

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly floor amendments adopted March 15, 2012.

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

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

5 “Distribution” except as otherwise provided in subsection g. of  
6 section 35 of this act, means a transfer of money or other property  
7 from a limited liability company to another person on account of a  
8 transferable interest.

9 “Effective” with respect to a record required or permitted to be  
10 delivered to the filing office for filing under this act, means  
11 effective under subsection c. of section 22 of this act.

12 “Filing office” means the Division of Revenue in the Department  
13 of the Treasury, or such other State office designated as such by  
14 law.

15 “Foreign limited liability company” means an unincorporated  
16 entity formed under the law of a jurisdiction other than this State  
17 and denominated by that law as a limited liability company.

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

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

24 “Manager-managed limited liability company” means a limited  
25 liability company that qualifies under subsection a. of section 37 of  
26 this act.

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

30 “Member-managed limited liability company” means a limited  
31 liability company that is not a manager-managed limited liability  
32 company.

33 “Operating agreement” means the agreement, whether or not  
34 referred to as an operating agreement and whether oral, in a record,  
35 implied, or in any combination thereof, of all the members of a  
36 limited liability company, including a sole member, concerning the  
37 matters described in subsection a. of section 11 of this act. The term  
38 includes the agreement as amended or restated.

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

41 “Person” means an individual, corporation, business trust, estate,  
42 trust, partnership, limited liability company, association, joint  
43 venture, public corporation, government or governmental  
44 subdivision, agency, or instrumentality, or any other legal or  
45 commercial entity.

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

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

7       “Registered office” means:

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

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

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

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

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

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

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

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

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

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

36

37       3. Knowledge; Notice.

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

39       (1) has actual knowledge of it; or

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

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

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

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

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

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

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

7 (2) to have notice of a limited liability company's:

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

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

14 (c) merger, conversion, or domestication, 90 days after articles  
15 of merger, conversion, or domestication under Article 10 (sections  
16 73 through 87 of this act) become effective.

17

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

19 a. A limited liability company is an entity distinct from its  
20 members.

21 b. A limited liability company may have any lawful purpose,  
22 regardless of whether for profit.

23 c. A limited liability company has perpetual duration.

24

25 5. Powers. A limited liability company has the capacity to sue  
26 and be sued in its own name and the power to do all things  
27 necessary or convenient to carry on its activities.

28

29 6. Governing Law. The law of this State governs:

30 a. The internal affairs of a limited liability company; and

31 b. The liability of a member as member and a manager as  
32 manager for the debts, obligations, or other liabilities of a limited  
33 liability company.

34

35 7. Supplemental Principles of Law. Unless displaced by  
36 particular provisions of this act, the principles of law and equity  
37 supplement this act.

38

39 8. Name.

40 a. The name of a limited liability company shall contain the  
41 words "limited liability company" or the abbreviation "L.L.C." or  
42 "LLC". "Limited" may be abbreviated as "Ltd.", and "company"  
43 may be abbreviated as "Co.".

44 b. Unless authorized by subsection c. of this section, the name  
45 of a limited liability company shall be distinguishable in the records  
46 of the filing office from:

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

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

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

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

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

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

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

27

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

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

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

36 or

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

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

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

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

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

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

17

18 10. Reservation of Name.

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

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

31

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

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

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

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

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

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

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

46 c. An operating agreement may not:

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



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

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

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

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

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

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

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

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

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

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

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

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

1 14. Office and Agent for Service of Process.

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

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

6 (2) an agent for service of process.

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

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

15

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

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

23 (1) the name of the company;

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

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

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

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

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

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

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

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

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

25 16. Resignation of Agent for Service of Process.

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

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

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

38 (1) the 31st day after the filing office files the statement of  
39 resignation;

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

43

44 17. Service of Process.

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

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

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

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

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

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

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

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

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

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

33

34

## ARTICLE 2

### 35 FORMATION; CERTIFICATE OF FORMATION AND OTHER 36 FILINGS

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

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

42 b. A certificate of formation shall state:

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

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

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

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

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

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

19

20 19. Amendment or Restatement of Certificate of Formation.

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

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

26 (1) the name of the company;

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

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

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

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

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

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

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

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

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

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

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

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

9

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

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

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

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

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

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

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

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

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

35

36 21. Signing and Filing Pursuant to Judicial Order.

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

40 (1) the person to sign the record;

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

42 or

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

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

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

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

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

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

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

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

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

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

30

31       23. Correcting Filed Record.

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

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

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

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

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

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



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

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

6

7 24. Liability for Inaccurate Information in Filed Record.

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

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

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

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

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

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

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

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

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

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

40

41 25. Certificate of Standing.

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

- 47 (1) the company's name;

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

34

35 26. Annual Report for Filing Office.

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

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

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

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

### 28 29 ARTICLE 3

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

##### 32 27. No Agency Power or Member as Member.

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

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

##### 38 39 28. Statement of Authority.

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

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

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

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

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

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

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

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

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

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

34

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

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

42 b. Denies the grant of authority.

43

44 30. Liability of Members and Managers.

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

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

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12

#### ARTICLE 4

13

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

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##### 31. Becoming a Member.

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a. If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

b. If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.

c. After formation of a limited liability company, a person becomes a member:

- (1) as provided in the operating agreement;
- (2) as the result of a transaction effective under Article 10 (sections 73 through 87 of this act);

(3) with the consent of all the members; or

(4) if, within 90 consecutive days after the company ceases to have any members:

(a) the last person to have been a member, or the legal representative of that person, designates a person to become a member; and

(b) the designated person consents to become a member.

d. A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

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

1       33. Liability for Contributions.

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

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

12

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

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

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

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

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

34

35       35. Limitations on Distribution.

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

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

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

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

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

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

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

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

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

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

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

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

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

37  
38       36. Liability for Improper Distributions.

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



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

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

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

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

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

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

25  
26       37. Management of Limited Liability Company.

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

29       (1) expressly provides that:

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

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

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

34       (2) includes words of similar import.

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

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

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

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

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

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

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

46  
47 38. Indemnification and Insurance.

1 a. As used in this section:

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

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

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

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

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

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

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

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

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

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

10

## 11 39. Standards of Conduct for Members and Managers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6  
7 ARTICLE 5

8 TRANSFERABLE INTERESTS AND RIGHTS OF  
9 TRANSFEREES AND CREDITORS

10 41. Nature of Transferable Interest.

11 A transferable interest shall be personal property.

12  
13 42. Transfer of Transferable Interest.

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

15 (1) is permissible;

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

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

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

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

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

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

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

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

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

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

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

6  
7 43. Charging Order.

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

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

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

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

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

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

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

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

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



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

3

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

10

11

ARTICLE 6

12

MEMBER'S POWER TO DISSOCIATE; WRONGFUL

13

DISSOCIATION

14

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

15

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

18

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

20

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

22

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

23

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

25

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

27

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

31

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

35

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

40

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

43

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

46

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

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

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

ARTICLE 7

DISSOLUTION AND WINDING UP

48. Events Causing Dissolution.

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

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

(2) the consent of all the members;

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

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

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

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

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

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

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

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

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

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

7  
8 49. Winding Up.

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

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

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

16 (2) shall:

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

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

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

25 (d) transfer the company's property;

26 (e) settle disputes by mediation or arbitration;

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

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

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

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

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

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

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

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

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

4

5       51. Other Claims Against Dissolved Limited Liability Company.

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

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

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

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

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

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

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

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

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

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

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

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

41

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

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

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

4 b. This section shall not:

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

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

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

11

12 53. Administrative Action.

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

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

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

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

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

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

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

44

45 54. Reinstatement Following Administrative Dissolution.



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

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

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

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

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

18

19 55. Appeal from Rejection of Reinstatement.

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

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

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

32

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

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

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

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

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

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

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

8

9

ARTICLE 8

10

FOREIGN LIMITED LIABILITY COMPANIES

11

57. Governing Law.

12

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

14

(1) the internal affairs of the company; and

15

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

18

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

22

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

26

27

58. Application for Certificate of Authority <sup>1</sup>; Amendments to  
28 Certificate of Authority<sup>1</sup>.

29

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

32

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

36

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

39

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

41

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

46

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

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

8  
9       59. Activities Not Constituting Transacting Business.

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

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

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

16       (3) maintaining accounts in financial institutions;

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

20       (5) selling through independent contractors;

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

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

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

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

31       (10) transacting business in interstate commerce.

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

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

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

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

3

4 61. Noncomplying Name of Foreign Limited Liability Company.

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

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

22

23 62. Revocation of Certificate of Authority.

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

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

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

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

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

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

6

7       63. Reinstatement of Certificate of Authority.

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

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

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

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

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

24

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

33

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

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

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

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

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

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

18  
19 ARTICLE 9

20 ACTIONS BY MEMBERS

21 67. Direct Action by Member.

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

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

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

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

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

43  
44 69. Proper Plaintiff.

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

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

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

6

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

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

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

13

14 71. Special Litigation Committee.

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

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

31 c. A special litigation committee may be appointed:

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

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

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

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

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

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

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

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

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

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

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

17

18 72. Proceeds and Expenses.

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

20 (1) any proceeds or other benefits of a derivative action under  
21 section 68 of this act, whether by judgment, compromise, or  
22 settlement, belong to the limited liability company and not to the  
23 plaintiff; and24 (2) if the plaintiff receives any proceeds, the plaintiff shall remit  
25 them immediately to the company.26 b. If a derivative action under section 68 of this act is  
27 successful in whole or in part, the court may award the plaintiff  
28 reasonable expenses, including reasonable attorney's fees and costs,  
29 from the recovery of the limited liability company.

30

31

## ARTICLE 10

32

## MERGER, CONVERSION AND DOMESTICATION

33 73. Definitions. As used in this Article 10 (sections 73 through  
34 87 of this act):35 "Constituent limited liability company" means a constituent  
36 organization that is a limited liability company.37 "Constituent organization" means an organization that is party to  
38 a merger.39 "Converted organization" means the organization into which a  
40 converting organization converts pursuant to sections 78 through 81  
41 of this act.42 "Converting limited liability company" means a converting  
43 organization that is a limited liability company.44 "Converting organization" means an organization that converts  
45 into another organization pursuant to section 78 of this act.46 "Domesticated company" means the company that exists after a  
47 domesticating foreign limited liability company or limited liability



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

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

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

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

13 “Organizational documents” means:

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

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

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

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

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

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

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

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

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

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

46

47 74. Merger.

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

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

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

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

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

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

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

- 1 (2) the conversion is not prohibited by the law of the jurisdiction  
2 that enacted the other organization's governing statute; and  
3 (3) the other organization complies with its governing statute in  
4 effecting the conversion.
- 5 b. A plan of conversion shall be in a record and shall include:  
6 (1) the name and form of the organization before conversion;  
7 (2) the name and form of the organization after conversion;  
8 (3) the terms and conditions of the conversion, including the  
9 manner and basis for converting interests in the converting  
10 organization into any combination of money, interests in the  
11 converted organization, and other consideration; and  
12 (4) the organizational documents of the converted organization  
13 that are, or are proposed to be, in a record.  
14
- 15 79. Action on Plan of Conversion by Converting Limited  
16 Liability Company.
- 17 a. Subject to section 86 of this act, a plan of conversion shall  
18 be consented to by all the members of a converting limited liability  
19 company.
- 20 b. Subject to section 86 of this act and any contractual rights,  
21 after a conversion is approved, and at any time before articles of  
22 conversion are delivered to the filing office for filing under section  
23 80 of this act, a converting limited liability company may amend  
24 the plan or abandon the conversion:  
25 (1) as provided in the plan; or  
26 (2) except as otherwise prohibited in the plan, by the same  
27 consent as was required to approve the plan.  
28
- 29 80. Filings Required for Conversion; Effective Date.
- 30 a. After a plan of conversion is approved:  
31 (1) a converting limited liability company shall deliver to the  
32 filing office for filing articles of conversion, which shall be signed  
33 as provided in subsection a. of section 20 of this act and shall  
34 include:  
35 (a) a statement that the limited liability company has been  
36 converted into another organization;  
37 (b) the name and form of the organization and such other  
38 information as may be required by the filing office to correctly  
39 identify the company and the jurisdiction of its governing statute;  
40 (c) the date the conversion is effective under the governing  
41 statute of the converted organization;  
42 (d) a statement that the conversion was approved as required by  
43 this act;  
44 (e) a statement that the conversion was approved as required by  
45 the governing statute of the converted organization; and  
46 (f) if the converted organization is a foreign organization not  
47 authorized to transact business in this State, the street and mailing

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

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

8

9 82. Domestication.

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

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

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

41

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

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

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

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

11

12 84. Filings Required for Domestication; Effective Date.

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

35 b. A domestication becomes effective:

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

41

42 85. Effect of Domestication.

43 a. When a domestication takes effect:

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



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

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

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

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

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

15  
16 87. Article Not Exclusive.

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

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

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

32  
33 ARTICLE 11

34 MISCELLANEOUS PROVISIONS

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

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

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

4  
5       91. Application to Existing Relationships.

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

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

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

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

17  
18       92. Tax Classification.

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

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

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

6

7 93. Fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33

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

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

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

40

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

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

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

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

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

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

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"Revised Uniform Limited Liability Company Act."