

[First Reprint]

ASSEMBLY, No. 4359

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED NOVEMBER 21, 2011

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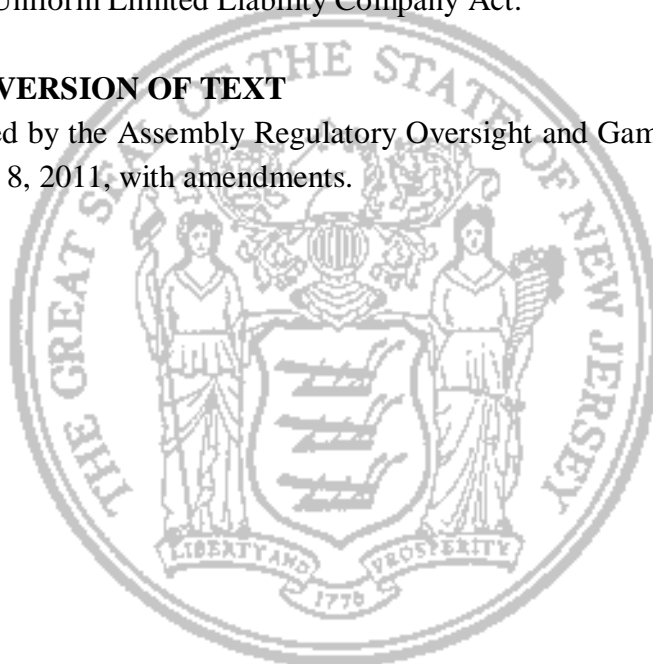
Assemblywoman McHose

SYNOPSIS

"Revised Uniform Limited Liability Company Act."

CURRENT VERSION OF TEXT

As reported by the Assembly Regulatory Oversight and Gaming Committee on December 8, 2011, with amendments.



(Sponsorship Updated As Of: 12/16/2011)

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:

¹Assembly ARG committee amendments adopted December 8, 2011.

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.

47 “State” means a state of the United States, the District of
48 Columbia, Puerto Rico, the United States Virgin Islands, or any

1 territory or insular possession subject to the jurisdiction of the
2 United States.

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

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

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

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

19

20 3. Knowledge; Notice.

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

22 (1) has actual knowledge of it; or

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

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

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

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

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

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

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

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

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

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

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

46

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

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

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

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

8
9 9. Use of Name Other Than Actual Limited Liability Company
10 Name.

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

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

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

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

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

31 (2) The alternate name;

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

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

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

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

1 d. This section shall not:

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

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

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

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

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

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

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

43

44 10. Reservation of Name.

45 a. A person may reserve the exclusive use of the name of a
46 limited liability company, including a fictitious or assumed name
47 for a foreign limited liability company whose name is not available,
48 by delivering an application to the filing office for filing. The

1 application must state the name and address of the applicant and the
2 name proposed to be reserved. If the filing office finds that the
3 name applied for is available, it must be reserved for the applicant's
4 exclusive use for a 120-day period.

5 b. The owner of a name reserved for a limited liability
6 company may transfer the reservation to another person by
7 delivering to the filing office for filing a signed notice of the
8 transfer which states the name and address of the transferee.

9

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

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

13 (1) relations among the members as members and between the
14 members and the limited liability company;

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

17 (3) the activities of the company and the conduct of those
18 activities; and

19 (4) the means and conditions for amending the operating
20 agreement.

21 b. To the extent the operating agreement does not otherwise
22 provide for a matter described in subsection a. of this section, this
23 act governs the matter.

24 c. An operating agreement may not:

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

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

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

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

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

34 (6) unreasonably restrict the duties and rights stated in section
35 40 of this act;

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

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

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

44 (10) restrict the right to approve a merger, conversion, or
45 domestication under section '[85] 86' of this act to a member that
46 will have personal liability with respect to a surviving, converted,
47 or domesticated organization; or

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

4 d. If not manifestly unreasonable, the operating agreement
5 may:

6 (1) restrict or eliminate the duty:

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

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

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

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

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

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

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

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

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

44 g. The operating agreement may alter or eliminate the
45 indemnification for a member or manager provided by section 38 of
46 this act and may eliminate or limit a member or manager's liability
47 to the limited liability company and members for money damages,
48 except for:

- 1 (1) breach of the duty of loyalty;
- 2 (2) a financial benefit received by the member or manager to
- 3 which the member or manager is not entitled;
- 4 (3) a breach of a duty under section 36 of this act;
- 5 (4) intentional infliction of harm on the company or a member;
- 6 or
- 7 (5) an intentional violation of criminal law.

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

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

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

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

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

19 ¹i. This act is to be liberally construed to give the maximum
20 effect to the principle of freedom of contract and to the
21 enforceability of operating agreements.¹

22

23 12. Operating Agreement; Effect on Limited Liability Company
24 and Persons Becoming Members; Preformation Agreement.

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

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

30 c. Two or more persons intending to become the initial
31 members of a limited liability company may make an agreement
32 providing that upon the formation of the company the agreement
33 will become the operating agreement. One person intending to
34 become the initial member of a limited liability company may
35 assent to terms providing that upon the formation of the company
36 the terms will become the operating agreement.

37

38 13. Operating Agreement; Effect on Third Parties and
39 Relationship to Records Effective on Behalf of Limited Liability
40 Company.

41 a. An operating agreement may specify that its amendment
42 requires the approval of a person that is not a party to the operating
43 agreement or the satisfaction of a condition. An amendment is
44 ineffective if its adoption does not include the required approval or
45 satisfy the specified condition.

46 b. The obligations of a limited liability company and its
47 members to a person in the person's capacity as a transferee or
48 dissociated member are governed by the operating agreement.

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

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

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

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

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

21

22 14. Office and Agent for Service of Process.

23 a. A limited liability company shall designate and continuously
24 maintain in this State:

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

27 (2) an agent for service of process.

28 b. A foreign limited liability company that has a certificate of
29 authority under section 58 of this act shall designate and
30 continuously maintain in this State an 'office and an' agent for
31 service of process.

32 c. An agent for service of process of a limited liability
33 company or foreign limited liability company shall be an individual
34 who is a resident of this State or other person with authority to
35 transact business in this State.

36

37 15. Change of Designated Office or Agent For Service of
38 Process.

39 a. A limited liability company or foreign limited liability
40 company may change its registered office, its agent for service of
41 process, or the address of its agent for service of process by
42 delivering to the filing office for filing a statement of change
43 containing:

44 (1) the name of the company;

45 (2) the street and mailing addresses of its current registered
46 office;

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

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

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

5 b. 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.

47 (3) A record filed on behalf of a dissolved limited liability
48 company that has no members shall be signed by the person

1 winding up the company's activities under subsection c. of section
2 49 of this act or a person appointed under subsection d. of section
3 49 of this act to wind up those activities.

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

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

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

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

15

16 21. Signing and Filing Pursuant to Judicial Order.

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

20 (1) the person to sign the record;

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

22 or

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

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

28

29 22. Delivery to and Filing of Records by Filing Office; Effective
30 Time and Date.

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

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

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

44 b. Upon request and payment of the requisite fee, the filing
45 office shall send to the requester a certified copy of a requested
46 record.

47 c. Except as otherwise provided in sections 15 and 23 of this
48 act, a record delivered to the filing office for filing under this act

1 may specify a delayed effective date. Subject to section 15,
2 subsection d. of section 18 and section 23 of this act, a record filed
3 by the filing office is effective:

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

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

10

11 23. Correcting Filed Record.

12 a. A limited liability company or foreign limited liability
13 company may deliver to the filing office for filing a certificate of
14 correction to correct a record previously delivered by the company
15 to the filing office and filed by the filing office, if at the time of
16 filing the record contained inaccurate information or was
17 defectively signed.

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

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

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

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

25 c. When filed by the filing office, a certificate of correction
26 under subsection a. of this section is effective retroactively as of the
27 effective date of the record the certificate corrects, but the
28 certificate is effective when filed:

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

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

32

33 24. Liability for Inaccurate Information in Filed Record.

34 a. If a record delivered to the filing office for filing under this
35 act and filed by the filing office contains inaccurate information, a
36 person that suffers a loss by reliance on the information may
37 recover damages for the loss from:

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

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

44 (a) the record was delivered for filing on behalf of the company;
45 and

46 (b) the member or manager had notice of the inaccuracy for a
47 reasonably sufficient time before the information was relied upon so

1 that, before the reliance, the member or manager reasonably could
2 have:

- 3 (i) effected an amendment under section 19 of this act;
4 (ii) filed a petition under section 21 of this act; or
5 (iii) delivered to the filing office for filing a certificate of change
6 under section 15 or a certificate of correction under section 23 of
7 this act.

8 b. To the extent that the operating agreement of a member-
9 managed limited liability company expressly relieves a member of
10 responsibility for maintaining the accuracy of information contained
11 in records delivered on behalf of the company to the filing office for
12 filing under this act and imposes that responsibility on one or more
13 other members, the liability stated in paragraph (2) of subsection a.
14 of this section applies to those other members and not to the
15 member that the operating agreement relieves of the responsibility.

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

19

20 25. Certificate of Standing ¹['or Authorization']¹ .

21 a. The filing office, upon request and payment of the requisite
22 fee, shall furnish to any person a certificate of standing for a limited
23 liability company if the records filed in the filing office show that
24 the company has been formed under section 18 of this act. A
25 certificate of standing ¹['must'] shall¹ state:

- 26 (1) the company's name;
27 (2) that the company was duly formed under the laws of this
28 State and the date of formation;
29 (3) whether all fees and penalties due under this act or other law
30 to the filing office have been paid;
31 (4) whether the company's most recent annual report required
32 by section 26 of this act has been filed in the filing office;
33 (5) whether the filing office has administratively revoked the
34 company; and
35 (6) whether the filing office has filed a certificate of dissolution.

36 b. The filing office, upon request and payment of the requisite
37 fee, shall furnish to any person a certificate of ¹['registration']
38 standing¹ for a foreign limited liability company if the records filed
39 in the office of the filing office show that the filing office has filed
40 a certificate of authority, has not revoked the certificate of
41 authority, and has not filed a notice of cancellation. A certificate of
42 ¹['registration'] standing¹ shall state:

- 43 (1) the company's name and any alternate name adopted under
44 subsection a. of section 61 of this act for use in this State;
45 (2) that the company is authorized to transact business in this
46 State;

- 1 (3) whether all fees and penalties due to the filing office under
2 this act or other law have been paid;
- 3 (4) whether the company's most recent annual report required
4 by section 26 of this act has been filed in the filing office;
- 5 (5) that the filing office has not revoked the company's
6 certificate of authority and has not filed a certificate of cancellation;
7 and
- 8 (6) other facts of record in the office of the filing office which
9 are specified by the person requesting the certificate.
- 10 c. Subject to any qualification stated in the certificate, a
11 certificate of standing '【or certificate of registration】' issued by the
12 filing office is conclusive evidence that the limited liability
13 company is in existence or the foreign limited liability company is
14 authorized to transact business in this State.

15

16 26. Annual Report for Filing Office.

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

- 19 (1) the name and address of the limited liability company;
- 20 (2) the name and address of the registered agent of the limited
21 liability company; and
- 22 (3) the name and addresses of the managing members or
23 managers, as the case may be.

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

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

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

37 (3) if the certificate of a domestic limited liability company has
38 been transferred to the inactive list or if the certificate of a foreign
39 limited liability company has been revoked, the certificate shall be
40 reinstated by proclamation of the filing office upon payment of all
41 fees due to the filing office, consisting of a reinstatement filing fee,
42 current annual report fee, all delinquent annual report fees, and a
43 late filing fee. The reinstatement relates back to the date of transfer
44 of the certificate of a domestic limited liability company to the
45 inactive list or to the date of revocation of the certificate of a
46 foreign limited liability company, as the case may be, and shall
47 validate all actions taken in the interim. In the event that in the
48 interim the name of the limited liability company has become

1 unavailable, the filing office shall reinstate the certificate upon, in
2 the case of a domestic limited liability company, the filing of an
3 amendment to its certificate of formation to change the name to an
4 available name, and in the case of a foreign limited liability
5 company, the filing of an amended certificate of ¹[registration]
6 authority¹ changing the name to an available name. The filing
7 office shall provide the forms necessary to effect annual report
8 reinstatements.

9

10 ARTICLE 3

11 RELATIONS OF MEMBERS AND MANAGERS TO PERSONS

12 DEALING WITH LIMITED LIABILITY COMPANY

13 27. No Agency Power or Member as Member.

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

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

19

20 28. Statement of Authority.

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

23 (1) shall include the name of the company, the street and
24 mailing addresses of its registered office and such other information
25 as may be required by the filing office to correctly identify the
26 company;

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

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

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

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

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

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

40 b. To amend or cancel a statement of authority filed with the
41 filing office under subsection a. of section 22 of this act, a limited
42 liability company shall deliver to the filing office for filing an
43 amendment or cancellation stating:

44 (1) the name of the company;

45 (2) the street and mailing addresses of the company's registered
46 office;

47 (3) such other information as may be required by the filing
48 office to correctly identify the company;

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

1 limitation on authority for the purposes of subsection g. of this
2 section.

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

8 j. An effective statement of denial operates as a restrictive
9 amendment under this section and may be recorded by certified
10 copy for the purposes of paragraph (1) of subsection f. of this
11 section.

12

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

16 a. Provides the name of the limited liability company and such
17 other information as may be required by the filing office to
18 correctly identify the company and the caption of the statement of
19 authority to which the statement of denial pertains; and

20 b. Denies the grant of authority.

21

22 30. Liability of Members and Managers.

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

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

27 (2) do not become the debts, obligations, or other liabilities of a
28 member or manager solely by reason of the member acting as a
29 member or manager acting as a manager.

30 b. The failure of a limited liability company to observe any
31 particular formalities relating to the exercise of its powers or
32 management of its activities is not a ground for imposing liability
33 on the members or managers for the debts, obligations, or other
34 liabilities of the company.

35

36

ARTICLE 4

37

RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

38

39 31. Becoming a Member.

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

45 b. If a limited liability company is to have more than one
46 member upon formation, those persons become members as agreed
47 by the persons before the formation of the company. The organizer

1 acts on behalf of the persons in forming the company and may be,
2 but need not be, one of the persons.

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

5 (1) as provided in the operating agreement;

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

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

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

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

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

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

18

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

24

25 33. Liability for Contributions.

26 a. A person's obligation to make a contribution to a limited
27 liability company is not excused by the person's death, disability, or
28 other inability to perform personally. If a person does not make a
29 required contribution of property or services, the person or the
30 person's estate is obligated, at the option of the company, to
31 contribute money equal to the value of the part of the contribution
32 which has not been made.

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

36

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

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

43 b. A person has a right to a distribution before the dissolution
44 and winding up of a limited liability company only if the company
45 decides to make an interim distribution. A person's dissociation
46 does not entitle the person to a distribution.

47 c. A person does not have a right to demand or receive a
48 distribution from a limited liability company in any form other than

1 money. Except as otherwise provided in subsection c. of section 56
2 of this act, a limited liability company may distribute an asset in
3 kind if each part of the asset is fungible with each other part and
4 each person receives a percentage of the asset equal in value to the
5 person's share of distributions.

6 d. If a member or transferee becomes entitled to receive a
7 distribution, the member or transferee has the status of, and is
8 entitled to all remedies available to, a creditor of the limited
9 liability company with respect to the distribution.

10
11 35. Limitations on Distribution.

12 a. A limited liability company may not make a distribution if
13 after the distribution:

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

16 (2) the company's total assets would be less than the sum of its
17 total liabilities plus the amount that would be needed, if the
18 company were to be dissolved, wound up, and terminated at the
19 time of the distribution, to satisfy the preferential rights upon
20 dissolution, winding up, and termination of members whose
21 preferential rights are superior to those of persons receiving the
22 distribution.

23 b. A limited liability company may base a determination that a
24 distribution is not prohibited under subsection a. of this section on
25 financial statements prepared on the basis of accounting practices
26 and principles that are reasonable in the circumstances or on a fair
27 valuation or other method that is reasonable under the
28 circumstances.

29 c. Except as otherwise provided in subsection f. of this section,
30 the effect of a distribution under subsection a. of this section is
31 measured:

32 (1) in the case of a distribution by purchase, redemption, or
33 other acquisition of a transferable interest in the company, as of the
34 date money or other property is transferred or debt incurred by the
35 company; and

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

37 (a) the distribution is authorized, if the payment occurs within
38 120 days after that date; or

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

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

45 e. A limited liability company's indebtedness, including
46 indebtedness issued in connection with or as part of a distribution,
47 is not a liability for purposes of subsection a. of this section if the
48 terms of the indebtedness provide that payment of principal and

1 interest are made only to the extent that a distribution could be
2 made to members under this section.

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

6 g. As used in this section, "distribution" does not include
7 amounts constituting reasonable compensation for present or past
8 services or reasonable payments made in the ordinary course of
9 business under a bona fide retirement plan or other benefits
10 program.

11

12 36. Liability for Improper Distributions.

13 a. Except as otherwise provided in subsection b. of this section,
14 if a member of a member-managed limited liability company or
15 manager of a manager-managed limited liability company consents
16 to a distribution made in violation of section 35 of this act and in
17 consenting to the distribution fails to comply with section 39 of this
18 act, the member or manager is personally liable to the company for
19 the amount of the distribution that exceeds the amount that could
20 have been distributed without the violation of section 35 of this act.

21 b. To the extent the operating agreement of a member-managed
22 limited liability company expressly relieves a member of the
23 authority and responsibility to consent to distributions and imposes
24 that authority and responsibility on one or more other members, the
25 liability stated in subsection a. of this section applies to the other
26 members and not the member that the operating agreement relieves
27 of authority and responsibility.

28 c. A person that receives a distribution knowing that the
29 distribution to that person was made in violation of section 35 of
30 this act is personally liable to the limited liability company but only
31 to the extent that the distribution received by the person exceeded
32 the amount that could have been properly paid under section 35 of
33 this act.

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

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

39 (2) implead any person that received a distribution in violation
40 of subsection c. of this section and seek to compel contribution
41 from the person in the amount the person received in violation of
42 subsection c. of this section.

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

45

46 37. Management of Limited Liability Company.

47 a. A limited liability company is a member-managed limited
48 liability company unless the operating agreement:

- 1 (1) expressly provides that:
- 2 (a) the company is or will be “manager-managed;”
- 3 (b) the company is or will be “managed by managers;” or
- 4 (c) management of the company is or will be “vested in
- 5 managers;” or
- 6 (2) includes words of similar import.
- 7 b. In a member-managed limited liability company, the
- 8 following rules **‘[shall]’** apply:
- 9 (1) The management and conduct of the company are vested in
- 10 the members.
- 11 (2) Each member has equal rights in the management and
- 12 conduct of the company’s activities.
- 13 (3) A difference arising among members as to a matter in the
- 14 ordinary course of the activities of the company may be decided by
- 15 a majority of the members.
- 16 (4) An act outside the ordinary course of the activities of the
- 17 company may be undertaken only with the consent of all members.
- 18 (5) The operating agreement may be amended only with the
- 19 consent of all members.
- 20 c. In a manager-managed limited liability company, the
- 21 following rules apply:
- 22 (1) Except as otherwise expressly provided in this act, any
- 23 matter relating to the activities of the company is decided
- 24 exclusively by the managers.
- 25 (2) Each manager has equal rights in the management and
- 26 conduct of the activities of the company.
- 27 (3) A difference arising among managers as to a matter in the
- 28 ordinary course of the activities of the company may be decided by
- 29 a majority of the managers.
- 30 (4) The consent of all members is required to:
- 31 (a) sell, lease, exchange, or otherwise dispose of all, or
- 32 substantially all, of the company’s property, with or without the
- 33 good will, outside the ordinary course of the company’s activities;
- 34 (b) approve a merger, conversion, or domestication under
- 35 Article 10 (section 73 through 87 of this act);
- 36 (c) undertake any other act outside the ordinary course of the
- 37 company’s activities; and
- 38 (d) amend the operating agreement.
- 39 (5) A manager may be chosen at any time by the consent of a
- 40 majority of the members and remains a manager until a successor
- 41 has been chosen, unless the manager at an earlier time resigns, is
- 42 removed, or dies, or, in the case of a manager that is not an
- 43 individual, terminates. A manager may be removed at any time by
- 44 the consent of a majority of the members without notice or cause.
- 45 (6) A person need not be a member to be a manager, but the
- 46 dissociation of a member that is also a manager removes the person
- 47 as a manager. If a person that is both a manager and a member

1 ceases to be a manager, that cessation does not by itself dissociate
2 the person as a member.

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

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

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

14 f. This act does not entitle a member to remuneration for
15 services performed for a member-managed limited liability
16 company, except for reasonable compensation for services rendered
17 in winding up the activities of the company.

18

19 38. Indemnification and Insurance.

20 a. As used in this section:

21 (1) "Company agent" means any person who is or was a
22 member of a member-managed company, a manager of a manager-
23 managed company, an officer, employee or agent of the
24 indemnifying company or of any constituent company absorbed by
25 the indemnifying company in a consolidation or merger and any
26 person who is or was a member, manager, officer, director, trustee,
27 employee or agent of any other enterprise, serving as such at the
28 request of the indemnifying company, or any such constituent
29 company, or the legal representatives of any such member,
30 manager, officer, director, trustee, employee or agent.

31 (2) "Other enterprise" and "another enterprise" mean any
32 domestic or foreign limited liability company other than the
33 company, and any corporation, partnership, joint venture, sole
34 proprietorship, trust or other enterprise, whether or not for profit,
35 served by a company agent;

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

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

40 (5) "Proceeding" means any pending, threatened or completed
41 civil, criminal, administrative or arbitral action, suit or
42 proceeding, and any appeal therein, and any inquiry or investigation
43 which could lead to that action or proceeding.

44 (6) References to an "other enterprise" or "another enterprise"
45 include employee benefit plans; ¹and¹ references to "fines" include
46 any excise taxes assessed on a person with respect to an employee
47 benefit plan ¹['; and references to "serving at the request of the
48 indemnifying company" include any service as a company agent

1 which imposes duties on, or involves services by, the company
2 agent with respect to an employee benefit plan, its participants and
3 beneficiaries]¹ .

4 b. A limited liability company shall indemnify a company
5 agent against expenses to the extent that such company agent has
6 been successful on the merits or otherwise in any proceeding
7 brought against the company agent by reason of the company agent
8 serving as a company agent or serving another enterprise at the
9 request of the limited liability company. If the company agent is
10 successful on the merits or otherwise in defense of any claim, issue
11 or matter in any such proceeding, indemnification shall be provided
12 under this subsection with respect to the claim, issue or matter.

13 c. A limited liability company shall indemnify a company
14 agent against any debt, obligation, expense or other liability
15 incurred by that company agent in the course of the company
16 agent's activities on behalf of the limited liability company or
17 another enterprise at the request of the limited liability company, if,
18 in making the payment or incurring the debt, obligation, expense or
19 other liability, the company agent complied with the duties stated in
20 sections 35 and 39 of this act.

21 d. A limited liability company may purchase and maintain
22 insurance on behalf of any company agent against any expenses
23 incurred in any proceeding and any liabilities asserted against the
24 company agent in his or her capacity as a company agent, whether
25 or not the limited liability company could eliminate or limit the
26 person's liability to the company for the conduct giving rise to the
27 liability under subsection g. of section 11 of this act. The limited
28 liability company may purchase such insurance from, or such
29 insurance may be reinsured in whole or in part by, an insurer owned
30 by or otherwise affiliated with the limited liability company,
31 whether or not such insurer does business with other insureds.

32

33 39. Standards of Conduct for Members and Managers.

34 a. A member of a member-managed limited liability company
35 owes to the company and, subject to subsection b. of section 67 of
36 this act, the other members, the duties of loyalty and care stated in
37 subsections b. and c. of this section.

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

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

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

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

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

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

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

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

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

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

13 f. All of the members of a member-managed limited liability
14 company or a manager-managed limited liability company may
15 authorize or ratify, after full disclosure of all material facts, a
16 specific act or transaction that otherwise would violate the duty of
17 loyalty.

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

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

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

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

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

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

38

39 40. Right of Members, Managers, and Dissociated Members to
40 Information.

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

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

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

2 (a) without demand, any information concerning the company's
3 activities, financial condition, and other circumstances which the
4 company knows and is material to the proper exercise of the
5 member's rights and duties under the operating agreement or this
6 act, except to the extent the company can establish that it
7 reasonably believes the member already knows the information; and

8 (b) on demand, any other information concerning the company's
9 activities, financial condition, and other circumstances, except to
10 the extent the demand or information demanded is unreasonable or
11 otherwise improper under the circumstances.

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

15 b. In a manager-managed limited liability company, the
16 following rules '~~shall~~' apply:

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

20 (2) During regular business hours and at a reasonable location
21 specified by the company, a member may obtain from the company
22 and inspect and copy full information regarding the activities,
23 financial condition, and other circumstances of the company as is
24 just and reasonable if:

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

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

30 (c) the information sought is directly connected to the member's
31 purpose.

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

35 (a) of the information that the company will provide in response
36 to the demand and when and where the company will provide the
37 information; and

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

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

45 c. On 10 days' demand made in a record received by a limited
46 liability company, a dissociated member may have access to
47 information to which the person was entitled while a member if the
48 information pertains to the period during which the person was a

1 member, the person seeks the information in good faith, and the
2 person satisfies the requirements imposed on a member by
3 paragraph (2) of subsection b. of this section. The company shall
4 respond to a demand made pursuant to this subsection in the manner
5 provided in paragraph (3) of subsection b. of this section.

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

9 e. A member or dissociated member may exercise rights under
10 this section through an agent or, in the case of an individual under
11 legal disability, a legal representative. Any restriction or condition
12 imposed by the operating agreement or under subsection g. of this
13 section applies both to the agent or legal representative and the
14 member or dissociated member.

15 f. The rights under this section do not extend to a person as
16 transferee.

17 g. In addition to any restriction or condition stated in its
18 operating agreement, a limited liability company, as a matter within
19 the ordinary course of its activities, may impose reasonable
20 restrictions and conditions on access to and use of information to be
21 furnished under this section, including designating information
22 confidential and imposing nondisclosure and safeguarding
23 obligations on the recipient. In a dispute concerning the
24 reasonableness of a restriction under this subsection, the company
25 has the burden of proving reasonableness.

26 27 ARTICLE 5

28 TRANSFERABLE INTERESTS AND RIGHTS OF 29 TRANSFEREES AND CREDITORS

30 41. Nature of Transferable Interest.

31 A transferable interest shall be personal property.
32

33 42. Transfer of Transferable Interest.

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

35 (1) is permissible;

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

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

41 (a) participate in the management or conduct of the company's
42 activities; or

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

46 b. A transferee has the right to receive, in accordance with the
47 transfer, distributions to which the transferor would otherwise be
48 entitled.

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

4 d. A transferable interest may be evidenced by a certificate of
5 the interest issued by the limited liability company in a record, and,
6 subject to this section, the interest represented by the certificate
7 may be transferred by a transfer of the certificate.

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

11 f. A transfer of a transferable interest in violation of a
12 restriction on transfer contained in the operating agreement is
13 ineffective as to a person having notice of the restriction at the time
14 of transfer.

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

20 h. When a member transfers a transferable interest to a person
21 that becomes a member with respect to the transferred interest, the
22 transferee is liable for the member's obligations under section 43
23 and subsection c. of section 36 of this act known to the transferee
24 when the transferee becomes a member.

25

26 43. Charging Order.

27 a. On application by a judgment creditor of a member or
28 transferee, a court may enter a charging order against the
29 transferable interest of the judgment debtor for the unsatisfied
30 amount of the judgment. A charging order constitutes a lien on a
31 judgment debtor's transferable interest and requires the limited
32 liability company to pay over to the person to which the charging
33 order was issued any distribution that would otherwise be paid to
34 the judgment debtor.

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

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

41 (2) make all other orders necessary to give effect to the charging
42 order.

43 c. Upon a showing that distributions under a charging order
44 will not pay the judgment debt within a reasonable time, the court
45 may foreclose the lien and order the sale of the transferable interest.
46 The purchaser at the foreclosure sale only obtains the transferable
47 interest, does not thereby become a member, and is subject to
48 section 42 of this act.

1 d. At any time before foreclosure under subsection c. of this
2 section, the member or transferee whose transferable interest is
3 subject to a charging order under subsection a. of this section may
4 extinguish the charging order by satisfying the judgment and filing
5 a certified copy of the satisfaction with the court that issued the
6 charging order.

7 e. At any time before foreclosure under subsection c. of this
8 section, a limited liability company or one or more members whose
9 transferable interests are not subject to the charging order may pay
10 to the judgment creditor the full amount due under the judgment
11 and thereby succeed to the rights of the judgment creditor,
12 including the charging order.

13 f. This act shall not deprive any member or transferee of the
14 benefit of any exemption laws applicable to the member's or
15 transferee's transferable interest.

16 g. This section provides the exclusive remedy by which a
17 person seeking to enforce a judgment against a member or
18 transferee may, in the capacity of judgment creditor, satisfy the
19 judgment from the judgment debtor's transferable interest.
20

21 44. Power of Personal Representative of Deceased Member. If a
22 member dies, the deceased member's personal representative or
23 other legal representative may exercise the rights of a transferee
24 provided in subsection c. of section 42 of this act and, for the
25 purposes of settling the estate, the rights of a current member under
26 section 40 of this act.
27

28 ARTICLE 6

29 MEMBER'S POWER TO DISSOCIATE; WRONGFUL 30 DISSOCIATION

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

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

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

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

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

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

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

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

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

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

10

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

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

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

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

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

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

24 (2) there has been a transfer of all of the person's transferable
25 interest in the company, other than:

26 (a) a transfer for security purposes; or

27 (b) a charging order in effect under section 43 of this act which
28 has not been foreclosed;

29 (3) the person is a corporation and, within 90 days after the
30 company notifies the person that it will be expelled as a member
31 because the person has filed a certificate of dissolution or the
32 equivalent, its charter has been revoked, or its right to conduct
33 business has been suspended by the jurisdiction of its incorporation,
34 the certificate of dissolution has not been revoked or its charter or
35 right to conduct business has not been reinstated; or

36 (4) the person is a limited liability company or partnership that
37 has been dissolved and whose business is being wound up;

38 e. On application by the company, the person is expelled as a
39 member by judicial order because the person:

40 (1) has engaged, or is engaging, in wrongful conduct that has
41 adversely and materially affected, or will adversely and materially
42 affect, the company's activities;

43 (2) has willfully or persistently committed, or is willfully and
44 persistently committing, a material breach of the operating
45 agreement or the person's duties or obligations under section 39 of
46 this act; or

- 1 (3) has engaged, or is engaging, in conduct relating to the
2 company's activities which makes it not reasonably practicable to
3 carry on the activities with the person as a member;
- 4 f. In the case of a person who is an individual:
- 5 (1) the person dies; or
- 6 (2) in a member-managed limited liability company:
- 7 (a) a guardian or general conservator for the person is
8 appointed; or
- 9 (b) there is a judicial order that the person has otherwise become
10 incapable of performing the person's duties as a member under this
11 act or the operating agreement;
- 12 g. In a member-managed limited liability company, the person:
- 13 (1) becomes a debtor in bankruptcy;
- 14 (2) executes an assignment for the benefit of creditors; or
- 15 (3) seeks, consents to, or acquiesces in the appointment of a
16 trustee, receiver, or liquidator of the person or of all or substantially
17 all of the person's property;
- 18 h. In the case of a person that is a trust or is acting as a member
19 by virtue of being a trustee of a trust, the trust's entire transferable
20 interest in the company is distributed;
- 21 i. In the case of a person that is an estate or is acting as a
22 member by virtue of being a personal representative of an estate,
23 the estate's entire transferable interest in the company is distributed;
- 24 j. In the case of a member that is not an individual,
25 partnership, limited liability company, corporation, trust, or estate,
26 the termination of the member;
- 27 k. The company participates in a merger under Article 10
28 (sections 73 through 87 of this act) if:
- 29 (1) the company is not the surviving entity; or,
- 30 (2) otherwise as a result of the merger, the person ceases to be a
31 member;
- 32 l. The company participates in a conversion under Article 10
33 (sections 73 through 87 of this act);
- 34 m. The company participates in a domestication under Article
35 10 (sections 73 through 87 of this act), if, as a result of the
36 domestication, the person ceases to be a member; or
- 37 n. The company terminates.
- 38
- 39 47. Effect of Person's Dissociation as Member.
- 40 a. When a person is dissociated as a member of a limited
41 liability company:
- 42 (1) the person's right to participate as a member in the
43 management and conduct of the company's activities terminates;
- 44 (2) if the company is member-managed, the person's fiduciary
45 duties as a member end with regard to matters arising and events
46 occurring after the person's dissociation; and
- 47 (3) subject to section 44 and Article 10 (sections 73 through 87
48 of this act), any transferable interest owned by the person

1 immediately before dissociation in the person's capacity as a
2 member is owned by the person solely as a transferee.

3 b. A person's dissociation as a member of a limited liability
4 company does not of itself discharge the person from any debt,
5 obligation, or other liability to the company or the other members
6 which the person incurred while a member.

7 c. A court that expels a member from a company pursuant to
8 subsection e. of section 46 of this act may order the sale of the
9 interests held by such person immediately before dissociation to
10 either the company or to any other persons who are parties to the
11 action if the court determines, in its discretion, that such an order is
12 required by any other law, rule or regulation, or that such an order
13 would be fair and equitable to all parties under all of the
14 circumstances of the case.

15

16

ARTICLE 7

17

DISSOLUTION AND WINDING UP

18

48. Events Causing Dissolution.

19

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

21

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

23

(2) the consent of all the members;

24

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

26

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

28

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

30

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

33

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

36

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

38

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

40

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

43

b. In a proceeding brought under paragraph (4) or (5) of
44 subsection a. of this section, the court may order or a party may
45 seek a remedy other than dissolution, including, but not limited to,
46 the appointment of a custodian or one or more provisional
47 managers. The court shall appoint a custodian or one or more
48 provisional managers if it appears to the court that such an

1 appointment may be in the best interests of the limited liability
2 company and its members. In any proceeding under this section,
3 the court shall allow reasonable compensation to any custodian or
4 provisional manager for his or her services and reimbursement or
5 direct payment of all his or her reasonable costs and expenses,
6 which amounts shall be paid by the limited liability company. The
7 court may appoint a custodian or one or more provisional managers
8 in a summary proceeding or otherwise; or order the sale of all
9 interests held by a member who is a party to the proceeding to
10 either the limited liability company or any other member who is a
11 party to the proceeding, if the court determines in its discretion that
12 such an order would be fair and equitable to all parties under all of
13 the circumstances of the case.

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

20

21 49. Winding Up.

22 a. A dissolved limited liability company shall wind up its
23 activities, and the company continues after dissolution only for the
24 purpose of winding up.

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

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

29 (2) shall:

30 (a) deliver to the filing office for filing a certificate of
31 dissolution stating the name of the company and such other
32 information as may be required by the filing office to correctly
33 identify the company and that the company is dissolved;

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

36 (c) prosecute and defend actions and proceedings, whether civil,
37 criminal, or administrative;

38 (d) transfer the company's property;

39 (e) settle disputes by mediation or arbitration;

40 (f) deliver to the filing office for filing a statement of
41 termination stating the name of the company and that the company
42 is terminated; and

43 (g) perform other acts necessary or appropriate to the winding
44 up.

45 c. If a dissolved limited liability company has no members, the
46 legal representative of the last person to have been a member may
47 wind up the activities of the company. If the person does so, the
48 person has the powers of a sole manager under subsection c. of

1 section 37 of this act and is deemed to be a manager for the
2 purposes of paragraph (2) of subsection a. of section 30 of this act.

3 d. If the legal representative under subsection c. of this section
4 declines or fails to wind up the company's activities, a person may
5 be appointed to do so by the consent of transferees owning a
6 majority of the rights to receive distributions as transferees at the
7 time the consent is to be effective. A person appointed under this
8 subsection:

9 (1) has the powers of a sole manager under subsection c. of
10 section 37 of this act and is deemed to be a manager for the
11 purposes of paragraph (2) of subsection a. of section 30 of this act;
12 and

13 (2) shall promptly deliver to the filing office for filing an
14 amendment to the company's certificate of formation to:

15 (a) state that the company has no members;

16 (b) state that the person has been appointed pursuant to this
17 subsection to wind up the company; and

18 (c) provide the street and mailing addresses of the person.

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

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

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

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

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

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

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

32

33 50. Known Claims Against Dissolved Limited Liability
34 Company.

35 a. Except as otherwise provided in subsection d. of this section,
36 a dissolved limited liability company may give notice of a known
37 claim under subsection b. of this section, which has the effect as
38 provided in subsection c. of this section.

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

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

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

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

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

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

- 4 (1) the claim is not received by the specified deadline; or
5 (2) if the claim is timely received but rejected by the company:
6 (a) the company causes the claimant to receive a notice in a
7 record stating that the claim is rejected and will be barred unless the
8 claimant commences an action against the company to enforce the
9 claim within 90 days after the claimant receives the notice; and
10 (b) the claimant does not commence the required action within
11 the 90 days.

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

15

16 51. Other Claims Against Dissolved Limited Liability Company.

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

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

21 (1) be published at least once in a newspaper of general
22 circulation in the county in this State in which the dissolved limited
23 liability company's principal office is located or, if it has none in
24 this State, in the county in which the company's registered office is
25 or was last located;

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

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

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

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

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

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

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

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

45 (2) if assets of the company have been distributed after
46 dissolution, against a member or transferee to the extent of that
47 person's proportionate share of the claim or of the assets distributed
48 to the member or transferee after dissolution, whichever is less, but

1 a person's total liability for all claims under this paragraph does not
2 exceed the total amount of assets distributed to the person after
3 dissolution.

4

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

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

14 b. This section shall not:

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

17 (2) operate to extend any otherwise applicable statute of
18 limitations; or

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

21

22 53. Administrative Action.

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

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

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

29 b. If the filing office determines that a ground exists for
30 placing a company on the inactive list, the filing office shall
31 provide notice of the filing office's intent to the registered office of
32 the company or the principal office of the company if the mailing
33 address of the principal office appears in the records of the filing
34 office and is different from the mailing address of the registered
35 office.

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

47 d. A limited liability company that has been placed on the
48 inactive list continues in existence but, subject to section 54 of this

1 act, may carry on only activities necessary to wind up its activities
2 and liquidate its assets under sections 49 and 56 of this act and to
3 notify claimants under sections 50 and 51 of this act.

4 e. An inactivation of a limited liability company does not
5 terminate the authority of its agent for service of process.
6

7 54. Reinstatement Following Administrative Dissolution.

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

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

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

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

20 c. When a reinstatement becomes effective, it relates back to
21 and takes effect as of the effective date of the filing office action
22 placing the company on the inactive list, and the limited liability
23 company may resume its activities as if the filing office action had
24 not occurred.
25

26 55. Appeal from Rejection of Reinstatement.

27 a. If the filing office rejects a limited liability company's
28 application for reinstatement, the filing office shall present a notice
29 to the company explaining the reason for rejection.

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

36 c. The court may order the filing office to reinstate a limited
37 liability company or take other action the court considers
38 appropriate.
39

40 56. Distribution of Assets in Winding Up Limited Liability
41 Company's Activities.

42 a. In winding up its activities, a limited liability company shall
43 apply its assets to discharge its obligations to creditors, including
44 members that are creditors.

45 b. After a limited liability company complies with subsection a.
46 of this section, any surplus shall be distributed in the following
47 order, subject to any charging order in effect under section 43 of
48 this act:

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

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

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

12 d. All distributions made under subsections b. and c. of this
13 section shall be paid in money.
14

15 ARTICLE 8

16 FOREIGN LIMITED LIABILITY COMPANIES

17 57. Governing Law.

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

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

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

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

28 c. A certificate of authority does not authorize a foreign limited
29 liability company to engage in any business or exercise any power
30 that a limited liability company may not engage in or exercise in
31 this State.
32

33 58. Application for Certificate of Authority.

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

38 a. the name of the company and, if the name does not comply
39 with section 8 of this act, an alternate name adopted pursuant to
40 subsection a. of section 61 of this act;

41 b. the name of the state or other jurisdiction under whose law
42 the company is formed;

43 c. the street and mailing addresses of the company's principal
44 office and, if the law of the jurisdiction under which the company is
45 formed require the company to maintain an office in that
46 jurisdiction, the street and mailing addresses of the required office;
47 and

1 d. the name and street and mailing addresses of the company's
2 initial agent for service of process in this state.

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
48 authority until it adopts, for the purpose of transacting business in

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

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

15

16 62. Revocation of Certificate of Authority.

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

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

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

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

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

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

47

48 63. Reinstatement of Certificate of Authority.

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

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

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

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

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

17

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

26

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

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

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

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

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

45

46 66. Action by Attorney General. The Attorney General of the
47 State of New Jersey may maintain an action to enjoin a foreign

1 limited liability company from transacting business in this State in
2 violation of this act.

3

4

ARTICLE 9

5

ACTIONS BY MEMBERS

6

67. Direct Action by Member.

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

13

14

15

16

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

17

18

19

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

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21

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

26

27

28

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

29

30

31

32

33

69. Proper Plaintiff.

34

35

36

37

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

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

38

39

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

40

41

42

43

44

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

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

45

46

47

48

71. Special Litigation Committee.

a. If a limited liability company is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the

1 proceeding and determine whether pursuing the action is in the best
2 interests of the company. If the company appoints a special
3 litigation committee, on motion by the committee made in the name
4 of the company, except for good cause shown, the court shall stay
5 discovery for the time reasonably necessary to permit the committee
6 to make its investigation. This subsection shall not prevent the
7 court from enforcing a person's right to information under section
8 40 of this act or, for good cause shown, granting extraordinary
9 relief in the form of a temporary restraining order or preliminary
10 injunction.

11 b. A special litigation committee may be composed of one or
12 more disinterested and independent individuals, who may be
13 members.

14 c. A special litigation committee may be appointed:

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

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

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

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

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

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

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

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

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

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

31 (4) be dismissed.

32 e. After making a determination under subsection d. of this
33 section, a special litigation committee shall file with the court a
34 statement of its determination and its report supporting its
35 determination, giving notice to the plaintiff. The court shall
36 determine whether the members of the committee were disinterested
37 and independent and whether the committee conducted its
38 investigation and made its recommendation in good faith,
39 independently, and with reasonable care, with the committee having
40 the burden of proof. If the court finds that the members of the
41 committee were disinterested and independent and that the
42 committee acted in good faith, independently, and with reasonable
43 care, the court shall enforce the determination of the committee.
44 Otherwise, the court shall dissolve the stay of discovery entered
45 under subsection a. of this section and allow the action to proceed
46 under the direction of the plaintiff.

47

48 72. Proceeds and Expenses.

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

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

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

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

12

13 ARTICLE 10

14 MERGER, CONVERSION AND DOMESTICATION

15 73. Definitions. As used in this Article 10 (sections 73 through
16 87 of this act):

17 "Constituent limited liability company" means a constituent
18 organization that is a limited liability company.

19 "Constituent organization" means an organization that is party to
20 a merger.

21 "Converted organization" means the organization into which a
22 converting organization converts pursuant to sections 78 through 81
23 of this act.

24 "Converting limited liability company" means a converting
25 organization that is a limited liability company.

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

28 "Domesticated company" means the company that exists after a
29 domesticating foreign limited liability company or limited liability
30 company effects a domestication pursuant to sections 82 through 85
31 of this act.

32 "Domesticating company" means the company that effects a
33 domestication pursuant to sections 82 through 85 of this act.

34 "Governing statute" means the statute that governs an
35 organization's internal affairs.

36 "Organization" means a general partnership, including a limited
37 liability partnership, limited partnership, including a limited
38 liability limited partnership, limited liability company, business
39 trust, corporation, or any other person having a governing statute.
40 The term includes a domestic or foreign organization regardless of
41 whether organized for profit.

42 "Organizational documents" means:

43 (1) for a domestic or foreign general partnership, its partnership
44 agreement;

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

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

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

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

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

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

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

20 (2) by the organization’s organizational documents under a
21 provision of the governing statute authorizing those documents to
22 make one or more specified persons liable for all or specified debts,
23 obligations, or other liabilities of the organization solely by reason
24 of the person or persons co-owning, having an interest in, or being a
25 member of the organization.

26 “Surviving organization” means an organization into which one
27 or more other organizations are merged whether the organization
28 preexisted the merger or was created by the merger.

29
30 74. Merger.

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

34 (1) the governing statute of each of the other organizations
35 authorizes the merger;

36 (2) the merger is not prohibited by the law of a jurisdiction that
37 enacted any of the governing statutes; and

38 (3) each of the other organizations complies with its governing
39 statute in effecting the merger.

40 b. A plan of merger shall be in a record and shall include:

41 (1) the name and form of each constituent organization;

42 (2) the name and form of the surviving organization and, if the
43 surviving organization is to be created by the merger, a statement to
44 that effect;

45 (3) the terms and conditions of the merger, including the manner
46 and basis for converting the interests in each constituent
47 organization into any combination of money, interests in the
48 surviving organization, and other consideration;

1 (4) if the surviving organization is to be created by the merger,
2 the surviving organization's organizational documents that are
3 proposed to be in a record; and

4 (5) if the surviving organization is not to be created by the
5 merger, any amendments to be made by the merger to the surviving
6 organization's organizational documents that are, or are proposed to
7 be, in a record.

8

9 75. Action on Plan of Merger by Constituent Limited Liability
10 Company.

11 a. Subject to section 86 of this act, a plan of merger shall be
12 consented to by all the members of a constituent limited liability
13 company.

14 b. Subject to section 86 of this act and any contractual rights,
15 after a merger is approved, and at any time before articles of merger
16 are delivered to the filing office for filing under section 76 of this
17 act, a constituent limited liability company may amend the plan or
18 abandon the merger:

19 (1) as provided in the plan; or

20 (2) except as otherwise prohibited in the plan, with the same
21 consent as was required to approve the plan.

22

23 76. Filings Required for Merger; Effective Date.

24 a. After each constituent organization has approved a merger,
25 articles of merger shall be signed on behalf of:

26 (1) each constituent limited liability company, as provided in
27 subsection a. of section 20 of this act; and

28 (2) each other constituent organization, as provided in its
29 governing statute.

30 b. Articles of merger under this section shall include:

31 (1) the name and form of each constituent organization and the
32 jurisdiction of its governing statute;

33 (2) the name and form of the surviving organization, the
34 jurisdiction of its governing statute, and, if the surviving
35 organization is created by the merger, a statement to that effect;

36 (3) the date the merger is effective under the governing statute
37 of the surviving organization;

38 (4) if the surviving organization is to be created by the merger:

39 (a) if it will be a limited liability company, the company's
40 certificate of formation; or

41 (b) if it will be an organization other than a limited liability
42 company, the organizational document that creates the organization
43 that is in a public record;

44 (5) if the surviving organization preexists the merger, any
45 amendments provided for in the plan of merger for the
46 organizational document that created the organization that are in a
47 public record;

1 (6) a statement as to each constituent organization that the
2 merger was approved as required by the organization's governing
3 statute;

4 (7) if the surviving organization is a foreign organization not
5 authorized to transact business in this State, the street and mailing
6 addresses of an office that the filing office may use for the purposes
7 of subsection b. of section 77 of this act; and

8 (8) any additional information required by the governing statute
9 of any constituent organization.

10 c. The surviving organization shall deliver the articles of
11 merger for filing in the office of the filing office.

12 d. A merger becomes effective under this act:

13 (1) if the surviving organization is a limited liability company,
14 upon the later of:

15 (a) compliance with subsection c. of this section; or

16 (b) subject to subsection c. of section 22 of this act, as specified
17 in the articles of merger; or

18 (2) if the surviving organization is not a limited liability
19 company, as provided by the governing statute of the surviving
20 organization.

21

22 77. Effect of Merger.

23 a. When a merger becomes effective:

24 (1) the surviving organization continues or comes into
25 existence;

26 (2) each constituent organization that merges into the surviving
27 organization ceases to exist as a separate entity;

28 (3) all property owned by each constituent organization that
29 ceases to exist vests in the surviving organization;

30 (4) all debts, obligations, or other liabilities of each constituent
31 organization that has ceased to exist continue as debts, obligations,
32 or other liabilities of the surviving organization;

33 (5) an action or proceeding pending by or against any
34 constituent organization that ceases to exist may be continued as if
35 the merger had not occurred;

36 (6) except as prohibited by other law, all of the rights,
37 privileges, immunities, powers, and purposes of each constituent
38 organization that ceases to exist vest in the surviving organization;

39 (7) except as otherwise provided in the plan of merger, the terms
40 and conditions of the plan of merger take effect; and

41 (8) except as otherwise agreed, if a constituent limited liability
42 company ceases to exist, the merger does not dissolve the limited
43 liability company for the purposes of Article 7, Dissolution and
44 Winding Up (sections 48 through 56 of this act);

45 (9) if the surviving organization is created by the merger:

46 (a) if it is a limited liability company, the certificate of
47 formation becomes effective; or

1 (b) if it is an organization other than a limited liability company,
2 the organizational document that creates the organization becomes
3 effective; and

4 (10) if the surviving organization preexisted the merger, any
5 amendments provided for in the articles of merger for the
6 organizational document that created the organization become
7 effective.

8 b. A surviving organization that is a foreign organization
9 consents to the jurisdiction of the courts of this State to enforce any
10 debt, obligation, or other liability owed by a constituent
11 organization, if before the merger the constituent organization was
12 subject to suit in this State on the debt, obligation, or other liability.
13 A surviving organization that is a foreign organization and not
14 authorized to transact business in this State appoints the filing
15 office as its agent for service of process for the purposes of
16 enforcing a debt, obligation, or other liability under this subsection.
17 Service on the filing office under this subsection shall be made in
18 the same manner and shall have the same consequences as in
19 subsections c. and d. of section 17 of this act

20

21 78. Conversion.

22 a. An organization, other than a limited liability company or a
23 foreign limited liability company, may convert to a limited liability
24 company, and a limited liability company may convert to an
25 organization other than a foreign limited liability company pursuant
26 to this section, sections 79 through 81 of this act, and a plan of
27 conversion, if:

28 (1) the other organization's governing statute authorizes the
29 conversion;

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

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

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

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

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

37 (3) the terms and conditions of the conversion, including the
38 manner and basis for converting interests in the converting
39 organization into any combination of money, interests in the
40 converted organization, and other consideration; and

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

43

44 79. Action on Plan of Conversion by Converting Limited
45 Liability Company.

46 a. Subject to section 86 of this act, a plan of conversion shall
47 be consented to by all the members of a converting limited liability
48 company.

1 b. Subject to section 86 of this act and any contractual rights,
2 after a conversion is approved, and at any time before articles of
3 conversion are delivered to the filing office for filing under section
4 80 of this act, a converting limited liability company may amend
5 the plan or abandon the conversion:

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 80. Filings Required for Conversion; Effective Date.

11 a. After a plan of conversion is approved:

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

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

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

21 (c) the date the conversion is effective under the governing
22 statute of the converted organization;

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

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

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

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

36 (a) a statement that the converted organization was converted
37 from another organization;

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

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

42 b. A conversion becomes effective:

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

45 (2) if the converted organization is not a limited liability
46 company, as provided by the governing statute of the converted
47 organization.

1 81. Effect of Conversion.

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

5 b. When a conversion takes effect:

6 (1) all property owned by the converting organization remains
7 vested in the converted organization;

8 (2) all debts, obligations, or other liabilities of the converting
9 organization continue as debts, obligations, or other liabilities of the
10 converted organization;

11 (3) an action or proceeding pending by or against the converting
12 organization may be continued as if the conversion had not
13 occurred;

14 (4) except as prohibited by law other than this act, all of the
15 rights, privileges, immunities, powers, and purposes of the
16 converting organization remain vested in the converted
17 organization;

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

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

23 c. A converted organization that is a foreign organization
24 consents to the jurisdiction of the courts of this State to enforce any
25 debt, obligation, or other liability for which the converting limited
26 liability company is liable if, before the conversion, the converting
27 limited liability company was subject to suit in this State on the
28 debt, obligation, or other liability. A converted organization that is
29 a foreign organization and not authorized to transact business in this
30 State appoints the filing office as its agent for service of process for
31 purposes of enforcing a debt, obligation, or other liability under this
32 subsection. Service on the filing office under this subsection shall
33 be made in the same manner and has the same consequences as in
34 subsections c. and d. of section 17 of this act.

35

36 82. Domestication.

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

40 (1) the foreign limited liability company's governing statute
41 authorizes the domestication;

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

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

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

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

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

5 (3) the ¹['foreign']¹ limited liability company complies with
6 ¹['its'] the foreign¹ governing statute in effecting the domestication.

7 c. A plan of domestication shall be in a record and shall
8 include:

9 (1) the name of the domesticating company before
10 domestication and such other information as may be required by the
11 filing office to correctly identify the company and the jurisdiction
12 of its governing statute;

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

15 (3) the terms and conditions of the domestication, including the
16 manner and basis for converting interests in the domesticating
17 company into any combination of money, interests in the
18 domesticated company, and other consideration; and

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

21

22 83. Action on Plan of Domestication By Domesticating Limited
23 Liability Company.

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

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

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

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

34 (1) as provided in the plan; or

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

37

38 84. Filings Required for Domestication; Effective Date.

39 a. After a plan of domestication is approved, a domesticating
40 company shall deliver to the filing office for filing articles of
41 domestication, which shall include:

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

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

47 (3) the name of the domesticated company and the jurisdiction
48 of its governing statute;

1 (4) the date the domestication is effective under the governing
2 statute of the domesticated company;

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

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

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

13 b. A domestication becomes effective:

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

16 (2) according to the governing statute of the domesticated
17 company, if the domesticated organization is a foreign limited
18 liability company.

19

20 85. Effect of Domestication.

21 a. When a domestication takes effect:

22 (1) the domesticated company is for all purposes the company
23 that existed before the domestication;

24 (2) all property owned by the domesticating company remains
25 vested in the domesticated company;

26 (3) all debts, obligations, or other liabilities of the domesticating
27 company continue as debts, obligations, or other liabilities of the
28 domesticated company;

29 (4) an action or proceeding pending by or against a
30 domesticating company may be continued as if the domestication
31 had not occurred;

32 (5) except as prohibited by other law, all of the rights,
33 privileges, immunities, powers, and purposes of the domesticating
34 company remain vested in the domesticated company;

35 (6) except as otherwise provided in the plan of domestication,
36 the terms and conditions of the plan of domestication take effect;
37 and

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

42 b. A domesticated company that is a foreign limited liability
43 company consents to the jurisdiction of the courts of this State to
44 enforce any debt, obligation, or other liability owed by the
45 domesticating company, if, before the domestication, the
46 domesticating company was subject to suit in this State on the debt,
47 obligation, or other liability. A domesticated company that is a
48 foreign limited liability company and not authorized to transact

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

7 c. If a limited liability company has adopted and approved a
8 plan of domestication under section 82 of this act providing for the
9 company to be domesticated in a foreign jurisdiction, a statement
10 surrendering the company's certificate of formation shall be
11 delivered to the filing office for filing setting forth:

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

14 (2) a statement that the certificate of formation is being
15 surrendered in connection with the domestication of the company in
16 a foreign jurisdiction;

17 (3) a statement that the domestication was approved as required
18 by this act; and

19 (4) the jurisdiction of formation of the domesticated foreign
20 limited liability company.

21

22 86. Restrictions on Approval of Mergers, Conversions, and
23 Domestications.

24 a. If a member of a constituent, converting, or domesticating
25 limited liability company will have personal liability with respect to
26 a surviving, converted, or domesticated organization, approval or
27 amendment of a plan of merger, conversion, or domestication are
28 ineffective without the consent of the member, unless:

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

32 (2) the member has consented to the provision of the operating
33 agreement.

34 b. A member does not give the consent required by subsection
35 a. of this section merely by consenting to a provision of the
36 operating agreement that permits the operating agreement to be
37 amended with the consent of fewer than all the members.

38

39 87. Article Not Exclusive. This Article 10 (Section 73 through
40 87 of this act) does not preclude an entity from being merged,
41 converted, or domesticated under law other than this act.

42

43

ARTICLE 11

44

MISCELLANEOUS PROVISIONS

45

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

1 89. Relation to Electronic Signatures In Global and National
2 Commerce Act. This act modifies, limits, and supersedes the
3 federal "Electronic Signatures in Global and National Commerce
4 Act," Pub.L.106-2, 15 U.S.C. s.7001 et seq., but does not modify,
5 limit, or supersede section 101(c) of that act, 15 U.S.C. s.7001(c),
6 or authorize electronic delivery of any of the notices described in
7 section 103(b) of that act, 15 U.S.C. s.7003(b).

8
9 90. Savings Clause. This act does not affect an action
10 commenced, proceeding brought, or right accrued before this act
11 takes effect.

12
13 91. Application to Existing Relationships.

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

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

18 (2) ¹[except as otherwise provided in subsection c. of this
19 section,]¹ a limited liability company formed before the effective
20 date of this act, which elects, in the manner provided in its
21 operating agreement or by law for amending the operating
22 agreement, to be subject to this act.

23 b. ¹[Except as otherwise provided in subsection c. of this
24 section, on] On¹ and after the first day of the 18th month next
25 following the enactment date of this act, this act governs all limited
26 liability companies.

27
28 92. Tax Classification.

29 a. For all purposes of taxation ¹on income¹ under the laws of
30 this State ¹and only for those purposes¹, a limited liability company
31 formed under this act or qualified to do business in this State as a
32 foreign limited liability company with two or more members shall
33 be classified as a partnership unless classified otherwise for federal
34 income tax purposes, in which case the limited liability company
35 shall be classified in the same manner as it is classified for federal
36 income tax purposes. For all purposes of taxation under the laws of
37 this State, a member or ¹[an assignee] a transferee¹ of a member of
38 a limited liability company formed under this act or qualified to do
39 business in this State as a foreign limited liability company shall be
40 treated as a partner in a partnership unless the limited liability
41 company is classified otherwise for federal income tax purposes, in
42 which case the member or ¹[assignee] transferee¹ of a member
43 shall have the same status as the member or ¹[assignee] transferee¹
44 of a member has for federal income tax purposes.

45 b. For all purposes of taxation on income under the laws of this
46 State and only for those purposes, a limited liability company
47 formed under this act or qualified to do business in this State as a

1 foreign limited liability company with one member is disregarded
2 as an entity separate from its owner, unless classified otherwise for
3 federal tax purposes, in which case the limited liability company
4 will be classified in the same manner as it is classified for federal
5 income tax purposes. For all purposes of taxation on income under
6 the laws of this State and only for those purposes, the sole member
7 or '[an assignee] a transferee' of all of the limited liability
8 company interest of the sole member of a limited liability company
9 formed under this act or qualified to do business in this State as a
10 foreign limited liability company is treated as the direct owner of
11 the underlying assets of the limited liability company and of its
12 operations, unless the limited liability company is classified
13 otherwise for federal income tax purposes, in which case the
14 member or '[assignee] transferee' of a member will have the same
15 status as the member or '[assignee] transferee' of a member has for
16 federal income tax purposes.

17

18 93. Fees.

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

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

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

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

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

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

43 (6) Upon filing of an annual report, a fee in the amount of
44 \$50.00.

45 (7) Upon requesting a reinstatement of a certificate of a limited
46 liability company, a late filing fee of \$200.00 and a reinstatement
47 filing fee of \$75.00.

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

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

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

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

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

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

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

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

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

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

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

37 The State Treasurer shall establish, and may from time to time
38 amend, a schedule of specific fees payable pursuant to this
39 subsection.

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

43

44 94. Notices. In computing the period of time for the giving of
45 any notice:

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

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

4
5 95. Repeals. Effective on the first day of the 18th month next
6 following the enactment date of this act, the following are repealed:

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

8 Section 22 of P.L.1997, c.139 (C.42:2B-8.1) ¹;

9 Section 14 of P.L.1997, c.139 (C.42:2B-24.1) ¹; and¹

10 Sections 1 and 2 of P.L.2003, c.12 (C.42:2B-49.1 and 42:2B-
11 49.2) ¹;

12
13 96. Effective Date. This act shall take effect on the 180th day
14 next following enactment.