third class, if any, to expire at the third annual meeting  
14 after their election. At each annual meeting after classification,  
15 a number of managers equal to the number of the class whose  
16 term expires at the time of the meeting shall be elected to hold  
17 office until the second succeeding annual meeting, if there are  
18 two classes, or until the third succeeding annual meeting, if there  
19 are three classes. No classification of managers shall be  
20 effective prior to the first annual meeting of members.

21 b. Any vacancies occurring in the class of managers may be  
22 filled by written agreement of a majority of the remaining  
23 managers. A manager chosen to fill a vacancy shall serve the  
24 unexpired term of his predecessor in office. Any manager's  
25 position to be filled by reason of an increase in the number of  
26 managers shall be filled by written agreement of a majority of  
27 the managers then in office or by election at an annual meeting  
28 or at a special meeting of members called for that purpose. A  
29 manager chosen to fill a position resulting from an increase in the  
30 number of managers shall hold office until the next annual  
31 meeting of members and until his successor has been elected and  
32 qualified.

33 c. At a meeting called expressly for that purpose, all managers  
34 or any lesser number, may be removed, with or without cause, in  
35 the manner provided in the operating agreement. If the operating  
36 agreement does not provide for the removal of managers with or  
37 without cause, then all managers or any lesser number may be  
38 removed with or without cause by a vote of the majority of the  
39 members then entitled to vote at an election of managers.

40 25. (New section) a. A manager elected pursuant to section  
41 23 of this act and as prescribed in the operating agreement of the  
42 limited liability company shall perform his duties as a manager in  
43 good faith, in a manner he reasonably believes to be in the best  
44 interests of the limited liability company, and with the care that  
45 an ordinarily prudent person in a like position would use under  
46 similar circumstances. A person who so performs his duties shall  
47 not have any liability by reason of being or having been a  
48 manager of the limited liability company.

49 b. In performing his duties, a manager shall be entitled to rely  
50 on information, opinions, reports, or statements of the following  
51 persons or groups unless he has knowledge concerning the matter  
52 in question that would cause reliance to be unwarranted:

53 (1) One or more employees or other agents of the limited  
54 liability company whom the manager reasonably believes to be

1 reliable and competent in the matters presented;

2 (2) Any attorney, public accountant, or other person as to  
3 matters which the manager reasonably believes to be within that  
4 person's professional or expert competence; or

5 (3) A committee upon which he does not serve, duly designated  
6 in accordance with a provision of the certificate of organization  
7 or the operating agreement, as to matters within its designated  
8 authority, which committee the manager reasonably believes to  
9 merit confidence.

10 c. A manager shall have no authority to do any act in  
11 contravention of either the certificate of organization or the  
12 operating agreement.

13 d. Every manager is an agent of the limited liability company  
14 for the purpose of its business, and the act of every manager,  
15 including the execution in the limited liability company name of  
16 any instrument for apparently carrying on in the usual way the  
17 business of the limited liability company of which he is a  
18 manager, binds the limited liability company, unless the act is in  
19 contravention of the certificate of organization or the operating  
20 agreement or unless the manager so acting otherwise lacks the  
21 authority to act for the limited liability company and the person  
22 with whom he is dealing has knowledge of the fact that he has no  
23 authority to act.

24 26. (New section) Except as otherwise provided in this act,  
25 the certificate of organization, or the operating agreement, no  
26 debt shall be contracted or liability incurred by or on behalf of a  
27 limited liability company, except by one or more of its managers.

28 27. (New section) Real and personal property owned or  
29 purchased by a limited liability company shall be held and owned,  
30 and conveyance made, in the name of a limited liability  
31 company. Instruments and documents providing for the  
32 acquisition, mortgage, or disposition of property of the limited  
33 liability company shall be valid and binding upon the limited  
34 liability company if executed by one or more managers of a  
35 limited liability company.

36 28. (New section) Except as provided in the operating  
37 agreement, a member or a manager may lend money to, act as  
38 surety for, and transact other business with the limited liability  
39 company and, subject to other applicable law, has the same rights  
40 and obligations with respect thereto as a person who is not a  
41 member or manager; except that this section shall not be  
42 construed to relieve a manager from any of his duties as specified  
43 in section 25 of this act.

44 29. (New section) a. As used in this section:

45 "Expenses" include attorney fees.

46 "Liability" means the obligation to pay a judgment, settlement,  
47 penalty, fine, including an excise tax assessed with respect to an  
48 employee benefit plan, or reasonable expense incurred with  
49 respect to a proceeding.

50 "Official capacity," when used with respect to a manager,  
51 means the office of manager in the limited liability company and,  
52 when used with respect to a person other than a manager, means  
53 the employment or agency relationship undertaken by the  
54 employee or agent on behalf of the limited liability company.

1 Official capacity does not include service for any other foreign or  
2 domestic limited liability company or for any corporation,  
3 partnership, joint venture, trust, other enterprise, or employee  
4 benefit plan.

5 "Party" includes an individual who was, is, or potentially may  
6 be made a named defendant or respondent in a proceeding.

7 "Proceeding" means any threatened, pending, or completed  
8 action, suit, or proceeding, whether civil, criminal,  
9 administrative, or investigative and whether formal or informal.

10 b. (1) Except as provided in paragraph (4) of this subsection, a  
11 limited liability company may indemnify against liability incurred  
12 in any proceeding an individual made a party to the proceeding  
13 because he is or was a manager if:

14 (a) He conducted himself in good faith;

15 (b) He reasonably believed:

16 (i) In the case of conduct in his official capacity, that his  
17 conduct was in the limited liability company's best interests; or

18 (ii) In all other cases, that his conduct was at least not opposed  
19 to the limited liability company's best interests; and

20 (iii) In the case of any criminal proceeding, he had no  
21 reasonable cause to believe his conduct was unlawful.

22 (2) The termination of any proceeding by judgment, order,  
23 settlement, or conviction, or upon a plea of nolo contendere or its  
24 equivalent, is not of itself determinative that the individual did  
25 not meet the standard of conduct set forth in paragraph (1) of  
26 this subsection.

27 (3) A limited liability company shall not indemnify a manager  
28 under this subsection either:

29 (a) In connection with a proceeding by or in the right of the  
30 limited liability company in which the manager was adjudged  
31 liable to the limited liability company; or

32 (b) In connection with any proceeding charging improper  
33 personal benefit to the manager, whether or not involving action  
34 in his official capacity, in which he was adjudged liable on the  
35 basis that personal benefit was improperly received by him.

36 (4) Indemnification permitted under this subsection in  
37 connection with a proceeding by or in the right of a limited  
38 liability company is limited to reasonable expenses incurred in  
39 connection with the proceeding.

40 c. Unless limited by the certificate of organization, a limited  
41 liability company shall be required to indemnify a manager of the  
42 limited liability company who was wholly successful, on the  
43 merits or otherwise, in defense of any proceeding to which he was  
44 a party, against reasonable expenses incurred by him in  
45 connection with the proceeding.

46 d. Unless limited by the certificate of organization, a manager  
47 who is or was a party to a proceeding may apply for  
48 indemnification to the court conducting the proceeding or to  
49 another court of competent jurisdiction. On receipt of an  
50 application, the court, after giving any notice the court considers  
51 necessary, may order indemnification in the following manner:

52 (1) If it determines the manager is entitled to mandatory  
53 indemnification under subsection c. of this section, the court  
54 shall order indemnification, in which case the court shall also

1 order the limited liability company to pay the manager's  
2 reasonable expenses incurred to obtain court-ordered  
3 indemnification.

4 (2) If it determines that the manager is fairly and reasonably  
5 entitled to indemnification in view of all the relevant  
6 circumstances, whether or not he met the standard of conduct set  
7 forth in paragraph (1) of subsection b. of this section, or was  
8 adjudged liable in the circumstances described in paragraph (3) of  
9 subsection b. of this section, the court may order  
10 indemnification as the court deems proper; except that the  
11 indemnification with respect to any proceeding in which liability  
12 shall have been adjudged in the circumstances described in  
13 paragraph (3) of subsection b. of this section is limited to  
14 reasonable expenses incurred.

15 e. (1) A limited liability company shall not indemnify a  
16 manager under subsection b. of this section unless authorized in  
17 the specific case after a determination has been made that  
18 indemnification of the manager is permissible in the  
19 circumstances because he has met the standard of conduct set  
20 forth in paragraph (1) of subsection b.

21 (2) The determination required to be made by paragraph (1) of  
22 this subsection shall be made by the members by a majority vote;  
23 except that the vote shall not include members who are parties to  
24 the proceedings.

25 (3) Authorization of indemnification and evaluation as to  
26 reasonableness of expenses shall be made in the same manner as  
27 the determination that indemnification is permissible.

28 f. (1) A limited liability company may pay for or reimburse  
29 the reasonable expenses incurred by a manager who is a party to  
30 a proceeding in advance of the final disposition of the proceeding  
31 if:

32 (a) The manager furnishes the limited liability company with a  
33 written affirmation of his good-faith belief that he has met the  
34 standard of conduct described in subparagraph (a) of paragraph (1)  
35 of subsection b. of this section;

36 (b) The manager furnishes the limited liability company a  
37 written undertaking, executed personally or on his behalf, to  
38 repay the advance if it is determined that he did not meet that  
39 standard of conduct; and

40 (c) A determination is made that the facts then known to those  
41 making the determination would not preclude indemnification  
42 under this subsection.

43 (2) The undertaking required by subparagraph (b) of paragraph  
44 (1) of this subsection shall be an unlimited general obligation of  
45 the manager but need not be secured and may be accepted  
46 without reference to financial ability to make repayment.

47 (3) Determinations and authorizations of payments under this  
48 subsection shall be made in the manner specified in subsection e.  
49 of this section.

50 g. (1) A provision concerning a limited liability company's  
51 indemnification of or advance for expenses to managers  
52 contained in its certificate of organization, its operating  
53 agreement, or in a contract, except for insurance policies, shall  
54 be valid only if and to the extent the provision is consistent with

1 this section and, if indemnification is limited by the certificate  
2 of organization, is consistent with the certificate.

3 (2) This subsection shall not limit a limited liability company's  
4 power to pay or reimburse expenses incurred by a manager in  
5 connection with his appearance as a witness in a proceeding at a  
6 time when he has not been made a named defendant or  
7 respondent in the proceeding.

8 h. Unless limited by the certificate of organization:

9 (1) A limited liability company may indemnify and advance  
10 expenses pursuant to subsection f. of this section to an employee  
11 or agent of the limited liability company who is not a manager to  
12 the same extent as a manager; and

13 (2) A limited liability company may indemnify and advance  
14 expenses to an employee or agent of the limited liability company  
15 who is not a manager to a greater extent if consistent with law  
16 and if provided for by its certificate of organization, its  
17 operating agreement, or in a contract.

18 i. A limited liability company may purchase and maintain  
19 insurance on behalf of a person who is or was a manager,  
20 employee, fiduciary, or agent of the limited liability company or  
21 who, while a manager, employee, fiduciary, or agent of the  
22 limited liability company, is or was serving at the request of the  
23 limited liability company as manager, officer, partner, trustee,  
24 employee, fiduciary, or agent of any foreign or domestic limited  
25 liability company or any corporation, partnership, joint venture,  
26 trust, other enterprise, or employee benefit plan against any  
27 liability asserted against or incurred by him in such capacity or  
28 arising out of his status as such, whether or not the limited  
29 liability company would have the power to indemnify him against  
30 liability under the provisions of this section. Any liability  
31 insurance may be procured from any insurance company  
32 designated by the members of the limited liability company,  
33 whether the insurance company is formed under the laws of this  
34 State, any other jurisdiction of the United States or elsewhere.

35 j. Any indemnification or advance of expenses to a manager in  
36 accordance with this section, if arising out of a proceeding by or  
37 on behalf of the limited liability company, shall be reported in  
38 writing to the members with or before the notice of the next  
39 members' meeting.

40 30. (New section) a. Each limited liability company shall keep  
41 at an office specified in the manner provided in the operating  
42 agreement or, if none, at the registered office, the following:

43 (1) A current list of the full name and last-known business,  
44 residence, or mailing address of each member and manager, both  
45 past and present;

46 (2) A copy of the certificate of organization and all  
47 amendments thereto, together with executed copies of any  
48 powers of attorney pursuant to which any amendment has been  
49 executed;

50 (3) Copies of the limited liability company's federal, state,  
51 and local income tax returns and reports, if any, for the three  
52 most recent years;

53 (4) Copies of any currently effective written operating  
54 agreements, copies of any writings permitted or required under



1 section 32 of this act, and copies of any financial statements of  
2 the limited liability company for the three most recent years;

3 (5) Minutes of every annual and special meeting and any  
4 meeting ordered pursuant to subsection d. of section 42 of this  
5 act;

6 (6) Unless contained in a written operating agreement or in a  
7 writing permitted or required under section 32 of this act, a  
8 statement prepared and certified as accurate by a manager of the  
9 limited liability company which describes:

10 (a) The amount of cash and a description and statement of the  
11 agreed value of the other property or services contributed by  
12 each member and which each member has agreed to contribute in  
13 the future;

14 (b) The times at which or events on the happening of which any  
15 additional contributions agreed to be made by each member are  
16 to be made;

17 (c) If agreed upon, the time at which or the events on the  
18 happening of which a member may terminate his membership in  
19 the limited liability company and the amount of, or the method of  
20 determining, the distribution to which he may be entitled  
21 respecting his membership interest and the terms and conditions  
22 of the termination and distribution;

23 (d) Any right of a member to receive distributions which  
24 include a return of all or any part of a member's contribution;

25 (7) Any written consents obtained from members pursuant to  
26 section 46 of this act.

27 b. The records specified in subsection a. of this section are  
28 subject to inspection and copying at the reasonable request, and  
29 at the expense, of any member during ordinary business hours.

30 31. (New section) The contribution of a member may be in  
31 cash, property, or a promissory note or other obligation to  
32 contribute cash or property.

33 32. (New section) a. Except as provided in the operating  
34 agreement, a member is obligated to the limited liability  
35 company to perform any enforceable promise to contribute cash  
36 or property, even if he is unable to perform because of death,  
37 disability, or any other reason. If a member does not make the  
38 required contribution of property, he shall at the option of the  
39 limited liability company, contribute cash equal to that portion of  
40 the value, as stated in the limited liability records required to be  
41 kept by section 30 of this act, of the contribution that has not  
42 been made.

43 b. Unless otherwise provided in the operating agreement, the  
44 obligation of a member to make a contribution or return money  
45 or other property paid or distributed in violation of this act may  
46 be compromised only by consent in writing of all members.  
47 Notwithstanding the compromise, a creditor of a limited liability  
48 company who extends credit or otherwise acts in reliance on the  
49 original obligation may enforce the original obligation.

50 c. No promise by a member to contribute to the limited  
51 liability company is enforceable unless set out in a writing signed  
52 by the member.

53 33. (New section) The profits and losses of a limited liability  
54 company shall be allocated among the members, and among

1 classes of members, in the manner provided in writing in the  
2 operating agreement. If the operating agreement does not so  
3 provide in writing, profits and losses shall be allocated on the  
4 basis of the value, as stated in the limited liability company  
5 records required to be kept pursuant to section 30 of this act, of  
6 contributions made by each member.

7 34. (New section) Distributions of cash or other assets of a  
8 limited liability company shall be allocated among the members,  
9 and among classes of members, in the manner provided in writing  
10 in the operating agreement. If the operating agreement does not  
11 so provide in writing, distributions shall be made on the basis of  
12 the value, as stated in the limited liability company records  
13 required to be kept pursuant to section 30 of this act, of the  
14 contributions made by each member.

15 35. (New section) a. Except as provided in this section, a  
16 member is entitled to receive distributions from a limited  
17 liability company before his resignation from the limited liability  
18 company and before the dissolution and winding up thereof to the  
19 extent and at the times or upon the happening of the events  
20 specified in the operating agreement.

21 b. A member may resign from a limited liability company at  
22 any time by giving written notice to the other members, but, if  
23 the resignation violates the operating agreement, the limited  
24 liability company may recover from the resigning member  
25 damages for breach of the operating agreement and offset the  
26 damages against the amount otherwise distributable to him.

27 c. Except as otherwise provided in this act, upon resignation,  
28 any resigning member shall receive any distribution to which he is  
29 entitled under the operating agreement, and if not otherwise  
30 provided in the operating agreement, he shall receive, within a  
31 reasonable time after resignation, the fair value of his  
32 membership interest in the limited liability company as of the  
33 date of resignation based upon his right to share in distributions  
34 from the limited liability company.

35 d. Except as provided in writing in the operating agreement, a  
36 member, regardless of the nature of his contribution, has no right  
37 to demand and receive any distribution from a limited liability  
38 company in any form other than cash. Except as provided in  
39 writing in the operating agreement, a member shall not be  
40 compelled to accept a distribution of any asset in kind from a  
41 limited liability company to the extent that the percentage of the  
42 asset distributed to him exceeds a percentage of that asset which  
43 is equal to the percentage in which he shares in distributions from  
44 the limited liability company.

45 e. At the time a member becomes entitled to receive a  
46 distribution, he has the status of, and is entitled to all remedies  
47 available to, a creator of the limited liability company with  
48 respect to the distribution.

49 f. A member shall not receive a distribution from a limited  
50 liability company to the extent that, after giving effect to the  
51 distribution, all liabilities of the limited liability company, other  
52 than liabilities to members on account of their membership  
53 interests, would exceed the fair value of the limited liability  
54 company assets.

1 g. (1) If a member has received the return of any part of his  
2 contribution without violation of the operating agreement or this  
3 act, he is liable to the limited liability company for a period of  
4 six years thereafter for the amount of the returned contribution,  
5 but only to the extent necessary to discharge the limited liability  
6 company's liability to creditors who extended credit to the  
7 limited liability company during the period the contribution was  
8 held by the limited liability company.

9 (2) If a member has received the return of any part of his  
10 contribution in violation of the operating agreement or this act,  
11 he is liable to the limited liability company for a period of six  
12 years thereafter for the amount of the contribution wrongfully  
13 returned.

14 (3) A member receives a return of his contribution to the  
15 extent that a distribution to him reduces his share of the fair  
16 value of the net assets of the limited liability company below the  
17 value, as set forth in the records required to be kept pursuant to  
18 section 30 of this act, of his contribution which has not been  
19 distributed to him.

20 36. (New section) After the filing of a limited liability  
21 company's original certificate of organization, a person shall be  
22 admitted as an additional member only upon the written consent  
23 of all members.

24 37. (New section) a. The interest of each member in a limited  
25 liability company constitutes the personal property of the  
26 member and may be transferred or assigned as provided in the  
27 operating agreement. However, if all of the other members of  
28 the limited liability company other than the member proposing to  
29 dispose of his interest do not approve of the proposed transfer or  
30 assignment by unanimous written consent, the transferee of the  
31 member's interest shall have no right to participate in the  
32 management of the business and affairs of the limited liability  
33 company or to become a member. The transferee shall only be  
34 entitled to receive the share of profits or other compensation by  
35 way of income and the return of contributions to which that  
36 member would otherwise be entitled.

37 b. A substituted member is a person admitted to all the rights  
38 of a member who has died or has assigned his interest in a limited  
39 liability company with the approval of all the members of the  
40 limited liability company by unanimous written consent. The  
41 substituted member has all the rights and powers and is subject to  
42 all the restrictions and liabilities of his assignor; except that the  
43 substitution of the assignee does not release the assignor from  
44 liability to the limited liability company under section 32 of this  
45 act.

46 38. (New section) On application to a court of competent  
47 jurisdiction by any judgment creditor of a member, the court may  
48 charge the membership interest of the member with payment of  
49 the unsatisfied amount of the judgment with interest. To the  
50 extent so charged, the judgment creditor has only the rights of an  
51 assignee of the membership interest. The operation of this  
52 section shall not deprive any member of the benefit of any  
53 exemption laws applicable to his membership interest.

54 39. (New section) a. If a member who is an individual dies or

1 a court of competent jurisdiction adjudges him to be incompetent  
2 to manage his person or his property, the member's executor,  
3 administrator, guardian, conservator, or other legal  
4 representative may exercise all of the member's rights for the  
5 purpose of settling his estate or administering his property.

6 b. If a member is a corporation, trust, or other entity and is  
7 dissolved or terminated, the powers of that member may be  
8 exercised by its legal representative or successor.

9 40. (New section) Members and managers of limited liability  
10 companies are not liable under a judgment, decree, or order of a  
11 court, or in any other manner, for a debt obligation, or liability of  
12 the limited liability company.

13 41. (New section) a. Subject to the provisions of this act  
14 which require majority or unanimous consent, vote, or agreement  
15 of the members, the operating agreement may grant to all or a  
16 specified group of the members the right to consent, vote, or  
17 agree, on a per capita or other basis, upon any matter.

18 b. Unless the operating agreement provides otherwise, any  
19 member may vote in person or by proxy.

20 42. (New section) a. Meetings of members may be held at any  
21 place, either within or without this State, as may be stated in or  
22 fixed in accordance with the operating agreement. If no other  
23 place is stated or so fixed, all meetings shall be held at the  
24 registered office of the limited liability company.

25 b. An annual meeting of the members shall be held at any time  
26 as may be stated or fixed in accordance with the operating  
27 agreement. Failure to hold the annual meeting at the designated  
28 time shall not work a forfeiture or dissolution of the limited  
29 liability company.

30 c. Special meetings of the members may be called by any  
31 manager or managers, by not less than one-tenth of all the  
32 members entitled to vote at the meeting, or by any other persons  
33 as may be provided in the certificate of organization or the  
34 operating agreement.

35 d. (1) Any court of competent jurisdiction in the State of New  
36 Jersey may summarily order a meeting to be held:

37 (a) On application of any member of the limited liability  
38 company, if an annual meeting was not held within six months  
39 after the end of the limited liability company's fiscal year or  
40 fifteen months after its last annual meeting, whichever is earlier;  
41 or

42 (b) On application of a member who participated in a proper  
43 call for a special meeting, if:

44 (i) Notice of the special meeting was not given within thirty  
45 days after the date the demand was delivered to the manager or  
46 managers of the limited liability company; or

47 (ii) The special meeting was not held in accordance with the  
48 notice.

49 (2) The court may fix the time and place of the meeting,  
50 specify a date for determining members entitled to notice of and  
51 to vote at the meeting, prescribe the form and content of the  
52 meeting notice, fix the quorum required for a meeting or direct  
53 that the interests represented at the meeting constitute a quorum  
54 for the meeting, and enter other orders necessary to permit the

1 meeting to be held.

2 43. (New section) Unless otherwise provided in the certificate  
3 of organization or in the operating agreement, a majority of the  
4 members entitled to vote shall constitute a quorum at the  
5 meeting of members. If a quorum is present, the affirmative  
6 vote of the majority of the members represented at the meeting  
7 and entitled to vote on the subject matter shall be the act of the  
8 members, unless the vote of a greater proportion or number or  
9 voting by classes is required by this act, the certificate of  
10 organization, or the operating agreement. If a quorum is not  
11 represented at any meeting of the members, the meeting may be  
12 adjourned for a period not to exceed sixty days at any one  
13 adjournment.

14 44. (New section) a. Written notice stating the place, day,  
15 and hour of the meeting and in case of a special meeting, the  
16 purpose for which the meeting is called shall be delivered not less  
17 than 10 nor more than 50 days before the date of the meeting,  
18 either personally or by mail, by, or at the direction of, any  
19 manager or person calling the meeting to each member of record  
20 entitled to vote at such meeting.

21 b. Notice to members, if mailed, shall be deemed delivered as  
22 to any member when deposited in the United States mail,  
23 addressed to the member, with postage prepaid, but, if three  
24 successive letters mailed to the last-known address of any  
25 member are returned as undeliverable, no further notices to the  
26 member shall be necessary until another address for the member  
27 is made known to the limited liability company.

28 c. When a meeting is adjourned to another time or place,  
29 unless the operating agreement otherwise requires, notice need  
30 not be given of the adjourned meeting if the time and place  
31 thereof are announced at the meeting at which the adjournment  
32 is taken. At the adjourned meeting the limited liability company  
33 may transact any business which might have been transacted at  
34 the original meeting. If the adjournment is for more than 30  
35 days, a notice of the adjourned meeting shall be given to each  
36 member entitled to vote at the meeting.

37 45. (New section) a. When any notice is required to be given  
38 to any member of a limited liability company under the provisions  
39 of this act or under the provisions of the certificate of  
40 organization or the operating agreement of the limited liability  
41 company, a waiver thereof in writing signed by the person  
42 entitled to the notice, whether before, at, or after the time  
43 stated therein, shall be equivalent to the giving of that notice.

44 b. By attending a meeting, a member:

45 (1) Waives objection to lack of notice or defective notice of  
46 the meeting unless the member, at the beginning of the meeting,  
47 objects to the holding of the meeting or the transacting of  
48 business at the meeting;

49 (2) Waives objection to consideration at the meeting of a  
50 particular matter not within the purposes described in the  
51 meeting notice unless the member objects to considering the  
52 matter when it is presented.

53 46. (New section) a. Unless the certificate of organization or  
54 the operating agreement provide otherwise, action required or

1 permitted by this act to be taken at a members' meeting may be  
2 taken without a meeting if the action is evidenced by one or more  
3 written consents describing the action taken, signed by each  
4 member entitled to vote. Action taken under this subsection is  
5 effective when all members entitled to vote have signed the  
6 consent, unless the consent specifies a different effective date.

7 b. Written consent of the members entitled to vote has the  
8 same force and effect as a unanimous vote of the members and  
9 may be stated as having that effect in any document.

10 47. (New section) a. A member of a limited liability company  
11 shall have the right to:

12 (1) Inspect and copy limited liability company records, as  
13 provided by section 30 of this act;

14 (2) Obtain from the managers from time to time, subject to  
15 reasonable standards that may be set forth in the operating  
16 agreement or otherwise established by the managers, upon  
17 reasonable demand for any purpose reasonably related to the  
18 member's interest as a member:

19 (a) True and full information regarding the state of the  
20 business and financial condition of the limited liability company  
21 and any other information regarding the affairs of the limited  
22 liability company; and

23 (b) Promptly after becoming available, a copy of the limited  
24 liability company's federal, state and local income tax returns  
25 for each year; and

26 (3) Have a formal accounting of limited liability company  
27 affairs whenever circumstances render it just and reasonable.

28 48. (New section) a. A limited liability company organized  
29 under this act shall be dissolved upon the occurrence of any of  
30 the following events:

31 (1) When the period fixed for the duration of the limited  
32 liability company expires;

33 (2) By the unanimous written agreement of all members; or

34 (3) Upon the death, retirement, resignation, expulsion,  
35 bankruptcy, or dissolution of a member or the occurrence of any  
36 other event which terminates the continued membership of a  
37 member in the limited liability company, unless there are at least  
38 two remaining members and the business of the limited liability  
39 company is continued by the consent of all the remaining  
40 members under a right to do so stated in the certificate of  
41 organization of the limited liability company within 90 days after  
42 the termination.

43 b. As soon as possible following the occurrence of any of the  
44 events specified in this section effecting the dissolution of the  
45 limited liability company, the limited liability company shall  
46 execute a statement of intent to dissolve in a form that shall be  
47 prescribed by the Secretary of State. The statement of intent to  
48 dissolve shall be executed by a manager of the limited liability  
49 company.

50 49. (New section) Any person who is adversely affected by the  
51 failure or refusal of any limited liability company to execute and  
52 file any amendment, statement of intent to dissolve, or other  
53 document to be filed under this act may petition the Superior  
54 Court in the county where the registered office of the limited

1 liability company is located or, if no address is on file with the  
2 Secretary of State, in the county in which the person who is  
3 adversely affected by that failure resides, to direct the execution  
4 and filing of the amendment, statement of intent to dissolve, or  
5 other document. If the court finds that it is proper for the  
6 amendment, statement of intent to dissolve, or other document  
7 to be executed and filed and that there has been a failure or  
8 refusal to execute and file the document, it shall order the  
9 Secretary of State to record an appropriate amendment,  
10 statement of intent to dissolve, or other document.

11 50. (New section) a. Duplicate originals of the statement of  
12 intent to dissolve shall be delivered to the Secretary of State. If  
13 the Secretary of State finds that the statement conforms to law,  
14 he shall, when all required fees have been paid:

15 (1) Endorse on each duplicate original the word "Filed" and the  
16 month, day, and year of the filing thereof;

17 (2) File one duplicate original in his office;

18 (3) Return the other duplicate original to the limited liability  
19 company or its representative.

20 b. The filing of the statement of intent to dissolve shall not  
21 affect the limited liability of the members.

22 51. (New section) Upon the filing with the Secretary of State  
23 of a statement of intent to dissolve, the limited liability company  
24 shall cease to carry on its business, except insofar as may be  
25 necessary for the winding up of its business, but its separate  
26 existence shall continue until the statement of intent to dissolve  
27 been filed with the Secretary of State or until a decree dissolving  
28 the limited liability company has been entered by a court of  
29 competent jurisdiction.

30 52. (New section) In settling accounts after dissolution, the  
31 assets of the limited liability company shall be distributed as  
32 follows:

33 a. To creditors, including members who are creditors, to the  
34 extent otherwise permitted by law, in satisfaction of liabilities of  
35 the limited liability company other than liabilities for  
36 distributions to members under section 35 of this act;

37 b. Except as provided in the operating agreement, to members  
38 and former members of the limited liability company in  
39 satisfaction of liabilities for distributions under section 35 of this  
40 act; and

41 c. Except as provided in the operating agreement, to members  
42 of the limited liability company for the return of their  
43 contributions and respecting their membership interests in the  
44 proportions in which the members share in distributions.

45 53. (New section) When all debts, liabilities, and obligations  
46 have been paid and discharged, or adequate provision has been  
47 made therefor and all of the remaining property and assets have  
48 been distributed to the members, a certificate of dissolution shall  
49 be executed in duplicate and verified by the person signing the  
50 statement, which statement shall set forth:

51 a. The name of the limited liability company;

52 b. That a statement of intent to dissolve the company has been  
53 filed with the Secretary of State and the date on which the  
54 statement was filed;

- 1 c. That all debts, obligations, and liabilities have been paid and  
2 discharged or that adequate provision has been made therefor;
- 3 d. That all the remaining property and assets have been  
4 distributed among its members in accordance with their  
5 respective rights and discharged or that adequate provision has  
6 been made therefor;
- 7 e. That all the remaining property and assets have been  
8 distributed among its members in accordance with their  
9 respective rights and interests; and
- 10 f. That there are no suits pending against the company in any  
11 court or that adequate provision has been made for the  
12 satisfaction of any judgement, order, or decree which may be  
13 entered against it in any pending suit.
- 14 54. (New section) a. Duplicate originals of the certificate of  
15 dissolution shall be delivered to the Secretary of State. If the  
16 Secretary of State finds that the certificate of dissolution  
17 conforms to law, he shall, when all required fees have been paid:
- 18 (1) Endorse on each duplicate original the word "Filed" and the  
19 date of the filing thereof; and
- 20 (2) File one duplicate original in his office.
- 21 b. A duplicate original of the certificate of dissolution,  
22 together with a certificate of dissolution issued by the Secretary  
23 of State, shall be returned to the representative of the dissolved  
24 limited liability company. Upon the filing of the certificate of  
25 dissolution, the existence of the company shall cease, except for  
26 the purpose of suits, other proceedings, and appropriate action as  
27 provided in this act. The managers in office at the time of  
28 dissolution, or those which remain, shall thereafter be trustees  
29 for the members and creditors of the dissolved limited liability  
30 company and shall have authority to distribute any company  
31 property discovered after dissolution, convey real estate, and  
32 take any other action as may be necessary on behalf of and in the  
33 name of the dissolved limited liability company.
- 34 55. (New section) a. A limited liability company may be  
35 dissolved involuntarily by a decree of the Superior Court in an  
36 action filed by the Attorney General when it is established that:
- 37 (1) The limited liability company procured its certificate of  
38 organization through fraud;
- 39 (2) The limited liability company has continued to exceed or  
40 abuse the authority conferred upon it by law;
- 41 (3) The limited liability company has failed for 30 days to  
42 appoint and maintain a registered agent in this State; or
- 43 (4) The limited liability company has failed for 30 days after  
44 the change of its registered office or registered agent to file in  
45 the office of the Secretary of State a statement of the change.
- 46 b. The Superior Court shall have full power to liquidate the  
47 assets and business of a limited liability company:
- 48 (1) In an action by a creditor:
- 49 (a) When the claim of the creditor has been reduced to  
50 judgment and an execution thereon is returned unsatisfied and it  
51 is established that the limited liability company is insolvent; or
- 52 (b) When the limited liability company has admitted in writing  
53 that the claim of the creditor is due and owing and it is  
54 established that the limited liability company is insolvent;



1 (2) Upon application by a limited liability company, which has  
2 filed a statement of intent to dissolve as provided in this act, to  
3 have its liquidation continued under supervision of the court; or

4 (3) When an action has been filed by the Attorney General to  
5 dissolve a limited liability company and it is established that  
6 liquidation of its business and affairs should precede the entry of  
7 a decree of dissolution.

8 c. Proceedings under paragraphs (1) and (2) of subsection b. of  
9 this section shall be brought in the Superior Court of the county  
10 in which the registered office of the limited liability company is  
11 located.

12 56. (New section) a. The Secretary of State may certify to  
13 the Attorney General the name of any limited liability company  
14 which has given cause for dissolution as provided pursuant to  
15 section 55 of this act, together with the facts pertinent thereto.

16 b. When the Secretary of State certifies the name of a limited  
17 liability company to the Attorney General as having given any  
18 cause for dissolution, the Secretary of State shall concurrently  
19 mail to the limited liability company at its registered office a  
20 notice that the certification has been made. Not less than thirty  
21 days after the receipt of the certification, the Attorney General  
22 shall file an action in the name of the State against the limited  
23 liability company for its dissolution.

24 c. If, before an action is filed, the limited liability company  
25 appoints or maintains a registered agent as provided in this act or  
26 files with the Secretary of State the required statement of  
27 change of registered office or registered agent, this act shall be  
28 promptly certified by the Secretary of State to the Attorney  
29 General, and he shall not file an action against the limited  
30 liability company for dissolution.

31 d. If, after an action has been filed, the limited liability  
32 company appoints or maintains a registered agent as provided in  
33 this act or files with the Secretary of State the required  
34 statement of change of registered office or registered agent and  
35 pays the cost of the action and a penalty of \$50, the action for  
36 cause shall abate.

37 57. (New section) a. Every action for the involuntary  
38 dissolution of a limited liability company brought by the Attorney  
39 General shall be commenced either in the Superior Court of the  
40 county in which the registered office of the limited liability  
41 company is located or in the Superior Court of the county of  
42 Mercer. Summons shall issue and be served as in other civil  
43 actions.

44 b. If service of process is unsuccessful, the Attorney General  
45 shall cause publication to be made in a newspaper of general  
46 circulation published in the county where the registered office of  
47 the limited liability company is located, containing a notice of  
48 the pendency of the action, the title of the court, the title of the  
49 action, and the date on or after which default may be entered.  
50 The Attorney General may include in one notice the names of any  
51 number of limited liability companies against which actions are  
52 then pending in the same court. The Attorney General shall  
53 cause a copy of the notice to be mailed to the registered agent of  
54 the limited liability company within 10 days after the first

1 publication thereof.

2 c. The certificate of the Attorney General of the mailing of  
3 the notice shall be prima facie evidence thereof. The notice shall  
4 be published at least once each week for two successive weeks,  
5 and the first publication may begin at any time after the  
6 summons has been returned. Unless a limited liability company  
7 has been served with summons, no default shall be taken against  
8 it earlier than 30 days after the first publication of the notice.

9 58. (New section) The certificate of organization shall be  
10 cancelled by the Secretary of State upon filing the statement of  
11 intent to dissolve.

12 59. (New section) Subject to the constitution of this State, the  
13 laws of the jurisdiction under which a foreign limited liability  
14 company is organized govern its organization and internal affairs  
15 and the liability of its members, and a foreign limited liability  
16 company may not be denied a certificate of authority to transact  
17 business in this State by reason of any difference between those  
18 laws and the laws of this State.

19 60. (New section) A foreign limited liability company may  
20 apply for a certificate of authority under any name that would be  
21 available to a domestic limited liability company, whether or not  
22 the name is the name under which it is authorized in its  
23 jurisdiction of organization.

24 61. (New section) a. Any limited liability company organized  
25 and existing under laws other than the laws of this State may  
26 register its company name pursuant to the provisions of this act,  
27 if the name would be available to a domestic limited liability  
28 company pursuant to section 8 of this act.

29 b. The registration shall be made by delivering to the  
30 Secretary of State an application for registration executed by an  
31 officer of the limited liability company, setting forth:

- 32 (1) The name of the limited liability company;  
33 (2) The jurisdiction under the laws of which it is organized;  
34 (3) The date of its organization;  
35 (4) A statement that it is carrying on or doing business and a  
36 brief statement of the business in which it is engaged; and  
37 (5) A certificate stating that the corporation is in good  
38 standing under the laws of the jurisdiction in which it is  
39 organized, executed by the Secretary of State of that jurisdiction  
40 or by any other official that may have custody of the records  
41 pertaining to limited liability companies.

42 c. The applicant shall also pay to the Secretary of State a  
43 registration fee in the amount of one dollar for each month, or  
44 fraction thereof, between the date of filing the application and  
45 December 31 of the calendar year in which the application is  
46 filed.

47 d. The registration shall be effective until the close of the  
48 calendar year in which the application for registration is filed.

49 62. (New section) Before transacting business in this State, a  
50 foreign limited liability company shall obtain a certificate of  
51 authority. An applicant for a certificate shall pay a filing fee in  
52 an amount determined by the Secretary of State and shall submit  
53 to the Secretary of State, in duplicate, an application executed  
54 by a manager, member, or other authorized agent and setting

1 forth:

2 a. The name of the foreign limited liability company and, if  
3 different, the name under which it proposes to transact business  
4 in this State;

5 b. The jurisdiction and date of its formation;

6 c. The name and business address of the proposed registered  
7 agent in this State, which agent shall be an individual resident of  
8 this State, a domestic corporation, or a foreign corporation  
9 having a place of business in, and authorized to do business in,  
10 this State;

11 d. The address of the office required to be maintained in the  
12 jurisdiction of its organization by the laws of that jurisdiction or,  
13 if not so required, of the principal place of business of the foreign  
14 limited liability company; and

15 e. Any additional information as may be necessary or  
16 appropriate in order to enable the Secretary of State to  
17 determine whether the limited liability company is entitled to  
18 transact business in this State.

19 63. (New section) a. If the Secretary of State finds that an  
20 application or amended application for a certificate of authority  
21 conforms to law and all requisite fees have been paid, then he  
22 shall:

23 (1) Endorse on the application or the amended application the  
24 word "Filed" and the date of the filing thereof;

25 (2) File in his office one duplicate original of the application  
26 or the amended application; and

27 (3) Return the other duplicate original of the application or  
28 the amended application to the person who filed it or to his  
29 representative with a certificate of authority issued by the  
30 Secretary of State.

31 64. (New section) If any statement in the application for a  
32 certificate of authority by a foreign limited liability company  
33 was false when made or any arrangements or other facts  
34 described have changed, making the application inaccurate in any  
35 respect, including but not limited to a change in the name or  
36 address of the registered agent required to be maintained by  
37 section 62 of this act, the foreign limited liability company shall  
38 promptly submit to the office of the Secretary of State, in  
39 duplicate, an amended application for a certificate of authority,  
40 executed by a manager, member, or other authorized agent  
41 correcting that statement.

42 65. (New section) a. A foreign limited liability company  
43 authorized to transact business in this State shall:

44 (1) Appoint and continuously maintain a registered agent in the  
45 same manner as provided in section 16 of this act;

46 (2) File a report upon any change in the name or business  
47 address of its registered agent in the same manner as provided in  
48 section 17 of this act.

49 (3) File limited liability company reports as provided in section  
50 18 of this act.

51 66. (New section) a. The certificate of authority of a foreign  
52 limited liability company to transact business in this State may  
53 be revoked by the Secretary of State upon the occurrence of any  
54 of these events:

1 (1) The foreign limited company has failed to:

2 (a) File its limited liability company report within the time  
3 required by this act or has failed to pay any fees or penalties  
4 prescribed by this act;

5 (b) Appoint and maintain a registered agent as required by this  
6 act;

7 (c) File a report upon any change in the name or business  
8 address of the registered agent; or

9 (d) File in the office of the Secretary of State any amendment  
10 to its application for a certificate of authority as specified in  
11 section 64 of this act.

12 (2) A misrepresentation has been made of any material matter  
13 in any application, report, affidavit, or other document submitted  
14 by the foreign limited liability company pursuant to this act.

15 b. No certificate of authority of a foreign limited liability  
16 company shall be revoked by the Secretary of State unless:

17 (1) He has given the foreign limited liability company not less  
18 than 60 days' notice thereof by mail addressed to its registered  
19 office in this State or, if the foreign limited liability company  
20 fails to appoint and maintain a registered agent in this State,  
21 addressed to the office required to be maintained pursuant to  
22 section 62 of this act; and

23 (2) During the 60-day period, the foreign limited liability  
24 company has failed to file the limited liability company report, to  
25 pay the fees or penalties, to file the report of change regarding  
26 the registered agent, to file any amendment, or to correct any  
27 misrepresentation.

28 c. Upon the expiration of sixty days after the mailing of the  
29 notice, the authority of the foreign limited liability company to  
30 transact business in this State shall cease.

31 67. (New section) a. A foreign limited liability company  
32 authorized to transact business in this State may withdraw from  
33 this State upon procuring from the Secretary of State a  
34 certificate of withdrawal. In order to procure the certificate,  
35 the foreign limited liability company shall deliver to the  
36 Secretary of State an application for withdrawal, which shall set  
37 forth:

38 (1) The name of the limited liability company and the  
39 jurisdiction under the laws of which it is incorporated;

40 (2) That the limited liability company is not transacting  
41 business in this State;

42 (3) That the limited liability company surrenders its authority  
43 to transact business in this State;

44 (4) That the limited liability company revokes the authority of  
45 its registered agent in this State to accept service of process and  
46 consents that service of process in any action, suit, or proceeding  
47 based upon any cause of action arising in this State during the  
48 time the limited liability company was authorized to transact  
49 business in this State may thereafter be made on the limited  
50 liability company by service thereof upon the Secretary of State;

51 (5) A post office address to which a person may mail a copy of  
52 any process against the limited liability company; and

53 (6) Any additional information that is necessary or appropriate  
54 in order to enable the Secretary of State to determine and assess

1 any unpaid fees payable by the limited liability company as  
2 prescribed in this act.

3 b. The application for withdrawal shall be in the form and  
4 manner designated by the Secretary of State and shall be  
5 executed by the limited liability company by one of its managers,  
6 or, if the limited liability company does not have a manager, by  
7 an authorized agent, or, if the limited liability company is in the  
8 hands of a receiver or trustee, by the receiver or trustee on  
9 behalf of the limited liability company. This report shall be  
10 accompanied by a written declaration that it is made under the  
11 penalties of perjury.

12 68. (New section) a. A foreign limited liability company  
13 transacting business in this State may not maintain any action,  
14 suit, or proceeding in any court of this State until it possesses a  
15 certificate of authority.

16 b. The failure of a foreign limited liability company to obtain  
17 a certificate of authority does not impair the validity of any  
18 contract or act of the foreign limited liability company or  
19 prevent the foreign limited liability company from defending any  
20 action, suit, or proceeding in any court of this State.

21 c. A foreign limited liability company, by transacting business  
22 in this State without a certificate of authority, appoints the  
23 Secretary of State as its agent upon whom any notice, process, or  
24 demand may be served.

25 d. A foreign limited liability company which transacts business  
26 in this State without a valid certificate of authority shall be  
27 liable to the State for the years or parts thereof during which it  
28 transacted business in this State without the certificate in an  
29 amount equal to all fees which would have been imposed by this  
30 act upon that limited liability company had it duly obtained the  
31 certificate, filed all reports required by this act, and paid all  
32 penalties imposed by this act. The Attorney General shall bring  
33 proceedings to cover all amounts due this State under the  
34 provisions of this section.

35 e. A foreign limited liability company which transacts business  
36 in this State without a valid certificate of authority shall be  
37 subject to a civil penalty, payable to the State, not to exceed  
38 \$5,000. Each manager or, in the absence of managers, each  
39 member or agent who authorizes, directs or participates in the  
40 transaction of business in this State on behalf of a foreign limited  
41 liability company which does not have a certificate shall be  
42 subject to a civil penalty, payable to the State, not to exceed  
43 \$1,000.

44 f. The civil penalties set forth in subsection e. of this section  
45 may be recovered in an action brought pursuant to the "penalty  
46 enforcement law", N.J.S.A.2A:58-1 et seq., by the Attorney  
47 General. Upon a finding by the court that a foreign limited  
48 liability company or any of its members, managers, or agents  
49 have transacted business in this State in violation of this act, the  
50 court shall issue, in addition to the imposition of a civil penalty,  
51 an injunction restraining the further transaction of the business  
52 of the foreign limited liability company and the further exercise  
53 of any limited liability company's rights and privileges in this  
54 State. The foreign limited liability company shall be enjoined

1 from transacting business in this State until all civil penalties  
2 plus any interest and court costs which the court may assess have  
3 been paid and until the foreign limited liability company has  
4 otherwise complied with the provisions of this act.

5 69. (New section) A member of a foreign limited liability  
6 company is not liable for the debts and obligations of the limited  
7 liability company solely by reason of the company's having  
8 transacted business in this State without a valid certificate of  
9 authority.

10 70. (New section) The Attorney General may bring an action  
11 to restrain a foreign limited liability company from transacting  
12 business in this State in violation of sections 60 through 69 of this  
13 act.

14 71. (New section) Service of process on a foreign limited  
15 liability company shall be as provided in section 21 of this act.

16 72. (New Section) a. The Secretary of State shall charge and  
17 collect any fees and other charges which are authorized by law,  
18 including:

19 (1) Issuing a certificate for any purpose whatsoever;

20 (2) Furnishing written information on any limited liability  
21 company;

22 (3) Furnishing a copy of any document or instrument and  
23 certifying the copy of that document or instrument;

24 (4) Any service of notice, demand, or process upon the  
25 Secretary of State as resident agent of a limited liability  
26 company, which amount may be recovered as taxable costs by the  
27 party to the suit, action, or proceeding causing the service to be  
28 made if the party prevails therein; and

29 (5) Filing any document required or permitted to be filed under  
30 this act.

31 b. The Secretary of State shall charge and collect, at the time  
32 of service of any subpoena upon the Secretary of State or his  
33 designee, a fee of \$50 and an allowance of \$10 for meals and a  
34 charge for mileage at the appropriate rate prescribed by the  
35 Secretary of State, for each mile from the State capitol to the  
36 place named in the subpoena. The fee is to be paid to the  
37 Secretary of State; the meal allowance and mileage charge are to  
38 be paid to the person named in the subpoena. If the person named  
39 in the subpoena is required to appear at the place named in the  
40 subpoena for more than one day, he shall be paid in advance a per  
41 diem allowance of \$44 for each day of attendance in addition to  
42 the other fees, allowances, and charges.

43 73. (New section) All filings and reports required by this act  
44 to be filed in the office of the Secretary of State shall be  
45 typewritten on forms which shall be prescribed and furnished by  
46 the Secretary of State.

47 74. N.J.S.54A:5-4 is amended to read as follows:

48 54A:5-4. Taxability of partners and members of limited  
49 liability companies.

50 a. A partnership or association as such shall not be subject to  
51 the tax imposed by this act, but the income or gain of a member  
52 of a partnership or association shall be subject to the tax and the  
53 tax shall be imposed on his share, whether or not distributed, of  
54 the income or gain received by the partnership or association for

1 its taxable year ending within or with the partner's or member's  
2 taxable year.

3 b. A limited liability company authorized to conduct business  
4 in this State pursuant to P.L....., c.....(C.....) (now pending  
5 before the Legislature as this bill), shall not be subject to the tax  
6 imposed by this act, but the income or gain of a member of a  
7 limited liability company shall be subject to the tax and the tax  
8 shall be imposed in the same manner as it is imposed upon the  
9 income or gain of a member of a partnership or association  
10 pursuant to this section.

11 (cf: N.J.S.54A:5-4)

12 75. This act shall take effect on the 180th day following  
13 enactment.

14

15

16

#### STATEMENT

17

18 This bill creates the "New Jersey Limited Liability Company  
19 Act," which provides for the organization of limited liability  
20 companies to conduct business in this State and which allows  
21 foreign limited liability companies to register and conduct  
22 business in this State. Members and managers of limited liability  
23 companies will enjoy the limited liability afforded to shareholders  
24 and directors of corporations, while at the same time enjoying  
25 the pass through tax advantages available to partnerships.

26 Limited liability companies will not be confronted with some of  
27 the restrictions that are placed upon S corporations and limited  
28 partnerships. For example, S corporations are subject to certain  
29 limits upon the number of shareholders they may have, while the  
30 membership of limited liability companies is not limited. Also, in  
31 a limited partnership only the limited partners are afforded the  
32 benefit of limited liability, while all the members and managers  
33 of a limited liability company would be afforded the benefit of  
34 limited liability.

35 Several states have already enacted laws providing for the  
36 creation of limited liability companies, while many others are in  
37 the process of doing so. In Revenue Ruling 88-76 the Internal  
38 Revenue Service ruled that limited liability companies can be  
39 treated as partnerships for tax purposes if they possess no more  
40 than two of the four characteristics of corporateness. The four  
41 characteristics of corporateness are: 1) continuity of life; 2)  
42 centralization of management; 3) limited liability and 4) free  
43 transferability of interests. A limited liability company  
44 organized under this bill would lack the corporate characteristics  
45 of continuity of life and free transferability of interests.

46 Continuity of life would be lacking in a New Jersey limited  
47 liability company because it would be dissolved upon the death,  
48 retirement, resignation, expulsion, bankruptcy, or dissolution of a  
49 member or the occurrence of any other event which terminates  
50 the continued membership of a member of a limited liability  
51 company, unless there are at least two remaining members and  
52 all of the remaining members consent to continue the business of  
53 the limited liability company. Also, a limited liability company  
54 may continue in existence for only thirty years after the filing of

1 its certificate of organization with the Secretary of State.

2 A limited liability company formed under this bill would lack  
3 the corporate characteristic of free transferability of interests  
4 because, although a member of a New Jersey limited liability  
5 company would be able to transfer his holdings in the company,  
6 the member would not be able to transfer his management  
7 interest in the company unless all of the other members  
8 consented.

9 In addition to any powers specifically granted to limited  
10 liability companies by the bill, a limited liability company formed  
11 under the bill would be able to conduct any business that a  
12 partnership or limited partnership may conduct pursuant to New  
13 Jersey law. Furthermore, the act sets standards and procedures  
14 for the creation and regulation of State limited liability  
15 companies and foreign limited liability companies through the  
16 Secretary of State and the Attorney General. Substantive  
17 standards for the management, finance, membership and  
18 distribution of the assets of limited liability companies are  
19 provided for in the act.

20 Finally, the act amends the "New Jersey Gross Income Tax  
21 Act" to provide that limited liability company income shall not  
22 be taxed under that act, but that the income of members of  
23 limited liability companies shall be taxed in the same manner as  
24 the income of members of a partnership is taxed under that act.

25

26

27

28

29 Provides for the creation of limited liability companies.



**SENATE COMMERCE COMMITTEE**  
**STATEMENT TO**  
**SENATE COMMITTEE SUBSTITUTE FOR**  
**SENATE, No. 890**  
**STATE OF NEW JERSEY**

**DATED: JUNE 14, 1993**

The Senate Commerce Committee reports favorably a Senate Committee Substitute for Senate, No. 890.

This bill, a Senate Committee Substitute for Senate, No. 890, enacts the "New Jersey Limited Liability Company Act." It provides for the organization of limited liability companies to conduct business in New Jersey, and allows foreign limited liability companies and limited liability partnerships to register and conduct business in this State. It entitles members and managers of these entities to take advantage of both the limited liability afforded to shareholders and directors of corporations and the pass through tax advantages available to partnerships.

Many states have already enacted laws providing for the creation of limited liability companies, while others are in the process of doing so. In Revenue Ruling 88-76 the Internal Revenue Service ruled that limited liability companies can be treated as partnerships for tax purposes if they possess no more than two of the four characteristics of corporateness. The four characteristics of corporateness are: 1) continuity of life; 2) centralization of management; 3) limited liability, and 4) free transferability of interests. A limited liability company organized under this bill would lack the corporate characteristics of continuity of life and free transferability of interests.

Continuity of life would be lacking in a limited liability company organized under this bill because it would be dissolved upon the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member or the occurrence of any other event which terminates the continued membership of a member of a limited liability company, unless all of the remaining members consent to continue the business of the limited liability company or pursuant to a right to continue stated in the operating agreement. Also, a limited liability company may continue in existence for only thirty years after the filing of its certificate of organization with the Secretary of State.

A limited liability company formed under the bill would lack the corporate characteristic of free transferability of interests because, although a member of a New Jersey limited liability company would be able to transfer his holdings in the company, the member would not be able to transfer his management interest in the company unless all of the other members consent or any procedures set forth in the operating agreement are complied with.

Furthermore, the bill sets standards and procedures for the creation and regulation of State limited liability companies and foreign limited liability companies and partnerships through the Secretary of State. Substantive standards for the management, finance, membership and distribution of the assets of limited liability companies are provided for in the bill.

Finally, this bill provides that limited liability companies formed under its provisions shall be treated as partnerships for purposes of State taxation, unless it is treated otherwise for federal income tax purposes. Also, a member or an assignee of a member of a limited liability company formed under the bill would be treated as a partner in a partnership for purposes of State taxation, unless the limited liability company is treated otherwise for federal income tax purposes.

This Senate Committee Substitute is identical to Assembly, No. 2350 (1R).

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 890

STATE OF NEW JERSEY

ADOPTED JUNE 14, 1993

Sponsored by Senator SINAGRA

1 AN ACT providing for the creation of limited liability companies  
2 and supplementing Title 42 of the Revised Statutes.

3

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

6 1. This act shall be known and may be cited as the "New  
7 Jersey Limited Liability Company Act."

8 2. As used in this Act unless the context otherwise requires:

9 "Bankruptcy" means an event that causes a person to cease  
10 to be a member as provided in section 24 of this act.

11 "Certificate of formation" means the certificate referred to in  
12 section 11 of this act, and the certificate as amended.

13 "Contribution" means any cash, property, services rendered or  
14 a promissory note or other obligation to contribute cash or  
15 property or to perform services, which a person contributes to a  
16 limited liability company in his capacity as a member; provided  
17 however, that services rendered and obligations to perform  
18 services are contributions only to the extent designated as  
19 contributions in the operating agreement.

20 "Foreign limited liability company" means a limited liability  
21 company or a registered limited liability partnership formed  
22 under the laws of any state or under the laws of any foreign  
23 country or other foreign jurisdiction and denominated as such  
24 under the laws of such state or foreign country or other foreign  
25 jurisdiction.

26 "Limited liability company" and "domestic limited liability  
27 company" means a limited liability company formed under the  
28 laws of this State and having two or more members.

29 "Limited liability company interest" means a member's share  
30 of the profits and losses of a limited liability company and a  
31 member's right to receive distributions of the limited liability  
32 company's assets.

33 "Liquidating trustee" means a person carrying out the winding  
34 up of a limited liability company.

35 "Manager" means a person who is named as a manager of a  
36 limited liability company in, or designated as a manager of a  
37 limited liability company pursuant to, an operating agreement or  
38 similar instrument under which the limited liability company is  
39 formed.

40 "Member" means a person who has been admitted to a limited  
41 liability company as a member as provided in section 21 of this  
42 act or, in the case of a foreign limited liability company, in  
43 accordance with the laws of the state or foreign country or other  
44 foreign jurisdiction under which the foreign limited liability  
45 company is organized.

1 "Operating agreement" means a written agreement of the  
2 members as to the affairs of a limited liability company and the  
3 conduct of its business.

4 "Person" means a natural person, partnership (whether general  
5 or limited and whether domestic or foreign), limited liability  
6 company, foreign limited liability company, trust, estate,  
7 association, corporation, custodian, nominee or any other  
8 individual or entity in its own or any representative capacity.

9 "State" means the District of Columbia or the Commonwealth  
10 of Puerto Rico or any state, territory, possession, or other  
11 jurisdiction of the United States other than this State.

12 3. The name of each limited liability company as set forth in  
13 its certificate of formation:

14 a. Shall contain the words "Limited Liability Company" or the  
15 abbreviation "L.L.C.";

16 b. May contain the name of a member or manager;

17 c. Must be such as to distinguish it upon the records in the  
18 office of the Secretary of State from the name of any  
19 corporation, limited partnership, business trust or limited liability  
20 company reserved, registered, formed or organized under the  
21 laws of this State or qualified to do business or registered as a  
22 foreign corporation, foreign limited partnership or foreign limited  
23 liability company in this State; provided, however, that a limited  
24 liability company may register under any name which does not  
25 distinguish it upon the records in the office of the Secretary of  
26 State from the name of any domestic or foreign corporation,  
27 limited partnership, business trust or limited liability company  
28 reserved, registered, formed or organized under the laws of this  
29 State with the written consent of the other corporation, limited  
30 partnership, business trust or limited liability company, which  
31 written consent shall be filed with the Secretary of State; and

32 d. Shall not contain any word or phrase, or any abbreviation or  
33 derivative thereof, the use of which is prohibited or restricted by  
34 any other statute of this State, unless the restrictions have been  
35 complied with.

36 4. a. No domestic limited liability company or foreign limited  
37 liability company which conducts activities in this State shall  
38 conduct any of those activities using an alternate name, including  
39 an abbreviation of its name or an acronym, unless:

40 (1) It also uses its actual name in the transaction of any of its  
41 activities in a manner that is not deceptive as to its actual  
42 identity; or

43 (2) It has first registered the alternate name as provided in  
44 subsection b. of this section.

45 b. Any limited liability company may adopt and use any  
46 alternate name, including any name which would be unavailable  
47 as the name of a domestic or foreign limited liability company  
48 because of the prohibitions of subsection c. of section 3, but not  
49 including any name not permitted as a limited liability company  
50 name by subsections a. or d. of section 3, by filing an original and  
51 a copy of a certificate of registration of alternate name with the  
52 Secretary of State executed on behalf of the limited liability  
53 company. The certificate shall set forth:

54 (1) The name, jurisdiction and date of establishment of the

1 limited liability company;

2 (2) the alternate name:

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

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

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

10 c. The registration shall be effective for five years from the  
11 date of filing and may be renewed successively for additional  
12 five-year periods by filing an original and a copy of the  
13 certificate of renewal executed on behalf of the limited liability  
14 company any time within 90 days prior to, but not later than, the  
15 date of expiration of the registration. The certificate of renewal  
16 shall set forth the information required in paragraphs (1) through  
17 (4) of subsection b. of this section, the date of the certificate of  
18 registration then in effect and that the limited liability company  
19 is continuing to use the alternate name.

20 d. This section shall not:

21 (1) Grant to the registrant of an alternate name any right in  
22 the name as against any prior or subsequent use of the name,  
23 regardless of whether used as a trademark, trade name, business  
24 name or corporate name; or

25 (2) Interfere with the power of any court to enjoin the use of  
26 the name on the basis of the law of unfair competition or on any  
27 other basis except the identity or similarity of the alternate  
28 name to any corporate, limited partnership or limited liability  
29 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 Secretary of State the  
34 filing fee prescribed for the certificate plus an additional filing  
35 fee equal to the full amount of the regular filing fee multiplied  
36 by the number of years it has been using the alternate name in  
37 violation of this section. For the purpose of this subsection, any  
38 part of a year shall be considered a full year.

39 f. The failure of a limited liability company to file a  
40 certificate of registration or renewal of alternate name shall not  
41 impair the validity of any contract or act of the limited liability  
42 company and shall not prevent the limited liability company from  
43 defending any action or proceedings in any court of this State,  
44 but the limited liability company shall not maintain any action or  
45 proceeding in any court of this State arising out of a contract or  
46 act in which it used the alternate name until it has filed the  
47 applicable certificate.

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

1 (2) A limited liability company which should have filed a  
2 certificate of registration or renewal of alternate name and fails  
3 to do so within 60 days after being notified of its obligation to do  
4 so by certified or registered mail by the Secretary of State, by  
5 any other governmental officer, or by any person aggrieved by its  
6 failure to do so, shall forfeit to the State a penalty of not less  
7 than \$200 nor more than \$500.

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

11 5. a. The exclusive right to the use of a name may be reserved  
12 by:

13 (1) Any person intending to organize a limited liability  
14 company under this act and to adopt that name;

15 (2) Any domestic limited liability company or any foreign  
16 limited liability company registered in this State which, in either  
17 case, proposes to change its name;

18 (3) Any foreign limited liability company intending to register  
19 in this State and adopt that name; and

20 (4) Any person intending to organize a foreign limited liability  
21 company and intending to have it register in this State and adopt  
22 that name.

23 b. The reservation of a specified name shall be made by filing  
24 with the Secretary of State an application, executed by the  
25 applicant, together with a duplicate copy, which may be either a  
26 signed or conformed copy, specifying the name to be reserved and  
27 the name and address of the applicant. If the Secretary of State  
28 finds that the name is available for use by a domestic or foreign  
29 limited liability company, he shall reserve the name for the  
30 exclusive use of the applicant for a period of 120 days. Once  
31 having so reserved a name, the same applicant may again reserve  
32 the same name for successive 120 day periods. The right to the  
33 exclusive use of a reserved name may be transferred to any other  
34 person by filing in the office of the Secretary of State a notice of  
35 the transfer, executed by the applicant for whom the name was  
36 reserved, together with a duplicate copy, which may be either a  
37 signed or conformed copy, specifying the name to be transferred  
38 and the name and address of the transferee. The reservation of a  
39 specified name may be cancelled by filing with the Secretary of  
40 State a notice of cancellation, executed by the applicant or  
41 transferee, together with a duplicate copy, which may be either a  
42 signed or conformed copy, specifying the name reservation to be  
43 cancelled and the name and address of the applicant or  
44 transferee. Any duplicate copy filed with the Secretary of State  
45 as required by this subsection shall be returned by the Secretary  
46 of State to the person who filed it or his representative with a  
47 notation thereon of the action taken with respect to the original  
48 copy thereof by the Secretary of State.

49 6. a. Each domestic and foreign limited liability company  
50 shall have and maintain in this State:

51 (1) A registered office, which may but need not be a place of  
52 its business in this State; and

53 (2) A registered agent for service of process on the limited  
54 liability company, which agent may be either an individual

1 resident of this State whose business office is identical with the  
2 limited liability company's registered office, or a domestic  
3 corporation, or a foreign corporation authorized to do business in  
4 this State having a business office identical with such registered  
5 office, or the limited liability company itself.

6 b. (1) A registered agent may (with prior notice to the limited  
7 liability company for which it is the registered agent), change the  
8 address of the registered office of any domestic or foreign  
9 limited liability company for which the registered agent is  
10 registered agent to another address in this State by filing in the  
11 office of the Secretary of State a certificate, executed by the  
12 registered agent, setting forth the names of each limited liability  
13 company, and the address at which the registered agent has  
14 maintained the registered office for each limited liability  
15 company, and further certifying to the new address to which the  
16 registered office will be changed on a given day, and at which  
17 new address the registered agent will thereafter maintain the  
18 registered office for each limited liability company recited in the  
19 certificate. Upon the filing of such certificate, the Secretary of  
20 State shall furnish to the registered agent a certified copy of the  
21 same under his hand and seal of office, and thereafter, or until  
22 further change of address, as authorized by law, the registered  
23 office in this State of each limited liability company recited in  
24 the certificate shall be located at the new address of the  
25 registered agent thereof as given in the certificate.

26 (2) In the event of a change of name of any person acting as a  
27 registered agent of a limited liability company, the registered  
28 agent shall file in the office of the Secretary of State a  
29 certificate, executed by the registered agent, setting forth the  
30 new name of the registered agent, the name of the registered  
31 agent before it was changed, the name of each limited liability  
32 company represented by the registered agent, and the address at  
33 which the registered agent has maintained the registered office  
34 for each limited liability company. Upon the filing of the  
35 certificate, the Secretary of State shall furnish to the registered  
36 agent a certified copy of the certificate under his hand and seal  
37 of office.

38 (3) Filing a certificate under this section shall be deemed to be  
39 an amendment of the certificate of formation of each limited  
40 liability company affected thereby and no limited liability  
41 company shall be required to take any further action with respect  
42 thereto, to amend its certificate of formation under this act.

43 7. a. The registered agent of a domestic limited liability  
44 company or a foreign limited liability company authorized to  
45 transact business in this State may resign by complying with the  
46 provisions of this section.

47 b. The registered agent of a foreign or domestic limited  
48 liability company may resign and appoint a successor registered  
49 agent by filing a certificate in the office of the Secretary of  
50 State, stating that it resigns and the name and address of the  
51 successor registered agent. There shall be attached to such  
52 certificate a statement executed by the affected limited liability  
53 company ratifying and approving such change of registered  
54 agent. Upon such filing, the successor registered agent shall

1 become the registered agent of each limited liability company  
2 which has ratified and approved the substitution and the  
3 successor registered agent's address, as stated in such  
4 certificate, shall become the address of each limited liability  
5 company's registered office in this State. The Secretary of State  
6 shall furnish to the successor registered agent upon request a  
7 certified copy of the certificate of resignation. Filing of the  
8 certificate of resignation shall be deemed to be an amendment of  
9 the certificate of formation of the limited liability company  
10 affected thereby and the limited liability company shall not be  
11 required to take any further action with respect thereto, to  
12 amend its certificate of formation under this act.

13 c. The registered agent of a limited liability company may  
14 resign without appointing a successor registered agent by  
15 complying with the following provisions:

16 (1) The registered agent, or, in the case of a registered agent  
17 who is deceased or has been declared incompetent by a court of  
18 competent jurisdiction, his legal representative, shall serve a  
19 notice of resignation by certified mail, return receipt requested,  
20 upon the limited liability company at the address last known to  
21 the agent, and shall make an affidavit of such service. If service  
22 cannot be made, the affidavit shall so state, and shall state  
23 briefly why service cannot be made. The affidavit, together with  
24 a copy of notice of resignation, shall be filed in the office of the  
25 Secretary of State.

26 (2) The resignation shall become effective 30 days after filing  
27 the affidavit of service in the office of the Secretary of State or  
28 upon the designation by the limited liability company of a new  
29 registered agent pursuant to this act, whichever is earlier. If the  
30 limited liability company fails to designate a new registered  
31 agent within the 30 day period, the limited liability company shall  
32 thereafter be deemed to have no registered agent or registered  
33 office in this State, until the limited liability company files a  
34 certificate of change of address of registered office and  
35 registered agent indicating the new registered office and  
36 registered agent.

37 (3) If any certificate of change replacing a resigned agent is  
38 not filed, the limited liability company shall, after written  
39 demand therefor by the Secretary of State, forfeit to the State a  
40 penalty of \$200 for each year or part thereof until an agent is  
41 appointed. The Secretary of State may issue a certificate to the  
42 Clerk of the Superior Court that the limited liability company is  
43 indebted for the payment of this penalty. This certificate shall  
44 be entered by the Clerk as a judgment docketed in the Superior  
45 Court, and shall have the same form as a docketed judgment.

46 (4) If a certificate of change replacing a resigned agent is not  
47 filed within two years from the effective date of the resignation,  
48 the certificate of formation of the limited liability company shall  
49 remain filed with the office of the Secretary of State but be  
50 transferred to an inactive list. A limited liability company whose  
51 certificate has been transferred to the inactive list shall remain a  
52 limited liability company formed under this act but no name  
53 reservations, transfers of reserved names or certificates of  
54 amendment may be filed until the limited liability company



1 regains active status by making all required filings and  
2 payments. The transfer of the certificate of formation of a  
3 limited liability company to the inactive list shall have no effect  
4 on the liability of a member of a limited liability company.

5 8. a. A limited liability company may carry on any lawful  
6 business, purpose or activity.

7 b. A limited liability company shall possess and may exercise  
8 all the powers and privileges granted by this act or by any other  
9 law or by its operating agreement, together with any powers  
10 incidental thereto, so far as such powers and privileges are  
11 necessary or convenient to the conduct, promotion or attainment  
12 of the business, purposes or activities of the limited liability  
13 company.

14 9. Except as otherwise provided in an operating agreement, a  
15 member or manager may lend money to, borrow money from, act  
16 as a surety, guarantor or endorser for, guarantee or assume one  
17 or more specific obligations of, provide collateral for, and  
18 transact other business with a limited liability company and,  
19 subject to other applicable law, has the same rights and  
20 obligations with respect to any such matter as a person who is not  
21 a member or manager.

22 10. Subject to such standards and restrictions, if any, as are  
23 set forth in its operating agreement, a limited liability company  
24 may, and shall have the power to, indemnify and hold harmless  
25 any member or manager or other person from and against any and  
26 all claims and demands whatsoever.

27 11. a. In order to form a limited liability company, one or  
28 more authorized persons must execute a certificate of  
29 formation. The certificate of formation shall be filed in the  
30 office of the Secretary of State and set forth:

31 (1) The name of the limited liability company;

32 (2) The address of the registered office and the name and  
33 address of the registered agent for service of process required to  
34 be maintained by section 6 of this act;

35 (3) That the limited liability company has two or more  
36 members;

37 (4) If the limited liability company is to have a specific date of  
38 dissolution, the latest date on which the limited liability company  
39 is to dissolve; and

40 (5) Any other matters the members determine to include  
41 therein.

42 b. A limited liability company is formed at the time of the  
43 filing of the initial certificate of formation in the office of the  
44 Secretary of State or at any later date or time specified in the  
45 certificate of formation if, in either case, there has been  
46 substantial compliance with the requirements of this section. A  
47 limited liability company formed under this act shall be a  
48 separate legal entity, the existence of which as a separate legal  
49 entity shall continue until cancellation of the limited liability  
50 company's certificate of formation.

51 12. If any instrument filed with the Secretary of State under  
52 any provision of this act is an inaccurate record of the limited  
53 liability company action therein referred to, or was defectively  
54 or erroneously executed, the instrument may be corrected by

1 filing with the Secretary of State a certificate of correction  
2 executed by an authorized person. The certificate of correction  
3 shall specify the inaccuracy or defect to be corrected and shall  
4 set forth the correction. The instrument so corrected shall be  
5 deemed to have been effective in its corrected form as of its  
6 original filing date except as to persons who actually relied in  
7 good faith upon the inaccurate portion of the certificate and who  
8 are adversely affected by the correction. As to these persons,  
9 the correction shall be effective as of the effective date of filing  
10 of the certificate of correction. Such filing shall only be made if  
11 the Secretary of State consents to the filing.

12 13. a. A certificate of formation is amended by filing a  
13 certificate of amendment thereto in the office of the Secretary  
14 of State. The certificate of amendment shall set forth:

15 (1) The name of the limited liability company; and

16 (2) The amendment to the certificate of formation.

17 b. A manager or, if there is no manager, any member who  
18 becomes aware that any statement in a certificate of formation  
19 was false when made, or that any matter described has changed  
20 making the certificate of formation false in any material respect,  
21 shall promptly amend the certificate of formation.

22 c. A certificate of formation may be amended at any time for  
23 any other proper purpose.

24 d. Unless a later effective date (which shall be a date certain  
25 not later than 30 days after the date of filing) is provided for in  
26 the certificate of amendment, a certificate of amendment shall  
27 be effective at the time of its filing with the Secretary of State.

28 14. a. A certificate of formation shall be cancelled upon the  
29 dissolution and the completion of winding up of a limited liability  
30 company, or at any other time there are fewer than two  
31 members, or upon the filing of a certificate of merger or  
32 consolidation if the limited liability company is not the surviving  
33 or resulting entity in a merger or consolidation.

34 b. A certificate of cancellation shall be filed in the office of  
35 the Secretary of State to accomplish the cancellation of a  
36 certificate of formation upon the dissolution and the completion  
37 of winding up of a limited liability company or at any other time  
38 there are not two members and shall set forth:

39 (1) The name of the limited liability company;

40 (2) The date of filing of its certificate of formation;

41 (3) The reason for filing the certificate of cancellation;

42 (4) The future effective date or time (which shall be a date or  
43 time certain) of cancellation if it is not to be effective upon the  
44 filing of the certificate; and

45 (5) Any other information the person filing the certificate of  
46 cancellation determines.

47 15. a. Each certificate required by this act to be filed in the  
48 office of the Secretary of State shall be executed by one or more  
49 authorized persons.

50 b. Unless otherwise provided in an operating agreement, any  
51 person may sign any certificate or amendment thereof or enter  
52 into an operating agreement or amendment thereof by an agent,  
53 including an attorney-in-fact. An authorization, including a  
54 power of attorney, to sign any certificate or amendment thereof

1 or to enter into an operating agreement or amendment thereof  
2 need not be in writing, need not be sworn to, verified or  
3 acknowledged, and need not be filed in the office of the  
4 Secretary of State, but if in writing, must be retained by the  
5 limited liability company.

6 c. The execution of a certificate by an authorized person  
7 constitutes an oath or affirmation, under the penalties of perjury  
8 in the third degree, that, to the best of the authorized person's  
9 knowledge and belief, the facts stated therein are true.

10 16. a. If a person required to execute a certificate required by  
11 this act fails or refuses to do so, any other person who is  
12 adversely affected by the failure or refusal may petition the  
13 Superior Court to direct the execution of the certificate. If the  
14 court finds that the execution of the certificate is proper and  
15 that any person so designated has failed or refused to execute the  
16 certificate, it shall order the Secretary of State to record an  
17 appropriate certificate.

18 b. If a person required to execute an operating agreement or  
19 amendment thereof fails or refuses to do so, any other person  
20 who is adversely affected by the failure or refusal may petition  
21 the Superior Court to direct the execution of the operating  
22 agreement or amendment thereof. If the court finds that the  
23 operating agreement or amendment thereof should be executed  
24 and that any person required to execute the operating agreement  
25 or amendment thereof has failed or refused to do so, it shall  
26 enter an order granting appropriate relief.

27 17. a. The original signed copy of the certificate of formation  
28 and of any certificates of amendment or cancellation (or of any  
29 judicial decree of amendment or cancellation), and of any  
30 certificate of merger or consolidation and of any restated  
31 certificate shall be delivered to the Secretary of State. A person  
32 who executes a certificate as an agent or fiduciary need not  
33 exhibit evidence of his authority as a prerequisite to filing. Any  
34 signature on any certificate authorized to be filed in the office of  
35 the Secretary of State under any provision of this act may be a  
36 facsimile. Unless the Secretary of State finds that any  
37 certificate does not conform to law, upon receipt of all filing  
38 fees required by law the Secretary of State shall:

39 (1) Certify that the certificate of formation, the certificate of  
40 amendment, the certificate of cancellation (or of any judicial  
41 decree of amendment or cancellation), the certificate of merger  
42 or consolidation or the restated certificate has been filed in his  
43 office by endorsing upon the original certificate the word  
44 "Filed," and the date and hour of the filing. This endorsement is  
45 conclusive of the date and time of its filing in the absence of  
46 actual fraud;

47 (2) File and index the endorsed certificate; and

48 (3) Prepare and return to the person who filed it or his  
49 representative a copy of the original signed instrument, similarly  
50 endorsed, and shall certify such copy as a true copy of the  
51 original signed instrument.

52 b. Upon the filing of a certificate of amendment (or judicial  
53 decree of amendment) or restated certificate in the office of the  
54 Secretary of State, or upon the future effective date or time

1 of a certificate of amendment (or judicial decree thereof) or  
2 restated certificate, as provided for therein, the certificate of  
3 formation shall be amended or restated as set forth therein.  
4 Upon the filing of a certificate of cancellation (or a judicial  
5 decree thereof), or a certificate of merger or consolidation which  
6 acts as a certificate of cancellation, or upon the future effective  
7 date or time of a certificate of cancellation (or a judicial decree  
8 thereof) or of a certificate of merger or consolidation which acts  
9 as a certificate of cancellation, the certificate of formation is  
10 cancelled.

11 18. A certificate of formation filed in the office of the  
12 Secretary of State is notice that the entity formed in connection  
13 with the filing of the certificate of formation is a limited  
14 liability company formed under the laws of this State and is  
15 notice of all other facts set forth therein which are required or  
16 permitted to be set forth in a certificate of formation by  
17 paragraphs (1) and (2) of subsection a. of section 11 of this act.

18 19. a. A limited liability company may, at any time, integrate  
19 into a single instrument all of the provisions of its certificate of  
20 formation which are then in effect and operative as a result of  
21 there having previously been filed in the office of the Secretary  
22 of State one or more certificates or other instruments pursuant  
23 to this act and it may at the same time also further amend its  
24 certificate of formation by adopting a restated certificate of  
25 formation.

26 b. If a restated certificate of formation merely restates and  
27 integrates but does not further amend the initial certificate of  
28 formation, as previously amended or supplemented by any  
29 instrument that was executed and filed pursuant to this act, it  
30 shall be specifically designated in its heading as a "Restated  
31 Certificate of Formation" together with such other words as the  
32 limited liability company may deem appropriate and shall be  
33 executed by an authorized person and filed as provided in section  
34 17 of this act in the office of the Secretary of State. If a  
35 restated certificate restates and integrates and also further  
36 amends in any respect the certificate of formation, as previously  
37 amended or supplemented, it shall be specifically designated in  
38 its heading as an "Amended and Restated Certificate of  
39 Formation" together with such other words as the limited  
40 liability company may deem appropriate and shall be executed by  
41 at least one authorized person, and filed as provided in section 17  
42 of this act in the office of the Secretary of State.

43 c. A restated certificate of formation shall state, either in its  
44 heading or in an introductory paragraph, the limited liability  
45 company's present name, and, if it has been changed, the name  
46 under which it was originally filed, and the future effective date  
47 (which shall be a date certain not more than 30 days after the  
48 date of filing) of the restated certificate if it is not to be  
49 effective upon the filing of the restated certificate. If a restated  
50 certificate only restates and integrates and does not further  
51 amend a limited liability company's certificate of formation and  
52 there is no discrepancy between the existing certificate of  
53 formation and the restated certificate, it shall state that fact as  
54 well.

1 d. Upon the filing of a restated certificate of formation with  
2 the Secretary of State, or upon the future effective date or time  
3 of a restated certificate of formation as provided for therein, the  
4 initial certificate of formation, as amended or supplemented,  
5 shall be superseded; the restated certificate of formation,  
6 including any further amendment or changes made thereby, shall  
7 be the certificate of formation of the limited liability company,  
8 but the original effective date of formation shall remain  
9 unchanged.

10 e. Any amendment or change effected in connection with the  
11 restatement and integration of the certificate of formation shall  
12 be subject to any other provision of this act, not inconsistent with  
13 this section, which would apply if a separate certificate of  
14 amendment were filed to effect such amendment or change.

15 20. a. As used in this section, "other business entity" means a  
16 corporation, or a business trust or association, a real estate  
17 investment trust, a common-law trust, or any other  
18 unincorporated business, including a partnership (whether general  
19 or limited), and a foreign limited liability company, but excluding  
20 a domestic limited liability company.

21 b. Pursuant to an agreement of merger or consolidation, a  
22 domestic limited liability company may merge or consolidate  
23 with or into one or more domestic limited liability companies or  
24 other business entities formed or organized under the laws of this  
25 State or any other state or the United States or any foreign  
26 country or other foreign jurisdiction, with such domestic limited  
27 liability company or other business entity as the agreement shall  
28 provide being the surviving or resulting domestic limited liability  
29 company or other business entity. Unless otherwise provided in  
30 the operating agreement, a merger or consolidation shall be  
31 approved by the members of each domestic limited liability  
32 company which is to merge or consolidate or, if there is more  
33 than one class or group of members, then by each class or group  
34 of members who under the provisions of the operating agreement  
35 are entitled to vote, in either case, by members who own more  
36 than 50 percent (unless a higher percentage is specified in the  
37 operating agreement) of the then current percentage or other  
38 interest in the profits of the domestic limited liability company  
39 owned by all of the members or by the members in each class or  
40 group, as appropriate. In connection with a merger or  
41 consolidation hereunder, rights or securities of, or interests in, a  
42 domestic limited liability company or other business entity which  
43 is a constituent party to the merger or consolidation may be  
44 exchanged for or converted into cash, property, rights or  
45 securities of, or interests in, the surviving or resulting domestic  
46 limited liability company or other business entity or, in addition  
47 to or in lieu thereof, may be exchanged for or converted into  
48 cash, property, rights or securities of, or interests in, a domestic  
49 limited liability company or other business entity which is not the  
50 surviving or resulting limited liability company or other business  
51 entity in the merger or consolidation. Notwithstanding prior  
52 approval, an agreement of merger or consolidation may be  
53 terminated or amended pursuant to a provision for such  
54 termination or amendment contained in the agreement of merger

1 or consolidation.

2 c. If a domestic limited liability company merges or  
3 consolidates under this section, the domestic limited liability  
4 company or other business entity surviving or resulting in or from  
5 the merger or consolidation shall file a certificate of merger or  
6 consolidation in the office of the Secretary of State. The  
7 certificate of merger or consolidation shall state:

8 (1) The name and jurisdiction of formation or organization of  
9 each of the domestic limited liability companies or other business  
10 entities which is to merge or consolidate;

11 (2) That an agreement of merger or consolidation has been  
12 approved and executed by each of the domestic limited liability  
13 companies or other business entities which is to merge or  
14 consolidate;

15 (3) The name of the surviving or resulting domestic limited  
16 liability company or other business entity;

17 (4) The future effective date or time (which shall be a date or  
18 time certain) of the merger or consolidation if it is not to be  
19 effective upon the filing of the certificate of merger or  
20 consolidation;

21 (5) That the agreement of merger or consolidation is on file at  
22 a place of business of the surviving or resulting domestic limited  
23 liability company or other business entity, and shall state the  
24 address thereof;

25 (6) That a copy of the agreement of merger or consolidation  
26 will be furnished by the surviving or resulting domestic limited  
27 liability company or other business entity, on request and without  
28 cost, to any member of any domestic limited liability company or  
29 any person holding an interest in any other business entity which  
30 is to merge or consolidate; and

31 (7) If the surviving or resulting entity is not a domestic limited  
32 liability company, or a corporation or limited partnership  
33 organized under the laws of this State, a statement that such  
34 surviving or resulting other business entity agrees that it may be  
35 served with process in this State in any action, suit or proceeding  
36 for the enforcement of any obligation of any domestic limited  
37 liability company which is to merge or consolidate, irrevocably  
38 appointing the Secretary of State as its agent to accept service  
39 of process in any such action, suit or proceeding and specifying  
40 the address to which a copy of such process shall be mailed to it  
41 by the Secretary of State.

42 d. Unless a future effective date or time is provided in a  
43 certificate of merger or consolidation, in which event a merger  
44 or consolidation shall be effective at any such future effective  
45 date or time, a merger or consolidation shall be effective upon  
46 the filing in the office of the Secretary of State of a certificate  
47 of merger or consolidation.

48 e. A certificate of merger or consolidation shall act as a  
49 certificate of cancellation for a domestic limited liability  
50 company which is not the surviving or resulting entity in the  
51 merger or consolidation.

52 f. An agreement of merger or consolidation approved in  
53 accordance with subsection b. of this section may (1) effect any  
54 amendment to the operating agreement or (2) effect the adoption

1 of a new operating agreement for a limited liability company if it  
2 is the surviving or resulting limited liability company in the  
3 merger or consolidation. Any amendment to an operating  
4 agreement or adoption of a new operating agreement made  
5 pursuant to this subsection shall be effective at the time or date  
6 of the merger or consolidation. The provisions of this subsection  
7 shall not be construed to limit the accomplishment of a merger or  
8 of any of the matters referred to herein by any other means  
9 provided for in an operating agreement or other agreement or as  
10 otherwise permitted by law, including that the operating  
11 agreement of any constituent limited liability company to the  
12 merger or consolidation (including a limited liability company  
13 formed for the purpose of consummating a merger or  
14 consolidation) shall be the operating agreement of the surviving  
15 or resulting limited liability company.

16 g. When any merger or consolidation becomes effective under  
17 this section, for all purposes of the laws of this State, all of the  
18 rights, privileges and powers of each of the domestic limited  
19 liability companies and other business entities that have merged  
20 or consolidated, and all property, real, personal and mixed, and  
21 all debts due to any of those domestic limited liability companies  
22 and other business entities, as well as all other things and causes  
23 of action belonging to each of those domestic limited liability  
24 companies and other business entities, shall be vested in the  
25 surviving or resulting domestic limited liability company or other  
26 business entity, and shall thereafter be the property of the  
27 surviving or resulting domestic limited liability company or other  
28 business entity as they were of each of the domestic limited  
29 liability companies and other business entities that have merged  
30 or consolidated, and the title to any real property vested by deed  
31 or otherwise, under the laws of this State, in any of those  
32 domestic limited liability companies and other business entities,  
33 shall not revert or be in any way impaired by reason of this act;  
34 but all rights of creditors and all liens upon any property of any  
35 of those domestic limited liability companies and other business  
36 entities shall be preserved unimpaired, and all debts, liabilities  
37 and duties of each of those domestic limited liability companies  
38 and other business entities that have merged or consolidated shall  
39 attach to the surviving or resulting domestic limited liability  
40 company or other business entity, and may be enforced against it  
41 to the same extent as if the debts, liabilities and duties had been  
42 incurred or contracted by it. Unless otherwise agreed, a merger  
43 or consolidation of a domestic limited liability company,  
44 including a domestic limited liability company which is not the  
45 surviving or resulting entity in the merger or consolidation, shall  
46 not require the domestic limited liability company to wind up its  
47 affairs under section 50 of this act or pay its liabilities and  
48 distribute its assets under section 51 of this act.

49 21. a. In connection with the formation of a limited liability  
50 company, a person acquiring a limited liability company interest  
51 is admitted as a member of the limited liability company upon  
52 the later to occur of:

- 53 (1) The formation of the limited liability company; or  
54 (2) The time provided in and upon compliance with the

1 operating agreement or, if the operating agreement does not so  
2 provide, when the person's admission is reflected in the records  
3 of the limited liability company.

4 b. After the formation of a limited liability company, a person  
5 acquiring a limited liability company interest is admitted as a  
6 member of the limited liability company:

7 (1) In the case of a person acquiring a limited liability  
8 company interest directly from the limited liability company, at  
9 the time provided in and upon compliance with the operating  
10 agreement or, if the operating agreement does not so provide,  
11 upon the consent of all members and when the person's admission  
12 is reflected in the records of the limited liability company; or

13 (2) In the case of an assignee of a limited liability company  
14 interest, (a) as provided in section 46 of this act and (b) at the  
15 time provided in and upon compliance with the operating  
16 agreement or, if the operating agreement does not so provide,  
17 when the assignee's permitted admission is reflected in the  
18 records of the limited liability company.

19 c. A person may be admitted to a limited liability company as  
20 a member of the limited liability company and may receive a  
21 limited liability company interest in the limited liability company  
22 without making a contribution or being obligated to make a  
23 contribution to the limited liability company.

24 d. An operating agreement or another written agreement or  
25 writing:

26 (1) May provide that a person shall be admitted as a member  
27 of a limited liability company, or shall become an assignee of a  
28 limited liability company interest or other rights or powers of a  
29 member to the extent assigned, and shall become bound by the  
30 operating agreement (a) if the person (or a representative  
31 authorized by the person orally, in writing or by other action such  
32 as payment for a limited liability company interest) executes the  
33 operating agreement or any other writing evidencing the intent of  
34 the person to become a member or assignee, or (b) without such  
35 execution, if the person (or a representative authorized by the  
36 person orally, in writing or by other action such as payment for a  
37 limited liability company interest) complies with the conditions  
38 for becoming a member or assignee as set forth in the operating  
39 agreement or any other writing and requests (orally, in writing or  
40 by other action such as payment for a limited liability company  
41 interest) that the records of the limited liability company reflect  
42 such admission or assignment; and

43 (2) Shall not be unenforceable by reason of its not having been  
44 signed by a person being admitted as a member or becoming an  
45 assignee as provided in paragraph (1) of this subsection, or by  
46 reason of its having been signed by a representatives as provided  
47 in this act.

48 22. a. An operating agreement may provide for classes or  
49 groups of members having such relative rights, powers and duties  
50 as the operating agreement may provide, and may make provision  
51 for the future creation in the manner provided in the operating  
52 agreement of additional classes or groups of members having such  
53 relative rights, powers and duties as may from time to time be  
54 established, including rights, powers and duties senior to existing



1 classes and groups of members. An operating agreement may  
2 provide for the taking of an action, including the amendment of  
3 the operating agreement, without the vote or approval of any  
4 member or class or group of members, including an action to  
5 create under the provisions of the operating agreement a class or  
6 group of limited liability company interests that was not  
7 previously outstanding.

8 b. An operating agreement may grant to all or certain  
9 identified members or a specified class or group of the members  
10 the right to vote, separately or with all or any class or group of  
11 managers or members, on any matter. Voting by members may  
12 be on a per capita, number, financial interest, class, group or any  
13 other basis. In the absence of any provision in the operating  
14 agreement, voting by members shall be on a per capita basis.

15 c. An operating agreement which grants a right to vote may  
16 set forth provisions relating to notice of the time, place or  
17 purpose of any meeting at which any matter is to be voted on by  
18 any manager or class or group of managers, waiver of any such  
19 notice, action by consent without a meeting, the establishment of  
20 a record date, quorum requirements, voting in person or by proxy,  
21 or any other matter with respect to the exercise of any such right  
22 to vote.

23 23. Except as otherwise provided by this act, the debts,  
24 obligations and liabilities of a limited liability company, whether  
25 arising in contract, tort or otherwise, shall be solely the debts,  
26 obligations and liabilities of the limited liability company; and no  
27 member, manager, employee or agent of a limited liability  
28 company shall be obligated personally for any such debt,  
29 obligation or liability of the limited liability company, or for any  
30 debt, obligation or liability of any other member, manager,  
31 employee or agent of the limited liability company, by reason of  
32 being a member, or acting as a manager, employee or agent of  
33 the limited liability company.

34 24. A person ceases to be a member of a limited liability  
35 company upon the happening of any of the following events:

36 a. Unless otherwise provided in an operating agreement, or  
37 with the written consent of all members, a member:

38 (1) Makes an assignment for the benefit of creditors;

39 (2) Files a voluntary petition in bankruptcy;

40 (3) Is adjudged bankrupt or insolvent, or has entered against  
41 him an order for relief, in any bankruptcy or insolvency  
42 proceeding;

43 (4) Files a petition or answer seeking for himself any  
44 reorganization, arrangement, composition, readjustment,  
45 liquidation, dissolution or similar relief under any statute, law or  
46 regulation;

47 (5) Files an answer or other pleading admitting or failing to  
48 contest the material allegations of a petition filed against him in  
49 any proceeding of this nature;

50 (6) Seeks, consents to or acquiesces in the appointment of a  
51 trustee, receiver or liquidator of the member or of all or any  
52 substantial part of his properties; or

53 b. Unless otherwise provided in an operating agreement, or  
54 with the written consent of all members, 120 days after the

1 commencement of any proceeding against the member seeking  
2 reorganization, arrangement, composition, readjustment,  
3 liquidation, dissolution or similar relief under any statute, law or  
4 regulation, if the proceeding has not been dismissed, or if within  
5 90 days after the appointment without his consent or  
6 acquiescence of a trustee, receiver or liquidator of the member  
7 or of all or any substantial part of his properties, the appointment  
8 is not vacated or stayed, or within 90 days after the expiration of  
9 any such stay, the appointment is not vacated.

10 25. a. Each member of a limited liability company has the  
11 right, subject to such reasonable standards (including standards  
12 governing what information and documents are to be furnished at  
13 what time and location and at whose expense) as may be set forth  
14 in an operating agreement or otherwise established by the  
15 manager or, if there is no manager, then by the members, to  
16 obtain from the limited liability company from time to time upon  
17 reasonable demand for any purpose reasonably related to the  
18 member's interest as a member of the limited liability company:

19 (1) True and full information regarding the status of the  
20 business and financial condition of the limited liability company;

21 (2) Promptly after becoming available, a copy of the limited  
22 liability company's federal, state and local income tax returns  
23 for each year;

24 (3) A current list of the name and last known business,  
25 residence or mailing address of each member and manager;

26 (4) A copy of any written operating agreement and certificate  
27 of formation and all amendments thereto, together with executed  
28 copies of any written powers of attorney pursuant to which the  
29 operating agreement and any certificate and all amendments  
30 thereto have been executed;

31 (5) True and full information regarding the amount of cash and  
32 a description and statement of the agreed value of any other  
33 property or services contributed by each member and which each  
34 member has agreed to contribute in the future, and the date on  
35 which each became a member; and

36 (6) Except as kept confidential pursuant to subsection c. of  
37 this section, other information regarding the affairs of the  
38 limited liability company as is just and reasonable.

39 b. Each manager shall have the right to examine all of the  
40 information described in this section for a purpose reasonably  
41 related to his position as a manager.

42 c. The manager of a limited liability company shall have the  
43 right to keep confidential from the members, for such period of  
44 time as the manager deems reasonable, any information which  
45 the manager reasonably believes to be in the nature of trade  
46 secrets or other information the disclosure of which the manager  
47 in good faith believes is not in the best interest of the limited  
48 liability company or could damage the limited liability company  
49 or its business or which the limited liability company is required  
50 by law or by agreement with a third party to keep confidential.

51 d. A limited liability company may maintain its records in  
52 other than a written form if such form is capable of conversion  
53 into written form within a reasonable time.

54 e. Any demand by a member under this section shall be in

1 writing and shall state the purpose of the demand.

2 26. An operating agreement may provide that a member who  
3 fails to perform in accordance with, or to comply with the terms  
4 and conditions of, the operating agreement shall be subject to  
5 specified penalties or specified consequences, and at the time or  
6 upon the happening of events specified in the operating  
7 agreement, a member shall be subject to specified penalties or  
8 specified consequences. Unless otherwise provided in the  
9 operating agreement, a member shall not be personally liable for  
10 failure to perform in accordance with, or to comply with the  
11 terms and conditions of, the operating agreement or for any other  
12 reason unless such failure to perform or to comply or such other  
13 reason constitutes gross negligence or willful misconduct by the  
14 member. The operating agreement may, in any event, eliminate  
15 or limit the personal liability of the member for such failure to  
16 perform or to comply or for such other reason.

17 27. Unless otherwise provided in an operating agreement, the  
18 management of a limited liability company shall be vested in its  
19 members in proportion to the then current percentage or other  
20 interest of members in the profits of the limited liability  
21 company owned by all of the members, the decision of members  
22 owning more than 50 percent of the then current percentage or  
23 other interest in the profits controlling; provided, however, that  
24 if an operating agreement provides for the management, in whole  
25 or in part, of a limited liability company by a manager, the  
26 management of the limited liability company, to the extent so  
27 provided, shall be vested in the manager who shall be chosen by  
28 the members in the manner provided in the operating agreement.  
29 The manager shall also hold the offices and have the  
30 responsibilities accorded to him by the members and set forth in  
31 an operating agreement. Subject to section 37 of this act, a  
32 manager shall cease to be a manager as provided in an operating  
33 agreement.

34 28. A manager of a limited liability company may make  
35 contributions to the limited liability company and share in the  
36 profits and losses of, and in distributions from, the limited  
37 liability company as a member. A person who is both a manager  
38 and a member has the rights and powers, and is subject to the  
39 restrictions and liabilities, of a manager and, except as provided  
40 in an operating agreement, also has the rights and powers, and is  
41 subject to the restrictions and liabilities, of a member to the  
42 extent of his participation in the limited liability company as a  
43 member.

44 29. a. An operating agreement may provide for classes or  
45 groups of managers having such relative rights, powers and duties  
46 as the operating agreement may provide, and may make provision  
47 for the future creation in the manner provided in the operating  
48 agreement of additional classes or groups of managers having  
49 such relative rights, powers and duties as may from time to time  
50 be established, including rights, powers and duties senior to  
51 existing classes and groups of managers. An operating agreement  
52 may provide for the taking of an action, including the amendment  
53 of the operating agreement, without the vote or approval of any  
54 manager or class or group of managers, including an action to

1 create under the provisions of the operating agreement a class or  
2 group of limited liability company interests that was not  
3 previously outstanding.

4 b. An operating agreement may grant to all or certain  
5 identified managers or a specified class or group of the managers  
6 the right to vote, separately or with all or any class or group of  
7 managers or members, on any matter. Voting by managers may  
8 be on a per capita, number, financial interest, class, group or any  
9 other basis.

10 c. An operating agreement which grants a right to vote may  
11 set forth provisions relating to notice of the time, place or  
12 purpose of any meeting at which any matter is to be voted on by  
13 any manager or class or group of managers, waiver of any such  
14 notice, action by consent without a meeting, the establishment of  
15 a record date, quorum requirements, voting in person or by proxy,  
16 or any other matter with respect to the exercise of any such right  
17 to vote.

18 30. An operating agreement may provide that a manager who  
19 fails to perform in accordance with, or to comply with the terms  
20 and conditions of, the operating agreement shall be subject to  
21 specified penalties or specified consequences, and at the time or  
22 upon the happening of events specified in the operating  
23 agreement, a manager shall be subject to specified penalties or  
24 specified consequences. Unless otherwise provided in the  
25 operating agreement, a manager shall not be personally liable for  
26 failure to perform in accordance with, or to comply with the  
27 terms and conditions of, the operating agreement or for any other  
28 reason unless such failure to perform or to comply or such other  
29 reason constitutes gross negligence or willful misconduct by the  
30 manager. The operating agreement may, in any event, eliminate  
31 or limit the personal liability of the manager for such failure to  
32 perform or to comply or for such other reason.

33 31. A member or manager of a limited liability company shall  
34 be fully protected in relying in good faith upon the records of the  
35 limited liability company and upon such information, opinions,  
36 reports or statements presented to the limited liability company  
37 by any of its other managers, members, officers, employees, or  
38 committees of the limited liability company, or by any other  
39 person, as to matters the member or manager reasonably believes  
40 are within such other person's professional or expert competence  
41 and who has been selected with reasonable care by or on behalf of  
42 the limited liability company, including information, opinions,  
43 reports or statements as to the value and amount of the assets,  
44 liabilities, profits or losses of the limited liability company or any  
45 other facts pertinent to the existence and amount of assets from  
46 which distributions to members might properly be paid.

47 32. The contribution of a member to a limited liability  
48 company may be in cash, property or services rendered, or a  
49 promissory note or other obligation to contribute cash or property  
50 or to perform services.

51 33. a. Except as provided in an operating agreement, a  
52 member is obligated to a limited liability company to perform  
53 any promise to contribute cash or property or to perform  
54 services, even if he is unable to perform because of death,

1 disability or any other reason. If a member does not make the  
2 required contribution of property or services, he is obligated at  
3 the option of the limited liability company to contribute cash  
4 equal to that portion of the agreed value (as stated in the records  
5 of the limited liability company) of the contribution that has not  
6 been made. The foregoing option shall be in addition to, and not  
7 in lieu of, any other rights, including the right to specific  
8 performance, that the limited liability company may have against  
9 such member under the operating agreement or applicable law.

10 b. Unless otherwise provided in an operating agreement, the  
11 obligation of a member to make a contribution or return money  
12 or other property paid or distributed in violation of this act may  
13 be compromised only by consent of all the members.  
14 Notwithstanding the compromise, a creditor of a limited liability  
15 company who extends credit, after the entering into of an  
16 operating agreement or an amendment thereto which, in either  
17 case, reflects the obligation, and before the amendment thereof  
18 to reflect the compromise, may enforce the original obligation to  
19 the extent that, in extending credit, the creditor reasonably  
20 relied on the obligation of a member to make a contribution or  
21 return. A conditional obligation of a member to make a  
22 contribution or return money or other property to a limited  
23 liability company may not be enforced unless the conditions of  
24 the obligation have been satisfied or waived as to or by such  
25 member. Conditional obligations include contributions payable  
26 upon a discretionary call of a limited liability company prior to  
27 the time the call occurs.

28 c. An operating agreement may provide that the limited  
29 liability company interest of any member who fails to make any  
30 contribution that he is obligated to make shall be subject to  
31 specified penalties for, or specified consequences of, such  
32 failure. Such penalty or consequence may take the form of  
33 reducing or eliminating the defaulting member's proportionate  
34 interest in a limited liability company, subordinating his limited  
35 liability company interest to that of nondefaulting members, a  
36 forced sale of his limited liability company interest, forfeiture of  
37 his limited liability company interest, the lending by other  
38 members of the amount necessary to meet his commitment, a  
39 fixing of the value of his limited liability company interest by  
40 appraisal or by formula and redemption or sale of his limited  
41 liability company interest at such value, or other penalty or  
42 consequence.

43 34. The profits and losses of a limited liability company shall  
44 be allocated among the members, and among classes or groups of  
45 members, in the manner provided in an operating agreement. If  
46 the operating agreement does not so provide, profits and losses  
47 shall be allocated on the basis of the agreed value (as stated in  
48 the records of the limited liability company) of the contributions  
49 made by each member to the extent they have been received by  
50 the limited liability company and have not been returned.

51 35. Distributions of cash or other assets of a limited liability  
52 company shall be allocated among the members, and among  
53 classes or groups of members, in the manner provided in an  
54 operating agreement. If the operating agreement does not so

1 provide, distributions shall be made on the basis of the agreed  
2 value (as stated in the records of the limited liability company) of  
3 the contributions made by each member to the extent they have  
4 been received by the limited liability company and have not been  
5 returned.

6 36. Except as provided in this act, to the extent and at the  
7 times or upon the happening of the events specified in an  
8 operating agreement, a member is entitled to receive from a  
9 limited liability company distributions before his resignation from  
10 the limited liability company and before the dissolution and  
11 winding up thereof.

12 37. A manager may resign as a manager of a limited liability  
13 company at the time or upon the happening of events specified in  
14 an operating agreement and in accordance with the operating  
15 agreement. An operating agreement may provide that a manager  
16 shall not have the right to resign as a manager of a limited  
17 liability company. Notwithstanding that an operating agreement  
18 provides that a manager does not have the right to resign as a  
19 manager of a limited liability company, a manager may resign as  
20 a manager of a limited liability company at any time by giving  
21 written notice to the members and other managers. If the  
22 resignation of a manager violates an operating agreement, in  
23 addition to any remedies otherwise available under applicable  
24 law, a limited liability company may recover from the resigning  
25 manager damages for breach of the operating agreement and  
26 offset the damages against the amount otherwise distributable to  
27 the resigning manager.

28 38. A member may resign from a limited liability company at  
29 the time or upon the happening of events specified in an  
30 operating agreement and in accordance with the operating  
31 agreement. If an operating agreement does not specify the time  
32 or the events upon the happening of which a member may resign  
33 or a definite time for the dissolution and winding up of a limited  
34 liability company, a member may resign upon not less than  
35 6 months' prior written notice to the limited liability company at  
36 its registered office as set forth in the certificate of formation  
37 filed in the office of the Secretary of State and to each member  
38 and manager at each member's and manager's address as set  
39 forth on the records of the limited liability company.  
40 Notwithstanding anything to the contrary set forth in this act, an  
41 operating agreement may provide that a member may not resign  
42 from a limited liability company or assign his limited liability  
43 company interest prior to the dissolution and winding up of the  
44 limited liability company.

45 39. Except as provided in this act, upon resignation any  
46 resigning member is entitled to receive any distribution to which  
47 he is entitled under an operating agreement and, if not otherwise  
48 provided in an operating agreement, he is entitled to receive,  
49 within a reasonable time after resignation, the fair value of his  
50 limited liability company interest as of the date of resignation  
51 based upon his right to share in distributions from the limited  
52 liability company.

53 40. Except as provided in an operating agreement, a member,  
54 regardless of the nature of his contribution, has no right to

1 demand and receive any distribution from a limited liability  
2 company in any form other than cash. Except as provided in an  
3 operating agreement, a member may not be compelled to accept  
4 a distribution of any asset in kind from a limited liability  
5 company to the extent that the percentage of the asset  
6 distributed to him exceeds a percentage of that asset which is  
7 equal to the percentage in which he shares in distributions from  
8 the limited liability company.

9 41. Subject to sections 42 and 51 of this act, and unless  
10 otherwise provided in an operating agreement, at the time a  
11 member becomes entitled to receive a distribution, he has the  
12 status of, and is entitled to all remedies available to, a creditor  
13 of a limited liability company with respect to the distribution.  
14 An operating agreement may provide for the establishment of a  
15 record date with respect to allocations and distributions by a  
16 limited liability company.

17 42. a. A limited liability company shall not make a  
18 distribution to a member to the extent that at the time of the  
19 distribution, after giving effect to the distribution, all liabilities  
20 of the limited liability company, other than liabilities to members  
21 on account of their limited liability company interests and  
22 liabilities for which the recourse of creditors is limited to  
23 specified property of the limited liability company, exceed the  
24 fair value of the assets of the limited liability company, except  
25 that the fair value of property that is subject to a liability for  
26 which the recourse of creditors is limited shall be included in the  
27 assets of the limited liability company only to the extent that the  
28 fair value of that property exceeds that liability.

29 b. A member who receives a distribution in violation of  
30 subsection a. of this section, and who knew at the time of the  
31 distribution that the distribution violated subsection a. of this  
32 section, shall be liable to a limited liability company for the  
33 amount of the distribution. A member who receives a  
34 distribution in violation of subsection a. of this section, and who  
35 did not know at the time of the distribution that the distribution  
36 violated subsection a. of this section, shall not be liable for the  
37 amount of the distribution. Subject to subsection c. of this  
38 section, this subsection b. shall not affect any obligation or  
39 liability of a member under an operating agreement or other  
40 applicable law for the amount of a distribution.

41 c. Unless otherwise agreed, a member who receives a  
42 distribution from a limited liability company shall have no  
43 liability under this act or other applicable law for the amount of  
44 the distribution after the expiration of three years from the date  
45 of the distribution unless an action to recover the distribution  
46 from the member is commenced prior to the expiration of the  
47 three year period and an adjudication of liability against the  
48 member is made in the said action.

49 43. A limited liability company interest is personal property.  
50 A member has no interest in specific limited liability company  
51 property.

52 44. a. A limited liability company interest is assignable in  
53 whole or in part except as provided in an operating agreement.  
54 The assignee of a member's limited liability company interest

1 shall have no right to participate in the management of the  
2 business and affairs of a limited liability company except as  
3 provided in an operating agreement and upon:

4 (1) The approval of all of the members of the limited liability  
5 company other than the member assigning his limited liability  
6 company interest; or

7 (2) Compliance with any procedure provided for in the  
8 operating agreement.

9 b. Unless otherwise provided in an operating agreement:

10 (1) An assignment entitles the assignee to share in the profits  
11 and losses, to receive the distribution or distributions, and to  
12 receive the allocation of income, gain, loss, deduction, or credit  
13 or similar item to which the assignor was entitled, to the extent  
14 assigned;

15 (2) A member ceases to be a member and to have the power to  
16 exercise any rights or powers of a member upon assignment of all  
17 of his limited liability company interest; and

18 (3) The pledge of, or granting of a security interest, lien or  
19 other encumbrance in or against, any or all of the limited liability  
20 company interest of a member shall not cause the member to  
21 cease to be a member or to have the power to exercise any rights  
22 or powers of a member.

23 c. An operating agreement may provide that a member's  
24 interest in a limited liability company may be evidenced by a  
25 certificate of limited liability company interest issued by the  
26 limited liability company.

27 d. Unless otherwise provided in an operating agreement and  
28 except to the extent assumed by agreement, until an assignee of  
29 a limited liability company interest becomes a member, the  
30 assignee shall have no liability as a member solely as a result of  
31 the assignment.

32 45. On application to a court of competent jurisdiction by any  
33 judgment creditor of a member, the court may charge the limited  
34 liability company interest of the member with payment of the  
35 unsatisfied amount of the judgment with interest. To the extent  
36 so charged, the judgment creditor has only the rights of an  
37 assignee of the limited liability company interest. An action by a  
38 court pursuant to this section does not deprive any member of the  
39 benefit of any exemption laws applicable to his limited liability  
40 company interest.

41 46. a. An assignee of a limited liability company interest may  
42 become a member as provided in an operating agreement and  
43 upon:

44 (1) The approval of all of the members of the limited liability  
45 company other than the member assigning his limited liability  
46 company interest; or

47 (2) Compliance with any procedure provided for in the  
48 operating agreement.

49 b. An assignee who has become a member has, to the extent  
50 assigned, the rights and powers, and is subject to the restrictions  
51 and liabilities, of a member under an operating agreement and  
52 this act. Notwithstanding the foregoing, unless otherwise  
53 provided in an operating agreement, an assignee who becomes a  
54 member is liable for the obligations of his assignor to make



1 contributions as provided in section 33 of this act, but shall not  
2 be liable for the obligations of his assignor under sections 37 or  
3 38. However, the assignee is not obligated for liabilities,  
4 including the obligations of his assignor to make contributions as  
5 provided in section 33 of this act, unknown to the assignee at the  
6 time he became a member and which could not be ascertained  
7 from an operating agreement.

8 c. Whether or not an assignee of a limited liability company  
9 interest becomes a member, the assignor is not released from his  
10 liability to a limited liability company under sections 32 through  
11 42 of this act.

12 47. If a member who is an individual dies or a court of  
13 competent jurisdiction adjudges him to be incompetent to manage  
14 his person or his property, the member's executor, administrator,  
15 guardian, conservator or other legal representative may exercise  
16 all of the member's rights for the purpose of settling his estate  
17 or administering his property, including any power under an  
18 operating agreement of an assignee to become a member. If a  
19 member is a corporation, trust or other entity and is dissolved or  
20 terminated, the powers of that member may be exercised by its  
21 legal representative or successor.

22 48. A limited liability company is dissolved and its affairs shall  
23 be wound up upon the first to occur of the following:

24 a. At the time specified in an operating agreement, or  
25 30 years from the date of the formation of the limited liability  
26 company if no such time is set forth in the operating agreement;

27 b. Upon the happening of events specified in an operating  
28 agreement;

29 c. The written consent of all members;

30 d. The death, retirement, resignation, expulsion, bankruptcy or  
31 dissolution of a member or the occurrence of any other event  
32 which terminates the continued membership of a member in the  
33 limited liability company unless the business of the limited  
34 liability company is continued either by the consent of all the  
35 remaining members within 90 days following the occurrence of  
36 any such event or pursuant to a right to continue stated in the  
37 operating agreement; or

38 e. The entry of a decree of judicial dissolution under section  
39 49 of this act.

40 49. On application by or for a member or manager the Superior  
41 Court may decree dissolution of a limited liability company  
42 whenever it is not reasonably practicable to carry on the business  
43 in conformity with an operating agreement.

44 50. a. Unless otherwise provided in an operating agreement, a  
45 manager who has not wrongfully dissolved a limited liability  
46 company or, if there is no manager, the members or a person  
47 approved by the members or, if there is more than one class or  
48 group of members, then by each class or group of members, in  
49 either case, by members who own more than 50 percent of the  
50 then current percentage or other interest in the profits of the  
51 limited liability company owned by all of the members or by the  
52 members in each class or group, as appropriate, may wind up the  
53 limited liability company's affairs; but the Court of Chancery,  
54 upon cause shown, may wind up the limited liability company's

1 affairs upon application of any member or manager, his legal  
2 representative or assignee, and in connection therewith, may  
3 appoint a liquidating trustee.

4 b. Upon dissolution of a limited liability company and until the  
5 filing of a certificate of cancellation as provided in section 14 of  
6 this act, the persons winding up the limited liability company's  
7 affairs may, in the name of, and for and on behalf of, the limited  
8 liability company, prosecute and defend suits, whether civil,  
9 criminal or administrative, gradually settle and close the limited  
10 liability company's business, dispose of and convey the limited  
11 liability company's property, discharge or make reasonable  
12 provision for the limited liability company's liabilities, and  
13 distribute to the members any remaining assets of the limited  
14 liability company, all without affecting the liability of members  
15 and managers and without imposing liability on a liquidating  
16 trustee.

17 51. a. Upon the winding up of a limited liability company, the  
18 assets shall be distributed as follows:

19 (1) To creditors, including members and managers who are  
20 creditors, to the extent otherwise permitted by law, in  
21 satisfaction of liabilities of the limited liability company  
22 (whether by payment or the making of reasonable provision for  
23 payment thereof) other than liabilities for which reasonable  
24 provision for payment has been made and liabilities for  
25 distributions to members under sections 36 or 39 of this act;

26 (2) Unless otherwise provided in an operating agreement, to  
27 members and former members in satisfaction of liabilities for  
28 distributions under sections 36 or 39 of this act; and

29 (3) Unless otherwise provided in an operating agreement, to  
30 members first for the return of their contributions and second  
31 respecting their limited liability company interests, in the  
32 proportions in which the members share in distributions.

33 b. A limited liability company which has dissolved shall pay or  
34 make reasonable provision to pay all claims and obligations,  
35 including all contingent, conditional or unmatured claims and  
36 obligations, known to the limited liability company and all claims  
37 and obligations which are known to the limited liability company  
38 but for which the identity of the claimant is unknown. If there  
39 are sufficient assets, the claims and obligations shall be paid in  
40 full and any provision for payment made shall be made in full. If  
41 there are insufficient assets, the claims and obligations shall be  
42 paid or provided for according to their priority and, among claims  
43 and obligations of equal priority, ratably to the extent of assets  
44 available therefor. Unless otherwise provided in an operating  
45 agreement, any remaining assets shall be distributed as provided  
46 in this act. Any liquidating trustee winding up a limited liability  
47 company's affairs who has complied with this section shall not be  
48 personally liable to the claimants of the dissolved limited liability  
49 company by reason of the trustee's actions in winding up the  
50 limited liability company.

51 52. The laws of the state, territory, possession, or other  
52 jurisdiction or country under which a foreign limited liability  
53 company is organized govern its organization and internal affairs  
54 and the liability of its members and managers and a foreign

1 limited liability company may not be denied registration by  
2 reason of any difference between those laws and the laws of this  
3 State.

4 53. a. Before doing business in this State, a foreign limited  
5 liability company shall register with the Secretary of State. In  
6 order to register, a foreign limited liability company shall submit  
7 to the Secretary of State a copy executed by an authorized  
8 person of an application for registration as a foreign limited  
9 liability company, setting forth:

10 (1) The name of the foreign limited liability company and, if  
11 different, the name under which it proposes to register and do  
12 business in this State;

13 (2) The state, territory, possession or other jurisdiction or  
14 country where formed, the date of its formation and a statement  
15 from an authorized person that, as of the date of filing, the  
16 foreign limited liability company validly exists as a limited  
17 liability company or a registered limited liability partnership  
18 under the laws of the jurisdiction of its formation;

19 (3) The nature of the business or purposes to be conducted or  
20 promoted in this State;

21 (4) The address of the registered office and the name and  
22 address of the registered agent for service of process required to  
23 be maintained by section 6 of this act;

24 (5) A statement that the Secretary of State is appointed the  
25 agent of the foreign limited liability company for service of  
26 process; and

27 (6) The date on which the foreign limited liability company  
28 first did, or intends to do, business in this State.

29 b. A person shall not be deemed to be doing business in this  
30 State solely by reason of being a member or manager of a  
31 domestic limited liability company or a foreign limited liability  
32 company.

33 54. a. If the Secretary of State finds that an application for  
34 registration from a foreign limited liability company conforms to  
35 law and all requisite fees have been paid, he shall:

36 (1) Certify that the application has been filed in his office by  
37 endorsing upon the original application the word "Filed," and the  
38 date and hour of the filing. This endorsement is conclusive of the  
39 date and time of its filing in the absence of actual fraud;

40 (2) File and index the endorsed application.

41 b. The duplicate of the application, similarly endorsed, shall be  
42 returned to the person who filed the application or his  
43 representative.

44 55. If any statement in the application for registration of a  
45 foreign limited liability company was false when made or any  
46 arrangements or other facts described have changed, making the  
47 application false in any respect, the foreign limited liability  
48 company shall promptly file in the office of the Secretary of  
49 State a certificate, executed by an authorized person, correcting  
50 the statement.

51 56. A foreign limited liability company may cancel its  
52 registration by filing in the office of the Secretary of State a  
53 certificate of cancellation, executed by an authorized person. A  
54 cancellation does not terminate the authority of the Secretary of

- 1 State to accept service of process on the foreign limited liability  
2 company with respect to causes of action arising out of the doing  
3 of business in this State.
- 4 57. a. A foreign limited liability company doing business in  
5 this State may not maintain any action, suit or proceeding in this  
6 State until it has registered in this State, and has paid to this  
7 State all fees and penalties for the years or parts thereof, during  
8 which it did business in this State without having registered.
- 9 b. The failure of a foreign limited liability company to register  
10 in this State does not impair:
- 11 (1) The validity of any contract or act of the foreign limited  
12 liability company;
- 13 (2) The right of any other party to the contract to maintain  
14 any action, suit or proceeding on the contract; or
- 15 (3) Prevent the foreign limited liability company from  
16 defending any action, suit or proceeding in any court of this State.
- 17 c. A member or a manager of a foreign limited liability  
18 company is not liable for the obligations of the foreign limited  
19 liability company solely by reason of the limited liability  
20 company's having done business in this State without registration.
- 21 d. Any foreign limited liability company doing business in this  
22 State without first having registered shall be fined and shall pay  
23 to the Secretary of State \$200 for each year or part thereof  
24 during which the foreign limited liability company failed to  
25 register in this State. The penalty shall be recovered with costs  
26 in an action prosecuted by the Attorney General. The Superior  
27 Court may proceed in the action in a summary manner or  
28 otherwise.
- 29 58. a. The Superior Court shall have jurisdiction to enjoin any  
30 foreign limited liability company, or any agent thereof, from  
31 doing any business in this State if the foreign limited liability  
32 company has failed to register under this act or if the foreign  
33 limited liability company has secured a certified and endorsed  
34 application from the Secretary of State under section 54 of this  
35 act on the basis of false or misleading representations, or if the  
36 registration of the foreign limited liability company in this State  
37 has been surrendered or if the foreign limited liability company  
38 has been dissolved or its authority or existence is otherwise  
39 terminated or cancelled in the jurisdiction of its organization.  
40 The Attorney General shall, upon his own motion or upon the  
41 relation of proper parties, proceed for this purpose by complaint  
42 in any county in which the foreign limited liability company is  
43 doing or has done business.
- 44 b. The provision of this section shall not exclude any other  
45 ground provided by law for injunctive relief against a foreign  
46 limited liability company to restrain it from the exercise of any  
47 franchise or the carrying on of any business, purpose or activity  
48 within this State.
- 49 c. The Superior Court may proceed in the action in a summary  
50 manner or otherwise.
- 51 59. Section 15 of this act shall be applicable to foreign limited  
52 liability companies as if they were domestic limited liability  
53 companies.
- 54 60. A member may bring an action in the Superior Court in the

1 right of a limited liability company to recover a judgment in its  
2 favor if managers or members with authority to do so have  
3 refused to bring the action or if an effort to cause those  
4 managers or members to bring the action is not likely to succeed.

5 61. In a derivative action, the plaintiff must be a member at  
6 the time of bringing the action and:

7 a. At the time of the transaction of which he complains; or

8 b. His status as a member had devolved upon him by operation  
9 of law or pursuant to the terms of an operating agreement from a  
10 person who was a member at the time of the transaction.

11 62. In a derivative action, the complaint shall set forth with  
12 particularity the effort, if any, of the plaintiff to secure  
13 initiation of the action by a manager or member or the reasons  
14 for not making the effort.

15 63. Unless the plaintiff's or plaintiffs' contributions to the  
16 limited liability company or the plaintiff's or plaintiff's  
17 allocable share of property amount to 5% or more of the  
18 contributions of, or allocation to, property of all members of the  
19 limited liability company in their status as members, or unless  
20 the contributions or the share allocable to the plaintiff or  
21 plaintiffs have a fair value in excess of \$100,000, the limited  
22 liability company in whose right the derivative action is brought  
23 shall be entitled at any stage of the proceedings before final  
24 judgment to require the plaintiff or plaintiffs to give security for  
25 the reasonable expenses, including attorney's fees, which may be  
26 incurred by the limited liability company in connection with the  
27 action. The amount of this security shall be determined by the  
28 Superior Court.

29 64. If a derivative action is successful, in whole or in part, as a  
30 result of a judgment, compromise or settlement of the derivative  
31 action, the court may award the plaintiff reasonable expenses,  
32 including reasonable attorney's fees, from any recovery in any  
33 such action or from a limited liability company.

34 65. a. No document required to be filed under this act shall be  
35 effective until the applicable fee required by this section is paid.  
36 The following fees shall be paid to and collected by the Secretary  
37 of State for the use of the State:

38 (1) Upon the receipt for filing of a certificate of registration  
39 of alternate name or a certificate of renewal pursuant to section  
40 4 of this act, a fee in the amount of \$50.

41 (2) Upon the receipt for filing of an application for reservation  
42 of name, an application for renewal of reservation or a notice of  
43 transfer or cancellation of reservation pursuant to section 5 of  
44 this act, a fee in the amount of \$50.

45 (3) Upon the receipt for filing of a certificate under subsection  
46 b. of section 6 of this act, a fee in the amount of \$25, upon the  
47 receipt for filing of a certificate under subsection b. of section 7  
48 of this act, a fee in the amount of \$25 and a further fee of \$10  
49 for each limited liability company affected by such certificate.

50 (4) Upon the receipt for filing of a notice of resignation and  
51 affidavit pursuant to subsection c. of section 7 of this act, a fee  
52 in the amount of \$25 and upon the receipt for filing of a  
53 certificate of change pursuant to subsection c. of section 7 of  
54 this act, a fee in the amount of \$25.

- 1 (5) Upon the receipt for filing of a certificate of formation  
2 under section 11 of this act, a certificate of correction under  
3 section 12 of this act, a certificate of amendment under section  
4 13 of this act, a certificate of cancellation under section 14 of  
5 this act, a certificate of merger or consolidation under section 20  
6 of this act or a restated certificate of formation under section 19  
7 of this act, a fee in the amount of \$100.
- 8 (6) For certifying copies of any paper on file as provided for by  
9 this act, a fee in the amount of \$25 for each copy certified.
- 10 (7) The Secretary of State may issue photocopies of  
11 instruments on file as well as other copies, and for all of those  
12 copies, whether certified or not, a fee in the amount of \$10 for  
13 the first page and \$2 per page thereafter shall be paid.
- 14 (8) Upon the receipt for filing of an application for  
15 registration as a foreign limited liability company under section  
16 53 of this act or a certificate of cancellation under section 56 of  
17 this act, a fee in the amount of \$100.
- 18 (9) For preclearance of any document for filing, a fee in the  
19 amount of \$50.
- 20 (10) For preparing and providing a written report of a record  
21 search, a fee in the amount of \$50.
- 22 (11) For issuing any certificate of the Secretary of State,  
23 including but not limited to a certificate of good standing, other  
24 than a certification of a copy under paragraph (6) of this  
25 subsection, a fee in the amount of \$50, except that for issuing  
26 any certificate of the Secretary of State that recites all of a  
27 limited liability company's filings with the Secretary of State, a  
28 fee of \$100 shall be paid for each such certificate.
- 29 (12) For receiving and filing and/or indexing any certificate,  
30 affidavit, agreement or any other paper provided for by this act,  
31 for which no different fee is specifically prescribed, a fee in the  
32 amount of \$50.
- 33 (13) The Secretary of State may in his discretion charge a fee  
34 of \$50 for each check received for payment of any fee that is  
35 returned due to insufficient funds or the result of a stop payment  
36 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 Secretary of  
39 State the following:
- 40 (1) for all services described in subsection a. of this section  
41 that are requested to be completed within the same day as the  
42 day of the request, an additional sum of up to \$50; and
- 43 (2) for all services described in subsection a. of this section  
44 that are requested to be completed within a 24-hour period from  
45 the time of the request, an additional sum of up to \$25.
- 46 The Secretary of State shall establish (and may from time to  
47 time amend) a schedule of specific fees payable pursuant to this  
48 subsection.
- 49 c. The Secretary of State may in his discretion permit the  
50 extension of credit for the fees required by this section upon such  
51 terms as he shall deem to be appropriate.
- 52 66. a. This act is to be liberally construed to give the  
53 maximum effect to the principle of freedom of contract and to  
54 the enforceability of operating agreements.

1       b. To the extent that, at law or in equity, a member or  
2 manager has duties (including fiduciary duties) and liabilities  
3 relating to a limited liability company or to another member or  
4 manager: (1) any member or manager acting under an operating  
5 agreement shall not be liable to the limited liability company or  
6 to any other member or manager of the limited liability company  
7 for the member's or manager's good faith reliance on the  
8 provisions of the operating agreement; and (2) the member's or  
9 manager's duties and liabilities may be expanded or restricted by  
10 provisions in an operating agreement.

11       67. In any case not provided for in this act, the rules of law  
12 and equity, including the law merchant, shall govern.

13       68. All provisions of this act may be altered from time to time  
14 or repealed and all rights of members and managers are subject  
15 to this reservation.

16       69. For all purposes of taxation under the law of this State, a  
17 limited liability company formed under this act or qualified to do  
18 business in this State as a foreign limited liability company shall  
19 be classified as a partnership unless classified otherwise for  
20 federal income tax purposes, in which case the limited liability  
21 company shall be classified in the same manner as it is classified  
22 for federal income tax purposes. For all purposes of taxation  
23 under the laws of this State, a member or an assignee of a  
24 member of a limited liability company formed under this act or  
25 qualified to do business in this State as a foreign limited liability  
26 company shall be treated as a partner in a partnership unless the  
27 limited liability company is classified otherwise for federal  
28 income tax purposes, in which case the member or assignee of a  
29 member shall have the same status as the member or assignee of  
30 a member has for federal income tax purposes.

31       70. All filings and reports required by this act to be filed in  
32 the office of the Secretary of State shall be on forms and in a  
33 manner which shall be prescribed and furnished by the Secretary  
34 of State.

35       71. This act shall take effect on the 180th day following  
36 enactment.

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Provides for the creation of limited liability companies.

LEGISLATIVE FISCAL ESTIMATE TO  
SENATE COMMITTEE SUBSTITUTE FOR  
SENATE, No. 890

STATE OF NEW JERSEY

DATED: July 8, 1993

Senate Committee Substitute for Senate Bill No. 890 of 1993 creates the "New Jersey Limited Liability Company Act," which provides for the organization of limited liability companies and allows foreign limited liability companies and foreign registered limited liability partnerships to register and conduct business in this State. Members and managers of limited liability companies would enjoy the limited liability afforded to shareholders and directors of corporations while enjoying the pass through tax advantages available to partnerships.

This substitute sets standards and procedures for the creation and regulation of State limited liability companies and foreign limited liability companies through the Secretary of State. This substitute also establishes a fee schedule for applications, renewals and filings of various certificates. These fees would be collected by the Secretary of State.

In addition, this substitute provides that limited liability companies and foreign limited liability companies qualified to do business in this State are treated as partnerships for purposes of State taxation unless they are treated otherwise for federal income tax purposes. Also, a member or an assignee of a member of a limited liability company or a foreign limited liability company qualified to do business in this State is treated as a partner in a partnership for purposes of State taxation unless the limited liability company is treated other than as a partnership for federal income tax purposes.

Information provided by the Division of Taxation in the Department of the Treasury estimates that enactment of this substitute would have little fiscal impact in fiscal years 1994 and 1995. The limited impact is due to the limited use of the relatively new limited liability company form because of interstate variations in legal and taxation approaches. As these interstate issues are resolved and approaches become standard and known to business organizers, the limited liability company may become appealing to more new and existing businesses, but the potential revenue impact is unknown at this time.

The Office of Legislative Services (OLS) concurs and, likewise, estimates that enactment of this substitute would have little fiscal impact on the Division of Commercial Recording in the Department of State over the same time period. OLS notes that the division may experience increased costs from an increased workload from this substitute's enactment; however, the related fees should be sufficient to cover the division's costs.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.