

[First Reprint]

SENATE, No. 742

STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

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District 36 (Bergen and Passaic)

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SYNOPSIS

"Revised Uniform Limited Liability Company Act."

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on February 9, 2012, with amendments.



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

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

8 ARTICLE 1

9 GENERAL PROVISIONS

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

13 2. Definitions. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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:

¹Senate SCM committee amendments adopted February 9, 2012.

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

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

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

10 “Manager-managed limited liability company” means a limited
11 liability company that qualifies under subsection a. of section 37 of
12 this act.

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

16 “Member-managed limited liability company” means a limited
17 liability company that is not a manager-managed limited liability
18 company.

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

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

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

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

35 “Record” means information that is inscribed on a tangible
36 medium or that is stored in an electronic or other medium and is
37 retrievable in perceivable form.

38 “Registered office” means:

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

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

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

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

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

1 “State” means a state of the United States, the District of
2 Columbia, Puerto Rico, the United States Virgin Islands, or any
3 territory or insular possession subject to the jurisdiction of the
4 United States.

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

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

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

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

21

22 3. Knowledge; Notice.

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

24 (1) has actual knowledge of it; or

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

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

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

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

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

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

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

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

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

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

45 (c) merger, conversion, or domestication, 90 days after articles
46 of merger, conversion, or domestication under Article 10 (sections
47 73 through 87 of this act) become effective.

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

1 this section and is distinguishable in the records of the filing office
2 from the name applied for; or

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

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

10

11 9. Use of Name Other Than Actual Limited Liability Company
12 Name.

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

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

19 or

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

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

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

33 (2) The alternate name;

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

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

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

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

1 subsection b. of this section, the date of the certificate of
2 registration then in effect and that the limited liability company is
3 continuing to use the alternate name.

4 d. This section shall not:

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

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

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

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

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

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

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

1 10. Reservation of Name.

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

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

14

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

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

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

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

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

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

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

29 c. An operating agreement may not:

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

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

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

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

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

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

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

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

- 1 (9) unreasonably restrict the right of a member to maintain an
2 action under Article 9 (sections 67 through 72 of this act);
- 3 (10) restrict the right to approve a merger, conversion, or
4 domestication under section ¹~~85~~ 86¹ of this act to a member that
5 will have personal liability with respect to a surviving, converted,
6 or domesticated organization; or
- 7 (11) except as otherwise provided in subsection b. of section 13
8 of this act, restrict the rights under this act of a person other than a
9 member or manager.
- 10 d. If not manifestly unreasonable, the operating agreement
11 may:
- 12 (1) restrict or eliminate the duty:
- 13 (a) as required in paragraph (1) of subsection b. and subsection
14 g. of section 39 of this act, to account to the limited liability
15 company and to hold as trustee for it any property, profit, or benefit
16 derived by the member in the conduct or winding up of the
17 company's business, from a use by the member of the company's
18 property, or from the appropriation of a limited liability company
19 opportunity;
- 20 (b) as required in paragraph (2) of subsection b. and subsection
21 g. of section 39 of this act, to refrain from dealing with the
22 company in the conduct or winding up of the company's business as
23 or on behalf of a party having an interest adverse to the company;
24 and
- 25 (c) as required by paragraph (3) of subsection b. and subsection
26 g. of section 39 of this act, to refrain from competing with the
27 company in the conduct of the company's business before the
28 dissolution of the company;
- 29 (2) identify specific types or categories of activities that do not
30 violate the duty of loyalty;
- 31 (3) alter the duty of care, except to authorize intentional
32 misconduct or knowing violation of law;
- 33 (4) alter any other fiduciary duty, including eliminating
34 particular aspects of that duty; and
- 35 (5) prescribe the standards by which to measure the performance
36 of the contractual obligation of good faith and fair dealing under
37 subsection d. and subsection g. of section 39 of this act.
- 38 e. The operating agreement may specify the method by which a
39 specific act or transaction that would otherwise violate the duty of
40 loyalty may be authorized or ratified by one or more disinterested
41 and independent persons after full disclosure of all material facts.
- 42 f. To the extent the operating agreement of a member-managed
43 limited liability company expressly relieves a member of a
44 responsibility that the member would otherwise have under this act
45 and imposes the responsibility on one or more other members, the
46 operating agreement may, to the benefit of the member that the
47 operating agreement relieves of the responsibility, also eliminate or

1 limit any fiduciary duty that would have pertained to the
2 responsibility.

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

8 (1) breach of the duty of loyalty;

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

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

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

14 (5) an intentional violation of criminal law.

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

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

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

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

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

26 ¹i. This act is to be liberally construed to give the maximum
27 effect to the principle of freedom of contract and to the
28 enforceability of operating agreements.¹
29

30 12. Operating Agreement; Effect on Limited Liability Company
31 and Persons Becoming Members; Preformation Agreement.

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

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

37 c. Two or more persons intending to become the initial
38 members of a limited liability company may make an agreement
39 providing that upon the formation of the company the agreement
40 will become the operating agreement. One person intending to
41 become the initial member of a limited liability company may
42 assent to terms providing that upon the formation of the company
43 the terms will become the operating agreement.
44

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

1 a. An operating agreement may specify that its amendment
2 requires the approval of a person that is not a party to the operating
3 agreement or the satisfaction of a condition. An amendment is
4 ineffective if its adoption does not include the required approval or
5 satisfy the specified condition.

6 b. The obligations of a limited liability company and its
7 members to a person in the person's capacity as a transferee or
8 dissociated member are governed by the operating agreement.
9 Subject only to any court order issued under paragraph (2) of
10 subsection b. ¹and subsection g. of section 43 of this act to
11 effectuate a charging order, an amendment to the operating
12 agreement made after a person becomes a transferee or dissociated
13 member is effective with regard to any debt, obligation, or other
14 liability of the limited liability company or its members to the
15 person in the person's capacity as a transferee or dissociated
16 member.

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

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

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

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

30

31 14. Office and Agent for Service of Process.

32 a. A limited liability company shall designate and continuously
33 maintain in this State:

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

36 (2) an agent for service of process.

37 b. A foreign limited liability company that has a certificate of
38 authority under section 58 of this act shall designate and
39 continuously maintain in this State an ¹office and an¹ agent for
40 service of process.

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

45

46 15. Change of Designated Office or Agent For Service of
47 Process.

1 a. A limited liability company or foreign limited liability
2 company may change its registered office, its agent for service of
3 process, or the address of its agent for service of process by
4 delivering to the filing office for filing a statement of change
5 containing:

6 (1) the name of the company;

7 (2) the street and mailing addresses of its current registered
8 office;

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

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

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

15 b. 'A registered agent may, with prior notice to the limited
16 liability company for which it is the registered agent, change the
17 address of the registered office of any domestic or foreign limited
18 liability company for which the registered agent is registered agent
19 to another address in this State by filing in the filing office a
20 statement of change, executed by the registered agent, setting forth
21 the names of each limited liability company, and the address at
22 which the registered agent has maintained the registered office for
23 each limited liability company, and further certifying to the new
24 address to which the registered office will be changed on a given
25 day, and at which new address the registered agent will thereafter
26 maintain the registered office for each limited liability company
27 recited in the statement of change. Upon the filing of such statement
28 of change, the filing office shall furnish to the registered agent a
29 filed copy of the same together with a receipt for the fees, and
30 thereafter, or until further change of address, as authorized by law,
31 the registered office in this State of each limited liability company
32 recited in the statement of change shall be located at the new
33 address of the registered agent thereof as given in such statement of
34 change.

35 c. In the event of a change of name of any person acting as a
36 registered agent of a limited liability company, the registered agent
37 shall file in the filing office a statement of change, executed by the
38 registered agent, setting forth the new name of the registered agent,
39 the name of the registered agent before it was changed, the name of
40 each limited liability company represented by the registered agent,
41 and the address at which the registered agent has maintained the
42 registered office for each limited liability company. Upon the filing
43 of the statement of change, the filing office shall furnish to the
44 registered agent a filed copy of the same together with a receipt for
45 the fees.

46 d. Filing a statement of change under this section shall be
47 deemed to be an amendment of the certificate of formation or the

1 certificate of authority of each limited liability company affected
2 thereby and no limited liability company shall be required to take
3 any further action with respect thereto, to amend its certificate of
4 formation or certificate of authority under this act.

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

7

8 16. Resignation of Agent for Service of Process.

9 a. To resign as an agent for service of process of a limited
10 liability company or foreign limited liability company, the agent
11 shall deliver to the filing office for filing a statement of resignation
12 containing the company name and stating that the agent is
13 resigning.

14 b. The filing office shall file a statement of resignation
15 delivered under subsection a. of this section and mail or otherwise
16 provide or deliver a copy to the registered office of the company or
17 the principal office of the company if the mailing address of the
18 principal office appears in the records of the filing office and is
19 different from the mailing address of the registered office.

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

21 (1) the 31st day after the filing office files the statement of
22 resignation;

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

26

27 17. Service of Process.

28 a. An agent for service of process appointed by a limited
29 liability company or foreign limited liability company is an agent of
30 the company for service of any process, notice, or demand required
31 or permitted by law to be served on the company.

32 b. If a limited liability company or foreign limited liability
33 company does not appoint or maintain an agent for service of
34 process in this State or the agent for service of process cannot with
35 reasonable diligence be found at the agent's street address, the
36 filing office is an agent of the company upon whom process, notice,
37 or demand may be served.

38 c. Service of any process, notice, or demand on the filing office
39 as agent for a limited liability company or foreign limited liability
40 company may be made by delivering to the filing office duplicate
41 copies of the process, notice, or demand. If a process, notice, or
42 demand is served on the filing office, the filing office shall forward
43 one of the copies by mail or otherwise provide or deliver a copy to
44 the registered office of the company or the principal office of the
45 company if the mailing address of the principal office appears in the
46 records of the filing office and is different from the mailing address
47 of the registered office.

- 1 d. Service is effected under subsection c. of this section at the
2 earliest of:
- 3 (1) the date the limited liability company or foreign limited
4 liability company receives the process, notice, or demand;
- 5 (2) the date shown on the return receipt, if signed on behalf of
6 the company; or
- 7 (3) five days after the process, notice, or demand is deposited
8 with the United States Postal Service, if correctly addressed and
9 with sufficient postage.
- 10 e. The filing office shall keep a record of each process, notice,
11 and demand served pursuant to this section and record the date of,
12 and the action taken regarding, the service.
- 13 f. This section does not affect the right to serve process,
14 notice, or demand in any other manner provided by law.

15

16

ARTICLE 2

17

FORMATION; CERTIFICATE OF FORMATION AND OTHER
18 FILINGS

19

18. Formation of Limited Liability Company; Certificate of
20 Formation.

21

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

24

b. A certificate of formation shall state:

25

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

27

(2) the street and mailing addresses of the initial registered
28 office and the name ¹【and street and mailing addresses】¹ of the
29 initial agent ¹at that office¹ for service of process of the company.

30

c. Subject to subsection c. of section 12 of this act, a certificate
31 of formation may also contain statements as to matters other than
32 those required by subsection b. of this section. However, a
33 statement in a certificate of formation is not effective as a statement
34 of authority.

35

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

39

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

43

f. Subject to any delayed effective date and except in a
44 proceeding by this State to dissolve a limited liability company, the
45 filing of the certificate of formation by the filing office is
46 conclusive proof that the organizer satisfied all conditions to the
47 formation of a limited liability company.

1 19. Amendment or Restatement of Certificate of Formation.

2 a. A certificate of formation may be amended or restated at any
3 time.

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

7 (1) the name of the company;

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

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

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

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

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

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

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

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

27 e. If a member of a member-managed limited liability
28 company, or a manager of a manager-managed limited liability
29 company, knows that any information in a filed certificate of
30 formation was inaccurate when the certificate was filed or has
31 become inaccurate owing to changed circumstances, the member or
32 manager shall promptly:

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

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

37

38 20. Signing of Records to be Delivered for Filing to Filing
39 Office.

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

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

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

1 (3) A record filed on behalf of a dissolved limited liability
2 company that has no members shall be signed by the person
3 winding up the company's activities under subsection c. of section
4 49 of this act or a person appointed under subsection d. of section
5 49 of this act to wind up those activities.

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

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

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

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

17

18 21. Signing and Filing Pursuant to Judicial Order.

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

22 (1) the person to sign the record;

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

24 or

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

26 b. If a petitioner under subsection a. of this section is not the
27 limited liability company or foreign limited liability company to
28 which the record pertains, the petitioner shall make the company a
29 party to the action.

30

31 22. Delivery to and Filing of Records by Filing Office; Effective
32 Time and Date.

33 a. A record authorized or required to be delivered to the filing
34 office for filing under this act shall be captioned to describe the
35 record's purpose, be in a medium permitted by the filing office, and
36 be delivered to the filing office. If the filing fees have been paid,
37 unless the filing office determines that a record does not comply
38 with the filing requirements of this act, the filing office shall file the
39 record and:

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

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

1 b. Upon request and payment of the requisite fee, the filing
2 office shall send to the requester a certified copy of a requested
3 record.

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

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

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

15
16 23. Correcting Filed Record.

17 a. A limited liability company or foreign limited liability
18 company may deliver to the filing office for filing a certificate of
19 correction to correct a record previously delivered by the company
20 to the filing office and filed by the filing office, if at the time of
21 filing the record contained inaccurate information or was
22 defectively signed.

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

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

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

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

30 c. When filed by the filing office, a certificate of correction
31 under subsection a. of this section is effective retroactively as of the
32 effective date of the record the certificate corrects, but the
33 certificate is effective when filed:

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

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

37
38 24. Liability for Inaccurate Information in Filed Record.

39 a. If a record delivered to the filing office for filing under this
40 act and filed by the filing office contains inaccurate information, a
41 person that suffers a loss by reliance on the information may
42 recover damages for the loss from:

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

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

4 (a) the record was delivered for filing on behalf of the company;
5 and

6 (b) the member or manager had notice of the inaccuracy for a
7 reasonably sufficient time before the information was relied upon so
8 that, before the reliance, the member or manager reasonably could
9 have:

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

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

12 (iii) delivered to the filing office for filing a certificate of change
13 under section 15 or a certificate of correction under section 23 of
14 this act.

15 b. To the extent that the operating agreement of a member-
16 managed limited liability company expressly relieves a member of
17 responsibility for maintaining the accuracy of information contained
18 in records delivered on behalf of the company to the filing office for
19 filing under this act and imposes that responsibility on one or more
20 other members, the liability stated in paragraph (2) of subsection a.
21 of this section applies to those other members and not to the
22 member that the operating agreement relieves of the responsibility.

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

26
27 25. Certificate of Standing ¹~~or Authorization~~¹.

28 a. The filing office, upon request and payment of the requisite
29 fee, shall furnish to any person a certificate of standing for a limited
30 liability company if the records filed in the filing office show that
31 the company has been formed under section 18 of this act. A
32 certificate of standing ¹~~must~~ shall¹ state:

33 (1) the company's name;

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

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

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

40 (5) whether the filing office has administratively revoked the
41 company; and

42 (6) whether the filing office has filed a certificate of dissolution.

43 b. The filing office, upon request and payment of the requisite
44 fee, shall furnish to any person a certificate of ¹~~registration~~
45 standing¹ for a foreign limited liability company if the records filed
46 in the office of the filing office show that the filing office has filed
47 a certificate of authority, has not revoked the certificate of

1 authority, and has not filed a notice of cancellation. A certificate of
2 '【registration】 standing' shall state:

3 (1) the company's name and any alternate name adopted under
4 subsection a. of section 61 of this act for use in this State;

5 (2) that the company is authorized to transact business in this
6 State;

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

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

11 (5) that the filing office has not revoked the company's
12 certificate of authority and has not filed a certificate of cancellation;
13 and

14 (6) other facts of record in the office of the filing office which
15 are specified by the person requesting the certificate.

16 c. Subject to any qualification stated in the certificate, a
17 certificate of standing '【or certificate of registration】' issued by the
18 filing office is conclusive evidence that the limited liability
19 company is in existence or the foreign limited liability company is
20 authorized to transact business in this State.

21

22 26. Annual Report for Filing Office.

23 a. Each domestic and foreign limited liability company shall
24 file an annual report with the filing office, setting forth:

25 (1) the name and address of the limited liability company;

26 (2) the name and address of the registered agent of the limited
27 liability company; and

28 (3) the name and addresses of the managing members or
29 managers, as the case may be.

30 b. If no annual report is filed as required by this section for two
31 consecutive years:

32 (1) the certificate of a domestic limited liability company shall
33 be transferred to an inactive list maintained by the filing office. A
34 limited liability company on the inactive list shall remain a limited
35 liability company and the limited liability of its members and
36 managers shall not be affected by its transfer to this list. The name
37 of a limited liability company on the inactive list shall, subject to
38 any other rights that limited liability company may have to its
39 name, be available for use by any other limited liability company,
40 including a newly-formed limited liability company.

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

43 (3) if the certificate of a domestic limited liability company has
44 been transferred to the inactive list or if the certificate of a foreign
45 limited liability company has been revoked, the certificate shall be
46 reinstated by proclamation of the filing office upon payment of all
47 fees due to the filing office, consisting of a reinstatement filing fee,

1 current annual report fee, all delinquent annual report fees, and a
2 late filing fee. The reinstatement relates back to the date of transfer
3 of the certificate of a domestic limited liability company to the
4 inactive list or to the date of revocation of the certificate of a
5 foreign limited liability company, as the case may be, and shall
6 validate all actions taken in the interim. In the event that in the
7 interim the name of the limited liability company has become
8 unavailable, the filing office shall reinstate the certificate upon, in
9 the case of a domestic limited liability company, the filing of an
10 amendment to its certificate of formation to change the name to an
11 available name, and in the case of a foreign limited liability
12 company, the filing of an amended certificate of ¹**【registration】**
13 authority¹ changing the name to an available name. The filing office
14 shall provide the forms necessary to effect annual report
15 reinstatements.

16

ARTICLE 3

17

RELATIONS OF MEMBERS AND MANAGERS TO PERSONS

18

DEALING WITH LIMITED LIABILITY COMPANY

19

27. No Agency Power or Member as Member.

20

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

21

22

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

23

24

25

26

28. Statement of Authority.

27

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

28

29

30 (1) shall include the name of the company, the street and
31 mailing addresses of its registered office and such other information
32 as may be required by the filing office to correctly identify the
33 company;

30

31

32

33

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

34

35

36

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

37

38

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

39

40

41 (3) may state the authority, or limitations on the authority, of a
42 specific person to:

41

42

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

43

44

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

45

46

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

1 statement is recorded in the office for recording transfers of the real
2 property.

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

8 h. Subject to subsection i. of this section, an effective
9 certificate of dissolution is a cancellation of any filed statement of
10 authority for the purposes of subsection f. of this section and is a
11 limitation on authority for the purposes of subsection g. of this
12 section.

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

18 j. An effective statement of denial operates as a restrictive
19 amendment under this section and may be recorded by certified
20 copy for the purposes of paragraph (1) of subsection f. of this
21 section.

22

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

26 a. Provides the name of the limited liability company and such
27 other information as may be required by the filing office to
28 correctly identify the company and the caption of the statement of
29 authority to which the statement of denial pertains; and

30 b. Denies the grant of authority.

31

32 30. Liability of Members and Managers.

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

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

37 (2) do not become the debts, obligations, or other liabilities of a
38 member or manager solely by reason of the member acting as a
39 member or manager acting as a manager.

40 b. The failure of a limited liability company to observe any
41 particular formalities relating to the exercise of its powers or
42 management of its activities is not a ground for imposing liability
43 on the members or managers for the debts, obligations, or other
44 liabilities of the company.

1 ARTICLE 4
2 RELATIONS OF MEMBERS TO EACH OTHER AND TO
3 LIMITED LIABILITY COMPANY

4 31. Becoming a Member.

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

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

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

17 (1) as provided in the operating agreement;

18 (2) as the result of a transaction effective under Article 10
19 (sections 73 through 87 of this act);

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

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

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

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

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

30

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

36

37 33. Liability for Contributions.

38 a. A person's obligation to make a contribution to a limited
39 liability company is not excused by the person's death, disability, or
40 other inability to perform personally. If a person does not make a
41 required contribution of property or services, the person or the
42 person's estate is obligated, at the option of the company, to
43 contribute money equal to the value of the part of the contribution
44 which has not been made.

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

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

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

7 b. A person has a right to a distribution before the dissolution
8 and winding up of a limited liability company only if the company
9 decides to make an interim distribution. A person's dissociation
10 does not entitle the person to a distribution.

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

18 d. If a member or transferee becomes entitled to receive a
19 distribution, the member or transferee has the status of, and is
20 entitled to all remedies available to, a creditor of the limited
21 liability company with respect to the distribution.

22

23 35. Limitations on Distribution.

24 a. A limited liability company may not make a distribution if
25 after the distribution:

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

28 (2) the company's total assets would be less than the sum of its
29 total liabilities plus the amount that would be needed, if the
30 company were to be dissolved, wound up, and terminated at the
31 time of the distribution, to satisfy the preferential rights upon
32 dissolution, winding up, and termination of members whose
33 preferential rights are superior to those of persons receiving the
34 distribution.

35 b. A limited liability company may base a determination that a
36 distribution is not prohibited under subsection a. of this section on
37 financial statements prepared on the basis of accounting practices
38 and principles that are reasonable in the circumstances or on a fair
39 valuation or other method that is reasonable under the
40 circumstances.

41 c. Except as otherwise provided in subsection f. of this section,
42 the effect of a distribution under subsection a. of this section is
43 measured:

44 (1) in the case of a distribution by purchase, redemption, or
45 other acquisition of a transferable interest in the company, as of the
46 date money or other property is transferred or debt incurred by the
47 company; and

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

2 (a) the distribution is authorized, if the payment occurs within
3 120 days after that date; or

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

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

10 e. A limited liability company's indebtedness, including
11 indebtedness issued in connection with or as part of a distribution,
12 is not a liability for purposes of subsection a. of this section if the
13 terms of the indebtedness provide that payment of principal and
14 interest are made only to the extent that a distribution could be
15 made to members under this section.

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

19 g. As used in this section, "distribution" does not include
20 amounts constituting reasonable compensation for present or past
21 services or reasonable payments made in the ordinary course of
22 business under a bona fide retirement plan or other benefits
23 program.

24

25 36. Liability for Improper Distributions.

26 a. Except as otherwise provided in subsection b. of this section,
27 if a member of a member-managed limited liability company or
28 manager of a manager-managed limited liability company consents
29 to a distribution made in violation of section 35 of this act and in
30 consenting to the distribution fails to comply with section 39 of this
31 act, the member or manager is personally liable to the company for
32 the amount of the distribution that exceeds the amount that could
33 have been distributed without the violation of section 35 of this act.

34 b. To the extent the operating agreement of a member-managed
35 limited liability company expressly relieves a member of the
36 authority and responsibility to consent to distributions and imposes
37 that authority and responsibility on one or more other members, the
38 liability stated in subsection a. of this section applies to the other
39 members and not the member that the operating agreement relieves
40 of authority and responsibility.

41 c. A person that receives a distribution knowing that the
42 distribution to that person was made in violation of section 35 of
43 this act is personally liable to the limited liability company but only
44 to the extent that the distribution received by the person exceeded
45 the amount that could have been properly paid under section 35 of
46 this act.

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

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

6 (2) implead any person that received a distribution in violation
7 of subsection c. of this section and seek to compel contribution
8 from the person in the amount the person received in violation of
9 subsection c. of this section.

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

12

13 37. Management of Limited Liability Company.

14 a. A limited liability company is a member-managed limited
15 liability company unless the operating agreement:

16 (1) expressly provides that:

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

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

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

21 (2) includes words of similar import.

22 b. In a member-managed limited liability company, the
23 following rules ¹**[shall]**¹ apply:

24 (1) The management and conduct of the company are vested in
25 the members.

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

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

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

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

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

37 (1) Except as otherwise expressly provided in this act, any
38 matter relating to the activities of the company is decided
39 exclusively by the managers.

40 (2) Each manager has equal rights in the management and
41 conduct of the activities of the company.

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

45 (4) The consent of all members is required to:

1 (a) sell, lease, exchange, or otherwise dispose of all, or
2 substantially all, of the company's property, with or without the
3 good will, outside the ordinary course of the company's activities;

4 (b) approve a merger, conversion, or domestication under
5 Article 10 (section 73 through 87 of this act);

6 (c) undertake any other act outside the ordinary course of the
7 company's activities; and

8 (d) amend the operating agreement.

9 (5) A manager may be chosen at any time by the consent of a
10 majority of the members and remains a manager until a successor
11 has been chosen, unless the manager at an earlier time resigns, is
12 removed, or dies, or, in the case of a manager that is not an
13 individual, terminates. A manager may be removed at any time by
14 the consent of a majority of the members without notice or cause.

15 (6) A person need not be a member to be a manager, but the
16 dissociation of a member that is also a manager removes the person
17 as a manager. If a person that is both a manager and a member
18 ceases to be a manager, that cessation does not by itself dissociate
19 the person as a member.

20 (7) A person's ceasing to be a manager does not discharge any
21 debt, obligation, or other liability to the limited liability company or
22 members which the person incurred while a manager.

23 d. An action requiring the consent of members under this act
24 may be taken without a meeting, and a member may appoint a
25 proxy or other agent to consent or otherwise act for the member by
26 signing an appointing record, personally or by the member's agent.

27 e. The dissolution of a limited liability company does not affect
28 the applicability of this section. However, a person that wrongfully
29 causes dissolution of the company loses the right to participate in
30 management as a member and a manager.

31 f. This act does not entitle a member to remuneration for
32 services performed for a member-managed limited liability
33 company, except for reasonable compensation for services rendered
34 in winding up the activities of the company.

35

36 38. Indemnification and Insurance.

37 a. As used in this section:

38 (1) "Company agent" means any person who is or was a
39 member of a member-managed company, a manager of a manager-
40 managed company, an officer, employee or agent of the
41 indemnifying company or of any constituent company absorbed by
42 the indemnifying company in a consolidation or merger and any
43 person who is or was a member, manager, officer, director, trustee,
44 employee or agent of any other enterprise, serving as such at the
45 request of the indemnifying company, or any such constituent
46 company, or the legal representatives of any such member,
47 manager, officer, director, trustee, employee or agent.

1 (2) “Other enterprise” and “another enterprise” mean any
2 domestic or foreign limited liability company other than the
3 company, and any corporation, partnership, joint venture, sole
4 proprietorship, trust or other enterprise, whether or not for profit,
5 served by a company agent;

6 (3) “Expenses” means reasonable costs, disbursements and
7 attorney’s fees;

8 (4) “Liabilities” means amounts paid or incurred in satisfaction
9 of settlements, judgments, fines and penalties; and

10 (5) “Proceeding” means any pending, threatened or completed
11 civil, criminal, administrative or arbitrative action, suit or
12 proceeding, and any appeal therein, and any inquiry or investigation
13 which could lead to that action or proceeding.

14 (6) References to an “other enterprise” or “another enterprise”
15 include employee benefit plans; ¹and¹ references to “fines” include
16 any excise taxes assessed on a person with respect to an employee
17 benefit plan¹]; and references to “serving at the request of the
18 indemnifying company” include any service as a company agent
19 which imposes duties on, or involves services by, the company
20 agent with respect to an employee benefit plan, its participants and
21 beneficiaries¹.

22 b. A limited liability company shall indemnify a company
23 agent against expenses to the extent that such company agent has
24 been successful on the merits or otherwise in any proceeding
25 brought against the company agent by reason of the company agent
26 serving as a company agent or serving another enterprise at the
27 request of the limited liability company. If the company agent is
28 successful on the merits or otherwise in defense of any claim, issue
29 or matter in any such proceeding, indemnification shall be provided
30 under this subsection with respect to the claim, issue or matter.

31 c. A limited liability company shall indemnify a company
32 agent against any debt, obligation, expense or other liability
33 incurred by that company agent in the course of the company
34 agent’s activities on behalf of the limited liability company or
35 another enterprise at the request of the limited liability company, if,
36 in making the payment or incurring the debt, obligation, expense or
37 other liability, the company agent complied with the duties stated in
38 sections 35 and 39 of this act.

39 d. A limited liability company may purchase and maintain
40 insurance on behalf of any company agent against any expenses
41 incurred in any proceeding and any liabilities asserted against the
42 company agent in his or her capacity as a company agent, whether
43 or not the limited liability company could eliminate or limit the
44 person’s liability to the company for the conduct giving rise to the
45 liability under subsection g. of section 11 of this act. The limited
46 liability company may purchase such insurance from, or such
47 insurance may be reinsured in whole or in part by, an insurer owned

1 by or otherwise affiliated with the limited liability company,
2 whether or not such insurer does business with other insureds.

3

4 39. Standards of Conduct for Members and Managers.

5 a. A member of a member-managed limited liability company
6 owes to the company and, subject to subsection b. of section 67 of
7 this act, the other members, the duties of loyalty and care stated in
8 subsections b. and c. of this section.

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

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

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

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

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

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

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

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

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

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

31 f. All of the members of a member-managed limited liability
32 company or a manager-managed limited liability company may
33 authorize or ratify, after full disclosure of all material facts, a
34 specific act or transaction that otherwise would violate the duty of
35 loyalty.

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

39 h. If, as permitted by subsection f. of this section or the
40 operating agreement, a member enters into a transaction with the
41 company that would otherwise be prohibited by paragraph (2) of
42 subsection b. of this section, the member's rights and obligations are
43 the same as those of a person not a member.

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

46 (1) Subsections a., b., c. and g. of this section apply to the
47 manager or managers and not the members, and the duty stated

1 under paragraph (3) of subsection b. of this section continues until
2 winding up is completed.

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

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

9

10 40. Right of Members, Managers, and Dissociated Members to
11 Information.

12 a. In a member-managed limited liability company, the
13 following rules ¹**['shall']**¹ apply:

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

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

21 (a) without demand, any information concerning the company's
22 activities, financial condition, and other circumstances which the
23 company knows and is material to the proper exercise of the
24 member's rights and duties under the operating agreement or this
25 act, except to the extent the company can establish that it
26 reasonably believes the member already knows the information; and

27 (b) on demand, any other information concerning the company's
28 activities, financial condition, and other circumstances, except to
29 the extent the demand or information demanded is unreasonable or
30 otherwise improper under the circumstances.

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

34 b. In a manager-managed limited liability company, the
35 following rules ¹**['shall']**¹ apply:

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

39 (2) During regular business hours and at a reasonable location
40 specified by the company, a member may obtain from the company
41 and inspect and copy full information regarding the activities,
42 financial condition, and other circumstances of the company as is
43 just and reasonable if:

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

- 1 (b) the member makes a demand in a record received by the
2 company, describing with reasonable particularity the information
3 sought and the purpose for seeking the information; and
4 (c) the information sought is directly connected to the member's
5 purpose.
- 6 (3) Within 10 days after receiving a demand pursuant to
7 subparagraph (b) of paragraph (2) of this subsection, the company
8 shall in a record inform the member that made the demand:
9 (a) of the information that the company will provide in response
10 to the demand and when and where the company will provide the
11 information; and
12 (b) if the company declines to provide any demanded
13 information, the company's reasons for declining.
- 14 (4) Whenever this act or an operating agreement provides for a
15 member to give or withhold consent to a matter, before the consent
16 is given or withheld, the company shall, without demand, provide
17 the member with all information that is known to the company and
18 is material to the member's decision.
- 19 c. On 10 days' demand made in a record received by a limited
20 liability company, a dissociated member may have access to
21 information to which the person was entitled while a member if the
22 information pertains to the period during which the person was a
23 member, the person seeks the information in good faith, and the
24 person satisfies the requirements imposed on a member by
25 paragraph (2) of subsection b. of this section. The company shall
26 respond to a demand made pursuant to this subsection in the manner
27 provided in paragraph (3) of subsection b. of this section.
- 28 d. A limited liability company may charge a person that makes
29 a demand under this section the reasonable costs of copying, limited
30 to the costs of labor and material.
- 31 e. A member or dissociated member may exercise rights under
32 this section through an agent or, in the case of an individual under
33 legal disability, a legal representative. Any restriction or condition
34 imposed by the operating agreement or under subsection g. of this
35 section applies both to the agent or legal representative and the
36 member or dissociated member.
- 37 f. The rights under this section do not extend to a person as
38 transferee.
- 39 g. In addition to any restriction or condition stated in its
40 operating agreement, a limited liability company, as a matter within
41 the ordinary course of its activities, may impose reasonable
42 restrictions and conditions on access to and use of information to be
43 furnished under this section, including designating information
44 confidential and imposing nondisclosure and safeguarding
45 obligations on the recipient. In a dispute concerning the
46 reasonableness of a restriction under this subsection, the company
47 has the burden of proving reasonableness.

1 ARTICLE 5
2 TRANSFERABLE INTERESTS AND RIGHTS OF
3 TRANSFEREES AND CREDITORS
4 41. Nature of Transferable Interest.
5 A transferable interest shall be personal property.
6
7 42. Transfer of Transferable Interest.
8 a. A transfer, in whole or in part, of a transferable interest:
9 (1) is permissible;
10 (2) does not by itself cause a member's dissociation or a
11 dissolution and winding up of the limited liability company's
12 activities; and
13 (3) subject to section 44 of this act, does not entitle the
14 transferee to:
15 (a) participate in the management or conduct of the company's
16 activities; or
17 (b) except as otherwise provided in subsection c. of this section,
18 have access to records or other information concerning the
19 company's activities.
20 b. A transferee has the right to receive, in accordance with the
21 transfer, distributions to which the transferor would otherwise be
22 entitled.
23 c. In a dissolution and winding up of a limited liability
24 company, a transferee is entitled to an account of the company's
25 transactions only from the date of dissolution.
26 d. A transferable interest may be evidenced by a certificate of
27 the interest issued by the limited liability company in a record, and,
28 subject to this section, the interest represented by the certificate
29 may be transferred by a transfer of the certificate.
30 e. A limited liability company need not give effect to a
31 transferee's rights under this section until the company has notice of
32 the transfer.
33 f. A transfer of a transferable interest in violation of a
34 restriction on transfer contained in the operating agreement is
35 ineffective as to a person having notice of the restriction at the time
36 of transfer.
37 g. Except as otherwise provided in paragraph (2) of subsection
38 d. of section 46 of this act, when a member transfers a transferable
39 interest, the transferor retains the rights of a member other than the
40 interest in distributions transferred and retains all duties and
41 obligations of a member.
42 h. When a member transfers a transferable interest to a person
43 that becomes a member with respect to the transferred interest, the
44 transferee is liable for the member's obligations under section 43
45 and subsection c. of section 36 of this act known to the transferee
46 when the transferee becomes a member.

1 43. Charging Order.

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

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

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

16 (2) make all other orders necessary to give effect to the charging
17 order.

18 c. Upon a showing that distributions under a charging order
19 will not pay the judgment debt within a reasonable time, the court
20 may foreclose the lien and order the sale of the transferable interest.
21 The purchaser at the foreclosure sale only obtains the transferable
22 interest, does not thereby become a member, and is subject to
23 section 42 of this act.

24 d. At any time before foreclosure under subsection c. of this
25 section, the member or transferee whose transferable interest is
26 subject to a charging order under subsection a. of this section may
27 extinguish the charging order by satisfying the judgment and filing
28 a certified copy of the satisfaction with the court that issued the
29 charging order.

30 e. At any time before foreclosure under subsection c. of this
31 section, a limited liability company or one or more members whose
32 transferable interests are not subject to the charging order may pay
33 to the judgment creditor the full amount due under the judgment
34 and thereby succeed to the rights of the judgment creditor,
35 including the charging order.

36 f. This act shall not deprive any member or transferee of the
37 benefit of any exemption laws applicable to the member's or
38 transferee's transferable interest.

39 g. This section provides the exclusive remedy by which a
40 person seeking to enforce a judgment against a member or
41 transferee may, in the capacity of judgment creditor, satisfy the
42 judgment from the judgment debtor's transferable interest.

43

44 44. Power of Personal Representative of Deceased Member. If a
45 member dies, the deceased member's personal representative or
46 other legal representative may exercise the rights of a transferee
47 provided in subsection c. of section 42 of this act and, for the

1 purposes of settling the estate, the rights of a current member under
2 section 40 of this act.

3

4

ARTICLE 6

5

MEMBER'S POWER TO DISSOCIATE; WRONGFUL

6

DISSOCIATION

7

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

8

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

11

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

13

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

15

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

16

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

18

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

20

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

24

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

28

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

33

34

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

36

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

39

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

41

c. The person is expelled as a member pursuant to the
42 operating agreement;

43

d. The person is expelled as a member by the unanimous
44 consent of the other members if:

45

(1) it is unlawful to carry on the company's activities with the
46 person as a member;

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

1 j. In the case of a member that is not an individual,
2 partnership, limited liability company, corporation, trust, or estate,
3 the termination of the member;

4 k. The company participates in a merger under Article 10
5 (sections 73 through 87 of this act) if:

6 (1) the company is not the surviving entity; or,

7 (2) otherwise as a result of the merger, the person ceases to be a
8 member;

9 l. The company participates in a conversion under Article 10
10 (sections 73 through 87 of this act);

11 m. The company participates in a domestication under Article
12 10 (sections 73 through 87 of this act), if, as a result of the
13 domestication, the person ceases to be a member; or

14 n. The company terminates.

15
16 47. Effect of Person's Dissociation as Member.

17 a. When a person is dissociated as a member of a limited
18 liability company:

19 (1) the person's right to participate as a member in the
20 management and conduct of the company's activities terminates;

21 (2) if the company is member-managed, the person's fiduciary
22 duties as a member end with regard to matters arising and events
23 occurring after the person's dissociation; and

24 (3) subject to section 44 and Article 10 (sections 73 through 87
25 of this act), any transferable interest owned by the person
26 immediately before dissociation in the person's capacity as a
27 member is owned by the person solely as a transferee.

28 b. A person's dissociation as a member of a limited liability
29 company does not of itself discharge the person from any debt,
30 obligation, or other liability to the company or the other members
31 which the person incurred while a member.

32 c. A court that expels a member from a company pursuant to
33 subsection e. of section 46 of this act may order the sale of the
34 interests held by such person immediately before dissociation to
35 either the company or to any other persons who are parties to the
36 action if the court determines, in its discretion, that such an order is
37 required by any other law, rule or regulation, or that such an order
38 would be fair and equitable to all parties under all of the
39 circumstances of the case.

40
41 ARTICLE 7

42 DISSOLUTION AND WINDING UP

43 48. Events Causing Dissolution.

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

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

- 1 (2) the consent of all the members;
- 2 (3) the passage of 90 consecutive days during which the
3 company has no members;
- 4 (4) on application by a member, the entry by the Superior Court
5 of an order dissolving the company on the grounds that:
- 6 (a) the conduct of all or substantially all of the company's
7 activities is unlawful; or
- 8 (b) it is not reasonably practicable to carry on the company's
9 activities in conformity with one or both of the certificate of
10 formation and the operating agreement; or
- 11 (5) on application by a member, the entry by the Superior Court
12 of an order dissolving the company on the grounds that the
13 managers or those members in control of the company:
- 14 (a) have acted, are acting, or will act in a manner that is illegal
15 or fraudulent; or
- 16 (b) have acted or are acting in a manner that is oppressive and
17 was, is, or will be directly harmful to the applicant.
- 18 (6) A certificate of dissolution is filed before the delayed
19 effective date of a certificate of formation pursuant to subsection e.
20 of section 18 of this act.
- 21 b. In a proceeding brought under paragraph (4) or (5) of
22 subsection a. of this section, the court may order or a party may
23 seek a remedy other than dissolution, including, but not limited to,
24 the appointment of a custodian or one or more provisional
25 managers. The court shall appoint a custodian or one or more
26 provisional managers if it appears to the court that such an
27 appointment may be in the best interests of the limited liability
28 company and its members. In any proceeding under this section,
29 the court shall allow reasonable compensation to any custodian or
30 provisional manager for his or her services and reimbursement or
31 direct payment of all his or her reasonable costs and expenses,
32 which amounts shall be paid by the limited liability company. The
33 court may appoint a custodian or one or more provisional managers
34 in a summary proceeding or otherwise; or order the sale of all
35 interests held by a member who is a party to the proceeding to
36 either the limited liability company or any other member who is a
37 party to the proceeding, if the court determines in its discretion that
38 such an order would be fair and equitable to all parties under all of
39 the circumstances of the case.
- 40 c. If the court determines that any party to a proceeding
41 brought under paragraph (4) or (5) of subsection a. of this section
42 has acted vexatiously, or otherwise not in good faith, it may in its
43 discretion award reasonable expenses, including counsel fees
44 incurred in connection with the action, to the injured party or
45 parties.

- 1 49. Winding Up.
- 2 a. A dissolved limited liability company shall wind up its
3 activities, and the company continues after dissolution only for the
4 purpose of winding up.
- 5 b. In winding up its activities, a limited liability company:
6 (1) shall discharge the company's debts, obligations, or other
7 liabilities, settle and close the company's activities, and marshal
8 and distribute the assets of the company; and
9 (2) shall:
- 10 (a) deliver to the filing office for filing a certificate of
11 dissolution stating the name of the company and such other
12 information as may be required by the filing office to correctly
13 identify the company and that the company is dissolved;
- 14 (b) preserve the company activities and property as a going
15 concern for a reasonable time;
- 16 (c) prosecute and defend actions and proceedings, whether civil,
17 criminal, or administrative;
- 18 (d) transfer the company's property;
- 19 (e) settle disputes by mediation or arbitration;
- 20 (f) deliver to the filing office for filing a statement of
21 termination stating the name of the company and that the company
22 is terminated; and
- 23 (g) perform other acts necessary or appropriate to the winding
24 up.
- 25 c. If a dissolved limited liability company has no members, the
26 legal representative of the last person to have been a member may
27 wind up the activities of the company. If the person does so, the
28 person has the powers of a sole manager under subsection c. of
29 section 37 of this act and is deemed to be a manager for the
30 purposes of paragraph (2) of subsection a. of section 30 of this act.
- 31 d. If the legal representative under subsection c. of this section
32 declines or fails to wind up the company's activities, a person may
33 be appointed to do so by the consent of transferees owning a
34 majority of the rights to receive distributions as transferees at the
35 time the consent is to be effective. A person appointed under this
36 subsection:
- 37 (1) has the powers of a sole manager under subsection c. of
38 section 37 of this act and is deemed to be a manager for the
39 purposes of paragraph (2) of subsection a. of section 30 of this act;
40 and
- 41 (2) shall promptly deliver to the filing office for filing an
42 amendment to the company's certificate of formation to:
- 43 (a) state that the company has no members;
- 44 (b) state that the person has been appointed pursuant to this
45 subsection to wind up the company; and
- 46 (c) provide the street and mailing addresses of the person.

1 e. The Superior Court may order judicial supervision of the
2 winding up of a dissolved limited liability company, including the
3 appointment of a person to wind up the company's activities:

4 (1) on application of a member, if the applicant establishes good
5 cause;

6 (2) on the application of a transferee, if:

7 (a) the company does not have any members;

8 (b) the legal representative of the last person to have been a
9 member declines or fails to wind up the company's activities; and

10 (c) within a reasonable time following the dissolution a person
11 has not been appointed pursuant to subsection d. of this section; or

12 (3) in connection with a proceeding under paragraph (4) or (5)
13 of subsection a. of section 48 of this act.

14

15 50. Known Claims Against Dissolved Limited Liability
16 Company.

17 a. Except as otherwise provided in subsection d. of this section,
18 a dissolved limited liability company may give notice of a known
19 claim under subsection b. of this section, which has the effect as
20 provided in subsection c. of this section.

21 b. A dissolved limited liability company may in a record notify
22 its known claimants of the dissolution. The notice shall:

23 (1) specify the information required to be included in a claim;

24 (2) provide a mailing address to which the claim is to be sent;

25 (3) state the deadline for receipt of the claim, which may not be
26 less than 120 days after the date the notice is received by the
27 claimant; and

28 (4) state that the claim will be barred if not received by the
29 deadline.

30 c. A claim against a dissolved limited liability company is
31 barred if the requirements of subsection b. of this section are met
32 and:

33 (1) the claim is not received by the specified deadline; or

34 (2) if the claim is timely received but rejected by the company:

35 (a) the company causes the claimant to receive a notice in a
36 record stating that the claim is rejected and will be barred unless the
37 claimant commences an action against the company to enforce the
38 claim within 90 days after the claimant receives the notice; and

39 (b) the claimant does not commence the required action within
40 the 90 days.

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

1 51. Other Claims Against Dissolved Limited Liability Company.

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

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

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

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

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

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

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

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

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

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

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

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

37

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

40 a. A claimant, and all those claiming through or under the
41 claimant, shall be forever barred from suing a member or transferee
42 on any claim, or otherwise realizing upon or enforcing any claim
43 against a member or transferee, unless an action is commenced
44 against the member or transferee, pursuant to paragraph (2) of
45 subsection d. of section 51 of this act, or otherwise, within five
46 years after the limited liability company was dissolved.

47 b. This section shall not:

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

3 (2) operate to extend any otherwise applicable statute of
4 limitations; or

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

7

8 53. Administrative Action.

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

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

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

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

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

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

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

40

41 54. Reinstatement Following Administrative Dissolution.

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

45 (1) the name of the company and such other information as may
46 be required by the filing office to correctly identify the company;
47 and

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

3 b. If the filing office determines that an application under
4 subsection a. of this section contains the required information and
5 that the information is correct, the filing office shall reinstate the
6 company and provide notice of the reinstatement to the company.

7 c. When a reinstatement becomes effective, it relates back to
8 and takes effect as of the effective date of the filing office action
9 placing the company on the inactive list, and the limited liability
10 company may resume its activities as if the filing office action had
11 not occurred.

12

13 55. Appeal from Rejection of Reinstatement.

14 a. If the filing office rejects a limited liability company's
15 application for reinstatement, the filing office shall present a notice
16 to the company explaining the reason for rejection.

17 b. Within 30 days after a rejection of reinstatement under
18 subsection a. of this section, a limited liability company may appeal
19 from the rejection by petitioning the court to set aside the filing
20 office action. The petition shall be served on the filing office and
21 contain a copy of the company's application for reinstatement and
22 the filing office's notice of rejection.

23 c. The court may order the filing office to reinstate a limited
24 liability company or take other action the court considers
25 appropriate.

26

27 56. Distribution of Assets in Winding Up Limited Liability
28 Company's Activities.

29 a. In winding up its activities, a limited liability company shall
30 apply its assets to discharge its obligations to creditors, including
31 members that are creditors.

32 b. After a limited liability company complies with subsection a.
33 of this section, any surplus shall be distributed in the following
34 order, subject to any charging order in effect under section 43 of
35 this act:

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

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

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

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

3
4 ARTICLE 8

5 FOREIGN LIMITED LIABILITY COMPANIES

6 57. Governing Law.

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

9 (1) the internal affairs of the company; and

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

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

17 c. A certificate of authority does not authorize a foreign limited
18 liability company to engage in any business or exercise any power
19 that a limited liability company may not engage in or exercise in
20 this State.

21
22 58. Application for Certificate of Authority ¹; Amendments to
23 Certificate of Authority¹.

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

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

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

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

36 ¹**[c.] (3)**¹ the street and mailing addresses of the company's
37 principal office and, if the law of the jurisdiction under which the
38 company is formed require the company to maintain an office in
39 that jurisdiction, the street and mailing addresses of the required
40 office; and

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

43 ¹b. If any statement in the application for a certificate of
44 authority of a foreign limited liability company was false when
45 made or any arrangements or other facts described have changed,
46 making the application false in any respect, the foreign limited
47 liability company shall promptly file in the filing office an amended

1 application, executed by an authorized person, correcting the
2 statement.¹

3

4 59. Activities Not Constituting Transacting Business.

5 a. Activities of a foreign limited liability company which do
6 not constitute transacting business in this State within the meaning
7 of this section include:

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

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

11 (3) maintaining accounts in financial institutions;

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

15 (5) selling through independent contractors;

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

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

21 (8) securing or collecting debts or enforcing mortgages or other
22 security interests in property securing the debts and holding,
23 protecting, or maintaining property so acquired;

24 (9) conducting an isolated transaction that is completed within
25 30 days and is not in the course of similar transactions; and

26 (10) transacting business in interstate commerce.

27 b. For purposes of this section, the ownership in this State of
28 income-producing real property or tangible personal property, other
29 than property excluded under subsection a. of this section,
30 constitutes transacting business in this State.

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

35

36 60. Filing of Certificate of Authority. Unless the filing office
37 determines that an application for a certificate of ¹**[registration]**
38 authority¹ does not comply with the filing requirements of this act,
39 the filing office, upon payment of all filing fees, shall file the
40 application of a foreign limited liability company, prepare and file a
41 certificate of authority to transact business in this State, and provide
42 a copy of the filed certificate, together with a receipt for the fees, to
43 the company or its representative.

44

45 61. Noncomplying Name of Foreign Limited Liability Company.

46 a. A foreign limited liability company whose name does not
47 comply with section 8 of this act may not obtain a certificate of

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

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

16

17 62. Revocation of Certificate of Authority.

18 a. A certificate of ¹~~registration~~ authority¹ of a foreign
19 limited liability company to transact business in this State may be
20 revoked by the filing office in the manner provided in subsections
21 b. and c. of this section, if the company does not:

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

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

26 b. To revoke a certificate of ¹~~registration~~ authority¹ of a
27 foreign limited liability company, the filing office shall provide
28 notice of the filing office's intent to the registered office of the
29 company or the principal office of the company if the mailing
30 address of the principal office appears in the records of the filing
31 office and is different from the mailing address of the registered
32 office.

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

43 d. The authority of a foreign limited liability company to
44 transact business in this State ceases on the effective date of the
45 notice of revocation unless before that date the company cures each
46 ground for revocation stated in the notice filed under subsection b.
47 of this section

1 63. Reinstatement of Certificate of Authority.

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

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

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

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

14 c. When a reinstatement becomes effective, it relates back to
15 and takes effect as of the effective date of the filing office
16 revocation action, and the foreign limited liability company may
17 resume its activities as if the filing office action had not occurred.
18

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

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

29 a. A foreign limited liability company transacting business in
30 this State may not maintain an action or proceeding in this State
31 unless it has a certificate of authority to transact business in this
32 State.

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

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

41 d. If a foreign limited liability company transacts business in
42 this State without a certificate of authority or cancels its certificate
43 of authority, it appoints the filing office as its agent for service of
44 process for rights of action arising out of the transaction of business
45 in this State.

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

12

13

ARTICLE 9

14

ACTIONS BY MEMBERS

15

67. Direct Action by Member.

16

a. Subject to subsection b. of this section, a member may
17 maintain a direct action against another member, a manager, or the
18 limited liability company to enforce the member's rights and
19 otherwise protect the member's interests, including rights and
20 interests under the operating agreement or this act or arising
21 independently of the membership relationship.

22

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

26

27

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

29

a. the member first makes a demand on the other members in a
30 member-managed limited liability company, or the managers of a
31 manager-managed limited liability company, requesting that they
32 cause the company to bring an action to enforce the right, and the
33 managers or other members do not bring the action within a
34 reasonable time; or

35

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

37

38

69. Proper Plaintiff.

39

a. Except as otherwise provided in subsection b. of this section,
40 a derivative action under section 68 of this act may be maintained
41 only by a person that is a member at the time the action is
42 commenced and remains a member while the action continues.

43

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

- 1 70. Pleading. In a derivative action under section 68 of this act,
2 the complaint shall state with particularity:
- 3 a. The date and content of plaintiff's demand and the response
4 to the demand by the managers or other members; or
- 5 b. If a demand has not been made, the reasons a demand under
6 subsection a. of section 68 of this act would be futile.
7
- 8 71. Special Litigation Committee.
- 9 a. If a limited liability company is named as or made a party in
10 a derivative proceeding, the company may appoint a special
11 litigation committee to investigate the claims asserted in the
12 proceeding and determine whether pursuing the action is in the best
13 interests of the company. If the company appoints a special
14 litigation committee, on motion by the committee made in the name
15 of the company, except for good cause shown, the court shall stay
16 discovery for the time reasonably necessary to permit the committee
17 to make its investigation. This subsection shall not prevent the
18 court from enforcing a person's right to information under section
19 40 of this act or, for good cause shown, granting extraordinary
20 relief in the form of a temporary restraining order or preliminary
21 injunction.
- 22 b. A special litigation committee may be composed of one or
23 more disinterested and independent individuals, who may be
24 members.
- 25 c. A special litigation committee may be appointed:
- 26 (1) in a member-managed limited liability company:
- 27 (a) by the consent of a majority of the members not named as
28 defendants or plaintiffs in the proceeding; and
- 29 (b) if all members are named as defendants or plaintiffs in the
30 proceeding, by a majority of the members named as defendants; or
- 31 (2) in a manager-managed limited liability company:
- 32 (a) by a majority of the managers not named as defendants or
33 plaintiffs in the proceeding; and
- 34 (b) if all managers are named as defendants or plaintiffs in the
35 proceeding, by a majority of the managers named as defendants.
- 36 d. After appropriate investigation, a special litigation
37 committee may determine that it is in the best interests of the
38 limited liability company that the proceeding:
- 39 (1) continue under the control of the plaintiff;
- 40 (2) continue under the control of the committee;
- 41 (3) be settled on terms approved by the committee; or
- 42 (4) be dismissed.
- 43 e. After making a determination under subsection d. of this
44 section, a special litigation committee shall file with the court a
45 statement of its determination and its report supporting its
46 determination, giving notice to the plaintiff. The court shall
47 determine whether the members of the committee were disinterested

1 and independent and whether the committee conducted its
2 investigation and made its recommendation in good faith,
3 independently, and with reasonable care, with the committee having
4 the burden of proof. If the court finds that the members of the
5 committee were disinterested and independent and that the
6 committee acted in good faith, independently, and with reasonable
7 care, the court shall enforce the determination of the committee.
8 Otherwise, the court shall dissolve the stay of discovery entered
9 under subsection a. of this section and allow the action to proceed
10 under the direction of the plaintiff.

11

12 72. Proceeds and Expenses.

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

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

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

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

24

25

ARTICLE 10

26

MERGER, CONVERSION AND DOMESTICATION

27

28

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

29

30

“Constituent limited liability company” means a constituent
organization that is a limited liability company.

31

32

“Constituent organization” means an organization that is party to
a merger.

33

34

“Converted organization” means the organization into which a
converting organization converts pursuant to sections 78 through 81
of this act.

36

37

“Converting limited liability company” means a converting
organization that is a limited liability company.

38

39

“Converting organization” means an organization that converts
into another organization pursuant to section 78 of this act.

40

41

“Domesticated company” means the company that exists after a
domesticating foreign limited liability company or limited liability
company effects a domestication pursuant to sections 82 through 85
of this act.

44

45

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

46

47

“Governing statute” means the statute that governs an
organization's internal affairs.

1 “Organization” means a general partnership, including a limited
2 liability partnership, limited partnership, including a limited
3 liability limited partnership, limited liability company, business
4 trust, corporation, or any other person having a governing statute.
5 The term includes a domestic or foreign organization regardless of
6 whether organized for profit.

7 “Organizational documents” means:

8 (1) for a domestic or foreign general partnership, its partnership
9 agreement;

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

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

15 (4) for a business trust, its agreement of trust and declaration of
16 trust;

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

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

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

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

31 (2) by the organization’s organizational documents under a
32 provision of the governing statute authorizing those documents to
33 make one or more specified persons liable for all or specified debts,
34 obligations, or other liabilities of the organization solely by reason
35 of the person or persons co-owning, having an interest in, or being a
36 member of the organization.

37 “Surviving organization” means an organization into which one
38 or more other organizations are merged whether the organization
39 preexisted the merger or was created by the merger.

40
41 74. Merger.

42 a. A limited liability company may merge with one or more
43 other constituent organizations pursuant to this section, sections 75
44 through 77 of this act, and a plan of merger, if:

45 (1) the governing statute of each of the other organizations
46 authorizes the merger;

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

21

22 75. Action on Plan of Merger by Constituent Limited Liability
23 Company.

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

35

36 76. Filings Required for Merger; Effective Date.

- 37 a. After each constituent organization has approved a merger,
38 articles of merger shall be signed on behalf of:
- 39 (1) each constituent limited liability company, as provided in
40 subsection a. of section 20 of this act; and
- 41 (2) each other constituent organization, as provided in its
42 governing statute.
- 43 b. Articles of merger under this section shall include:
- 44 (1) the name and form of each constituent organization and the
45 jurisdiction of its governing statute;

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

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

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

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

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

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

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

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

12
13 79. Action on Plan of Conversion by Converting Limited
14 Liability Company.

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

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

23 (1) as provided in the plan; or

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

26
27 80. Filings Required for Conversion; Effective Date.

28 a. After a plan of conversion is approved:

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

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

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

38 (c) the date the conversion is effective under the governing
39 statute of the converted organization;

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

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

44 (f) if the converted organization is a foreign organization not
45 authorized to transact business in this State, the street and mailing
46 addresses of an office which the filing office may use for the
47 purposes of subsection c. of section 81 of this act; and

1 (2) if the converting organization is not a converting limited
2 liability company, the converting organization shall deliver to the
3 filing office for filing a certificate of formation, which shall
4 include, in addition to the information required by subsection b. of
5 section 18 of this act:

6 (a) a statement that the converted organization was converted
7 from another organization;

8 (b) the name and form of that converting organization and the
9 jurisdiction of its governing statute; and

10 (c) a statement that the conversion was approved in a manner
11 that complied with the converting organization's governing statute.

12 b. A conversion becomes effective:

13 (1) if the converted organization is a limited liability company,
14 when the certificate of formation takes effect; and

15 (2) if the converted organization is not a limited liability
16 company, as provided by the governing statute of the converted
17 organization.

18
19 81. Effect of Conversion.

20 a. An organization that has been converted pursuant to this
21 Article 10 (sections 73 through 87 of this act) is for all purposes the
22 same entity that existed before the conversion.

23 b. When a conversion takes effect:

24 (1) all property owned by the converting organization remains
25 vested in the converted organization;

26 (2) all debts, obligations, or other liabilities of the converting
27 organization continue as debts, obligations, or other liabilities of the
28 converted organization;

29 (3) an action or proceeding pending by or against the converting
30 organization may be continued as if the conversion had not
31 occurred;

32 (4) except as prohibited by law other than this act, all of the
33 rights, privileges, immunities, powers, and purposes of the
34 converting organization remain vested in the converted
35 organization;

36 (5) except as otherwise provided in the plan of conversion, the
37 terms and conditions of the plan of conversion take effect; and

38 (6) except as otherwise agreed, the conversion does not dissolve
39 a converting limited liability company for the purposes of Article 7,
40 Dissolution and Winding Up (sections 48 through 56 of this act).

41 c. A converted organization that is a foreign organization
42 consents to the jurisdiction of the courts of this State to enforce any
43 debt, obligation, or other liability for which the converting limited
44 liability company is liable if, before the conversion, the converting
45 limited liability company was subject to suit in this State on the
46 debt, obligation, or other liability. A converted organization that is
47 a foreign organization and not authorized to transact business in this

1 State appoints the filing office as its agent for service of process for
2 purposes of enforcing a debt, obligation, or other liability under this
3 subsection. Service on the filing office under this subsection shall
4 be made in the same manner and has the same consequences as in
5 subsections c. and d. of section 17 of this act.
6

7 82. Domestication.

8 a. A foreign limited liability company may become a limited
9 liability company pursuant to this section, sections 83 through 85 of
10 this act, and a plan of domestication, if:

11 (1) the foreign limited liability company's governing statute
12 authorizes the domestication;

13 (2) the domestication is not prohibited by the law of the
14 jurisdiction that enacted the governing statute; and

15 (3) the foreign limited liability company complies with its
16 governing statute in effecting the domestication.

17 b. A limited liability company may become a foreign limited
18 liability company pursuant to this section, sections 83 through 85 of
19 this act, and a plan of domestication, if:

20 (1) the foreign **'[limited liability company's]'** governing statute
21 authorizes the domestication;

22 (2) the domestication is not prohibited by the law of the
23 jurisdiction that enacted the governing statute; and

24 (3) the **'[foreign]'** limited liability company complies with
25 **'[its] the foreign'** governing statute in effecting the domestication.

26 c. A plan of domestication shall be in a record and shall
27 include:

28 (1) the name of the domesticating company before
29 domestication and such other information as may be required by the
30 filing office to correctly identify the company and the jurisdiction
31 of its governing statute;

32 (2) the name of the domesticated company after domestication
33 and the jurisdiction of its governing statute;

34 (3) the terms and conditions of the domestication, including the
35 manner and basis for converting interests in the domesticating
36 company into any combination of money, interests in the
37 domesticated company, and other consideration; and

38 (4) the organizational documents of the domesticated company
39 that are, or are proposed to be, in a record.
40

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

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

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

46 (2) as provided in the domesticating company's governing
47 statute, if the company is a foreign limited liability company.

1 b. Subject to any contractual rights, after a domestication is
2 approved, and at any time before articles of domestication are
3 delivered to the filing office for filing under section 84 of this act, a
4 domesticating limited liability company may amend the plan or
5 abandon the domestication:

6 (1) as provided in the plan; or

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

9

10 84. Filings Required for Domestication; Effective Date.

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

14 (1) a statement, as the case may be, that the company has been
15 domesticated from or into another jurisdiction;

16 (2) the name of the domesticating company and such other
17 information as may be required by the filing office to correctly
18 identify the company and the jurisdiction of its governing statute;

19 (3) the name of the domesticated company and the jurisdiction
20 of its governing statute;

21 (4) the date the domestication is effective under the governing
22 statute of the domesticated company;

23 (5) if the domesticating company was a limited liability
24 company, a statement that the domestication was approved as
25 required by this act;

26 (6) if the domesticating company was a foreign limited liability
27 company, a statement that the domestication was approved as
28 required by the governing statute of the other jurisdiction; and

29 (7) if the domesticated company was a foreign limited liability
30 company not authorized to transact business in this State, the street
31 and mailing addresses of an office that the filing office may use for
32 the purposes of subsection b. section 85 of this act.

33 b. A domestication becomes effective:

34 (1) when the certificate of formation takes effect, if the
35 domesticated company is a limited liability company; and

36 (2) according to the governing statute of the domesticated
37 company, if the domesticated organization is a foreign limited
38 liability company.

39

40 85. Effect of Domestication.

41 a. When a domestication takes effect:

42 (1) the domesticated company is for all purposes the company
43 that existed before the domestication;

44 (2) all property owned by the domesticating company remains
45 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. This Article 10 (Section 73 through
17 87 of this act) does not preclude an entity from being merged,
18 converted, or domesticated under law other than this act.

19
20 ARTICLE 11

21 MISCELLANEOUS PROVISIONS

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

26
27 89. Relation to Electronic Signatures In Global and National
28 Commerce Act. This act modifies, limits, and supersedes the
29 federal "Electronic Signatures in Global and National Commerce
30 Act," Pub.L.106-229, 15 U.S.C. s.7001 et seq., but does not modify,
31 limit, or supersede section 101(c) of that act, 15 U.S.C. s.7001(c),
32 or authorize electronic delivery of any of the notices described in
33 section 103(b) of that act, 15 U.S.C. s.7003(b).

34
35 90. Savings Clause. This act does not affect an action
36 commenced, proceeding brought, or right accrued before this act
37 takes effect.

38
39 91. Application to Existing Relationships.

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

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

44 (2) ¹except as otherwise provided in subsection c. of this
45 section,¹ a limited liability company formed before the effective
46 date of this act, which elects, in the manner provided in its

1 operating agreement or by law for amending the operating
2 agreement, to be subject to this act.

3 b. ¹【Except as otherwise provided in subsection c. of this
4 section, on】 On¹ and after the first day of the 18th month next
5 following the enactment date of this act, this act governs all limited
6 liability companies.

7

8 92. Tax Classification.

9 a. For all purposes of taxation under the laws of this State, a
10 limited liability company formed under this act or qualified to do
11 business in this State as a foreign limited liability company with
12 two or more members shall be classified as a partnership unless
13 classified otherwise for federal income tax purposes, in which case
14 the limited liability company shall be classified in the same manner
15 as it is classified for federal income tax purposes. For all purposes
16 of taxation under the laws of this State, a member or ¹【an assignee】
17 a transferee¹ of a member of a limited liability company formed
18 under this act or qualified to do business in this State as a foreign
19 limited liability company shall be treated as a partner in a
20 partnership unless the limited liability company is classified
21 otherwise for federal income tax purposes, in which case the
22 member or ¹【assignee】 transferee¹ of a member shall have the same
23 status as the member or ¹【assignee】 transferee¹ of a member has for
24 federal income tax purposes.

25 b. For all purposes of taxation on income under the laws of this
26 State and only for those purposes, a limited liability company
27 formed under this act or qualified to do business in this State as a
28 foreign limited liability company with one member is disregarded
29 as an entity separate from its owner, unless classified otherwise for
30 federal tax purposes, in which case the limited liability company
31 will be classified in the same manner as it is classified for federal
32 income tax purposes. For all purposes of taxation on income under
33 the laws of this State and only for those purposes, the sole member
34 or ¹【an assignee】 a transferee¹ of all of the limited liability
35 company interest of the sole member of a limited liability company
36 formed under this act or qualified to do business in this State as a
37 foreign limited liability company is treated as the direct owner of
38 the underlying assets of the limited liability company and of its
39 operations, unless the limited liability company is classified
40 otherwise for federal income tax purposes, in which case the
41 member or ¹【assignee】 transferee¹ of a member will have the same
42 status as the member or ¹【assignee】 transferee¹ of a member has for
43 federal income tax purposes.

44

45 93. Fees.

46 a. No document required to be filed under this act shall be
47 effective until the applicable fee required by this section is paid.

1 The following fees shall be paid to and collected by the State
2 Treasurer for the use of the State:

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

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

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

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

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

23 (6) Upon filing of an annual report, a fee in the amount of
24 \$50.00.

25 (7) Upon requesting a reinstatement of a certificate of a limited
26 liability company, a late filing fee of \$200.00 and a reinstatement
27 filing fee of \$75.00.

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

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

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

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

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

42 (13) For issuing any certificate of the State Treasurer, including
43 but not limited to a certificate of good standing, other than a
44 certification of a copy under paragraph (8) of this subsection, a fee
45 in the amount of \$50, except that for issuing any certificate of the
46 State Treasurer that recites all of a limited liability company's

1 filings with the State Treasurer, a fee of \$100 shall be paid for each
2 such certificate.

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

7 (15) The State Treasurer may in his discretion charge a fee of
8 \$50 for each check received for payment of any fee that is returned
9 due to insufficient funds or the result of a stop payment order.

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

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

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

19 The State Treasurer shall establish, and may from time to time
20 amend, a schedule of specific fees payable pursuant to this
21 subsection.

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

25

26 94. Notices. In computing the period of time for the giving of
27 any notice:

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

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

32

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

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

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

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

38 Sections 1 and 2 of P.L.2003, c.12 (C.42:2B-49.1 and 42:2B-
39 49.2).

40

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