

**REVISED UNIFORM LIMITED LIABILITY
COMPANY ACT***

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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**REVISED UNIFORM LIMITED LIABILITY
COMPANY ACT**

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COMPANY ACT**

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REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Revised Uniform Limited Liability Company Act.

SECTION 102. DEFINITIONS. In this [act]:

(1) “Certificate of organization” means the certificate required by Section 201. The term includes the certificate as amended or restated.

(2) “Contribution” means any benefit provided by a person to a limited liability company:

(A) in order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

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

(C) in the person’s capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

(3) “Debtor in bankruptcy” means a person that is the subject of:

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

(B) a comparable order under federal, state, or foreign law governing insolvency.

(4) “Designated office” means:

(A) with respect to a limited liability company, the office that it is required to designate and maintain under Section 113; or

(B) with respect to a foreign limited liability company, its principal office.

(5) “Distribution” means, except as otherwise provided in Section 405(g), a transfer of money or other property from a limited liability company to another person on account of a transferable interest.

(6) “Effective”, with regard to a record required or permitted to be delivered to the

[Secretary of State] for filing under this [act], means effective under Section 205(c).

(7) “Foreign limited liability company” means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company.

(8) “Limited liability company”, except in the phrase “foreign limited liability company”, means an entity formed under this [act].

(9) “Manager” means a person who under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in Section 407(b).

(10) “Manager-managed limited liability company” means a limited liability company whose operating agreement expressly provides that:

(A) the limited liability company is “manager-managed”;

(B) the limited liability company is or will be “managed by managers”; or

(C) management of the limited liability company is or will be vested in managers.

(11) “Member” means a person that has become a member of a limited liability company under Section 401 and has not been dissociated under Section 602.

(12) “Member-managed limited liability company” means a limited liability company that is not a manager-managed limited liability company.

(13) “Operating agreement” means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in Section 110(a). The term includes the agreement as amended or restated.

(14) “Organizer” means a person that acts under Section 201 to form a limited liability company.

(15) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(16) “Principal office” means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.

(17) “Record” means information that is inscribed on a tangible medium or that is stored

in an electronic or other medium and is retrievable in perceivable form.

(18) “Sign” means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

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

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

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

(21) “Transferable interest” means the right, as originally associated with a person’s capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement. The term applies whether or not the person remains a member or continues to own any part of the right.

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

SECTION 103. KNOWLEDGE; NOTICE.

(a) A person knows a fact when the person:

(1) has actual knowledge of it; or

(2) is deemed to know it under subsection (d)(1) or law other than this [act].

(b) A person has notice of a fact when the person:

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

(2) is deemed to have notice of the fact under subsection (d)(2);

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

(d) A person that is not a member is deemed:

(1) to know of a limitation on authority to transfer real property as provided in Section 302(g); and

(2) to have notice of:

(A) a limited liability company's dissolution, 90 days after a statement of dissolution under Section 702(b)(2)(A) becomes effective;

(B) a limited liability company's termination, 90 days after a statement of termination Section 702(b)(2)(F) becomes effective; and

(C) a limited liability company's merger, conversion, or domestication, 90 days after a statement of merger, conversion, or domestication under [Article] 10 becomes effective.

SECTION 104. NATURE, PURPOSE, AND DURATION OF LIMITED LIABILITY COMPANY.

(a) A limited liability company is an entity distinct from its members.

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

(c) A limited liability company has perpetual duration.

Legislative Note: In light of the Comment to subsection (b), enacting jurisdictions should consider whether to amend statutes protecting the public interest in organizations formed for charitable or similar purposes.

SECTION 105. POWERS. A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities.

SECTION 106. GOVERNING LAW. The law of this state governs:

(1) the internal affairs of a limited liability company; and

(2) the liability of a member as member and a manager as manager.

SECTION 107. SUPPLEMENTAL PRINCIPLES OF LAW. Unless displaced by particular provisions of this [act], the principles of law and equity supplement this [act].

SECTION 108. NAME.

(a) The name of a limited liability company must contain the words "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", or "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co."

(b) Unless authorized by subsection (c), the name of a limited liability company must be distinguishable in the records of the [Secretary of State] from:

(1) the name of each person, other than an individual, incorporated, organized, or authorized to transact business in this state; and

(2) each name reserved under Section 109 and [cite other state laws allowing the reservation or registration of business names, including fictitious or assumed name statutes].

(c) A limited liability company may apply to the [Secretary of State] for authorization to use a name that does not comply with subsection (b). The [Secretary of State] shall authorize use of the name applied for if, as to each conflicting name:

(1) the present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the [Secretary of State] to change the conflicting name to a name that complies with subsection (b) and is distinguishable in the records of the [Secretary of State] from the name applied for; or

(2) the applicant delivers to the [Secretary of State] a certified copy of the final judgment of a court establishing the applicant's right to use in this state the name applied for.

(d) Subject to Section 805, this section applies to any foreign limited liability company transacting business in this state which has a certificate of authority to transact business in this state, or which has applied for a certificate of authority.

SECTION 109. RESERVATION OF NAME.

(a) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious or assumed name for a foreign company whose name is not available, by delivering an application to the [Secretary of State] for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the [Secretary of State] finds that the name applied for is available, it must be reserved for the applicant's exclusive use for a 120-day period.

(b) The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the [Secretary of State] for filing a signed notice of the transfer which states the name and address of the transferee.

SECTION 110. OPERATING AGREEMENT; SCOPE, FUNCTION AND LIMITATIONS.

(a) Except as otherwise provided in subsections (b) and (c), the operating agreement governs:

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

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

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

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

(b) To the extent the operating agreement does not otherwise provide for a matter described in subsection, this [act] governs the matter.

(c) An operating agreement may not:

(1) vary a limited liability company's capacity under Section 105(a) to sue, be sued, and defend in its own name;

(2) vary the law applicable under Section 106;

(3) vary the power of the court under Section 204;

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

(5) subject to subsection (d) through (g), eliminate the contractual obligation of good faith and fair dealing under Section 409(d);

(6) unreasonably restrict the duties and rights stated in Section 410;

(7) vary the power of a court to decree dissolution in the circumstances specified in Section 701(a)(4) and (5);

(8) vary the requirement to wind up a limited liability company's business as specified in Section 702;

(9) unreasonably restrict the right of a member to maintain an action under [Article] 9;

(10) restrict the right of a member under Section 1014 to approve a merger, conversion, or domestication; or

(11) except as provided in Section 112(b), restrict the rights under this [act] of a person other than a member or manager.

(d) If not manifestly unreasonable, the operating agreement may:

(1) eliminate the duty:

(A) to account, as required in Section 409(b)(1) and (g), to the limited

liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity;

(B) to refrain, as required in Section 409(b)(2) and (g), from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

(C) to refrain, as required by Section 409(b)(3) and (g), from competing with the company in the conduct of the company's business before the dissolution of the company.

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

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

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

(5) prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under Section 409(d);

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

(f) to the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this [act] and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member whom the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

(g) The operating agreement may alter the indemnification for a member or manager provided by Section 408(a) and may eliminate or limit a member or manager's liability to the limited liability company and members for money damages, except for:

(1) breach of the duty of loyalty;

(2) a financial benefit received by the member or manager to which the member

or manager is not entitled;

(3) a breach of a duty under Section 406;

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

(5) an intentional violation of criminal law.

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

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

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

(A) the objective of the provision is unreasonable; or

(B) the provision is an unreasonable means to achieve the provision's objective.

SECTION 111. OPERATING AGREEMENT; EFFECT ON LIMITED LIABILITY COMPANY AND PERSONS BECOMING MEMBERS.

(a) A person or persons intending to become the initial member or members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement.

(b) A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

(c) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

SECTION 112. OPERATING AGREEMENT; EFFECT ON THIRD PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF LIMITED LIABILITY COMPANY.

(a) The operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a limited liability company and its members to a person in the

person's capacity as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under Section 503(b)(2) to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

(c) If a record that has been delivered by a limited liability company to the [Secretary of State] for filing and has become effective under this [act] contains a provision that would be ineffective under Section 110(c) if contained in the operating agreement, the provision is likewise ineffective in the record.

(d) Subject to subsection (c), if a record that has been delivered by a limited liability company to the [Secretary of State] for filing and has become effective under this [act] conflicts with a provision of the operating agreement:

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

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

SECTION 113. OFFICE AND AGENT FOR SERVICE OF PROCESS.

(a) A limited liability company shall designate and continuously maintain in this state:

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

(2) an agent for service of process.

(b) A foreign limited liability company that has a certificate of authority under Section 802 shall designate and continuously maintain in this state an agent for service of process.

(c) An agent for service of process of a limited liability company or foreign limited liability company must be an individual who is a resident of this state or other person authorized to do business in this state.

SECTION 114. CHANGE OF DESIGNATED OFFICE OR AGENT FOR SERVICE OF PROCESS.

(a) A limited liability company or foreign limited liability company may change its designated office, its agent for service of process, or the address of its agent for service of

process by delivering to the [Secretary of State] for filing a statement of change containing:

- (1) the name of the company;
- (2) the street and mailing address of its current designated office;
- (3) if the current designated office is to be changed, the street and mailing address of the new designated office;
- (4) the name and street and mailing address of its current agent for service of process; and
- (5) if the current agent for service of process or an address of the agent is to be changed, the new information.

(b) Subject to Section 205(c), a statement of change is effective when filed by the [Secretary of State].

SECTION 115. RESIGNATION OF AGENT FOR SERVICE OF PROCESS.

(a) To resign as an agent for service of process of a limited liability company or foreign limited liability company, the agent must deliver to the [Secretary of State] for filing a statement of resignation containing the company name and stating that the agent is resigning.

(b) After receiving a statement of resignation, the [Secretary of State] shall file it and mail a copy to the designated office of the limited liability company or foreign limited liability company and another copy to the principal office of the company if the mailing address of the principal office appears in the records of the [Secretary of State] and is different from the mailing address of the designated office.

(c) An agency for service of process terminates on the 31st day after the [Secretary of State] files the statement of resignation, unless before that day a record designating a new agent for service of process is delivered to the [Secretary of State] for filing on behalf of the limited liability company and becomes effective.

SECTION 116. SERVICE OF PROCESS.

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

(b) If a limited liability company or foreign limited liability company does not appoint or maintain an agent for service of process in this state or the agent for service of process cannot

with reasonable diligence be found at the agent's street address, the [Secretary of State] is an agent of the company upon whom process, notice, or demand may be served.

(c) Service of any process, notice, or demand on the [Secretary of State] may be made by delivering to and leaving with the [Secretary of State] duplicate copies of the process, notice, or demand. If a process, notice, or demand is served on the [Secretary of State], the [Secretary of State] shall forward one of the copies by registered or certified mail, return receipt requested, to the limited liability company or foreign limited liability company at its designated office.

(d) Service is effected under subsection (c) at the earliest of:

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

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

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

(e) The [Secretary of State] shall keep a record of each process, notice, and demand served pursuant to this section and record the time of, and the action taken regarding, the service.

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

[ARTICLE] 2

FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

**SECTION 201. FORMATION OF LIMITED LIABILITY COMPANY;
CERTIFICATE OF ORGANIZATION.**

(a) One or more persons may act as organizers to form a limited liability company by signing and delivering to the [Secretary of State] for filing a certificate of organization.

(b) A certificate of organization must state:

(1) the name of the limited liability company, which must comply with Section 108;

(2) the street and mailing address of the initial designated office and the name and street and mailing address of the initial agent for service of process of the company; and

(3) if the company will have no members when the [Secretary of State] files the certificate, a statement to that effect.

(c) Subject to Section 112(c), a certificate of organization may also contain statements as to matters other than those required by subsection (a). However, a statement in a certificate of organization is not effective as a statement of authority.

(d) Unless the filed certificate of organization contains the statement as provided in subsection (b)(3):

(1) a limited liability company is formed when the [Secretary of State] has filed the certificate of organization and the company has at least one member, unless the certificate states a delayed effective date pursuant to Section 205(c);

(2) if the certificate states a delayed effective date, a limited liability company is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the [Secretary of State] for filing and the [Secretary of State] files the certificate; and

(3) subject to any delayed effective date and except in a proceeding by this state to dissolve a limited liability company, the filing of the certificate of organization by the [Secretary of State] is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

(e) If a filed certificate of organization contains a statement as provided in subsection (b)(3):

(1) the certificate lapses and is void unless, within [90] days from the date the [Secretary of State] files the certificate, an organizer signs and delivers to the [Secretary of State] for filing a notice stating:

(i) that the limited liability company has at least one member; and

(ii) the date on which a person or persons became the company's initial member or members;

(2) if an organizer complies with subsection (e)(1), a limited liability company is deemed formed as of the date of initial membership stated in the notice delivered pursuant to subsection (e)(1); and

(3) except in a proceeding by this state to dissolve a limited liability company, the filing of the notice by the [Secretary of State] is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF ORGANIZATION.

(a) To amend its certificate of organization, a limited liability company must deliver to the [Secretary of State] for filing an amendment stating:

(1) the name of the company;

(2) the date of filing of its certificate of organization; and

(3) the changes the amendment makes to the certificate as most recently amended or restated.

(b) A certificate of organization may be amended or restated at any time.

(c) A restated certificate of organization may be delivered to the [Secretary of State] for filing in the same manner as an amendment. A restated certificate of organization must be designated as such in the heading and state in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its initial certificate of organization.

(d) Subject to Sections 112(c) and 205(c), an amendment to or restatement of a certificate of organization is effective when filed by the [Secretary of State].

(e) If a member of a member-managed limited liability company, or a manager of a manager-managed company, knows that any information in a filed certificate of organization was false when the certificate was filed or has become false owing to changed circumstances, the member or manager shall promptly:

(1) cause the certificate to be amended; or

(2) if appropriate, deliver to the [Secretary of State] for filing a statement of change under Section 113 or a statement of correction under Section 206.

SECTION 203. SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO [SECRETARY OF STATE].

(a) A record delivered to the [Secretary of State] for filing pursuant to this [act] must be signed as follows:

(1) Except as otherwise provided in paragraphs (2) through (4), a record signed on behalf of a limited liability company must be signed by a person authorized by the limited liability company.

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

(3) A notice under Section 201(e)(1) must be signed by an organizer.

(4) A record filed on behalf of a dissolved limited liability company that has no members must be signed by the person winding up the company's activities under Section 702(b) or a person appointed under Section 702(c) to wind up those activities.

(5) A statement of cancellation under Section 201(c) must be signed by each organizer that signed the initial certificate of organization, except that a personal representative of a decedent or incompetent organizer may sign in the place of the decedent or incompetent.

(6) A statement of denial by a person under Section 303 must be signed by that person.

(7) Any other record must be signed by the person on whose behalf the record is delivered to the [Secretary of State].

(b) Any record to be filed under this [act] may be signed by an agent.

SECTION 204. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.

(a) If a person required by this [act] to sign a record or deliver a record to the [Secretary

of State] for filing under [this act] does not do so, any other person that is aggrieved may petition the [appropriate court] to order:

- (1) the person to sign the record;
- (2) the person to deliver the record to the [Secretary of State] for filing; or
- (3) the [Secretary of State] to file the record unsigned.

(b) If the petitioner under subsection (a) is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the company a party to the action.

SECTION 205. DELIVERY TO AND FILING OF RECORDS BY [SECRETARY OF STATE]; EFFECTIVE TIME AND DATE.

(a) A record authorized or required to be delivered to the [Secretary of State] for filing under this [act] must be captioned to describe the record's purpose, be in a medium permitted by the [Secretary of State], and be delivered to the [Secretary of State]. If the filing fees have been paid, unless the [Secretary of State] determines that a record does not comply with the filing requirements of this [act], the [Secretary of State] shall file the record and:

(1) for a statement of denial under Section 303, send a copy of the filed statement and a receipt for the fees to the person on whose behalf the statement was delivered for filing and to the limited liability company; and

(2) for all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(b) Upon request and payment of the requisite fee, the [Secretary of State] shall send to the requester a certified copy of a requested record.

(c) Except as otherwise provided in Sections 114 and 206, a record delivered to the [Secretary of State] for filing under this [act] may specify an effective time and a delayed effective date. Subject to Sections 114, 201(c), and 206, a record filed by the [Secretary of State] is effective:

(1) if the record does not specify either an effective time or a delayed effective date, on the date and at the time the record is filed as evidenced by the [Secretary of State's] endorsement of the date and time on the record;

(2) if the record specifies an effective time but not a delayed effective date, on the

date the record is filed at the time specified in the record;

(3) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(A) the specified date; or

(B) the 90th day after the record is filed; or

(4) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(A) the specified date; or

(B) the 90th day after the record is filed.

SECTION 206. CORRECTING FILED RECORD.

(a) A limited liability company or foreign limited liability company may deliver to the [Secretary of State] for filing a statement of correction to correct a record previously delivered by the company to the [Secretary of State] and filed by the [Secretary of State], if at the time of filing the record contained was defectively signed or inaccurate.

(b) A statement of correction under subsection (a) may not state a delayed effective date and must:

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

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

(3) correct the defective signature or inaccurate information.

(c) When filed by the [Secretary of State], a statement of correction under subsection (a) is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

(1) for the purposes of Section 103(c); and

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

SECTION 207. LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD.

(a) If a record delivered to the [Secretary of State] for filing under this [act] and filed by

the [Secretary of State] contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from:

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

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

(A) the record was delivered for filing on behalf of the limited liability company; and

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

(i) effected an amendment under Section 202;

(ii) filed a petition under Section 204; or

(iii) or delivered to the [Secretary of State] for filing a statement of change under Section 113 or a statement of correction under Section 206.

(b) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of a limited liability company to the [secretary of state] for filing under this [act] and imposes that responsibility on one or more other members, the liability stated in subsection (a)(2) applies to those other members and not to the member whom the operating agreement relieves of the responsibility.

(c) A person who signs a record authorized or required to be filed under this [act] thereby affirms under the penalties of perjury that the facts stated in the record are accurate.

SECTION 208. CERTIFICATE OF EXISTENCE OR AUTHORIZATION.

(a) The [Secretary of State], upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the records filed in the [office of the Secretary of State] show that the [Secretary of State] has filed a certificate of organization and has not filed a statement of termination. A certificate of existence must state:

(1) the company's name;

(2) that the company was duly formed under the laws of this state and the date of

formation;

(3) whether all fees, taxes, and penalties due under this [act] or other law to the [Secretary of State] have been paid;

(4) whether the company's most recent annual report required by Section 209 has been filed by the [Secretary of State];

(5) whether the [Secretary of State] has administratively dissolved the company;

(6) whether the company has delivered to the [Secretary of State] for filing a statement of dissolution;

(7) that a statement of termination has not been filed by the [Secretary of State];

and

(8) other facts of record in the [office of the Secretary of State] which are specified by the person requesting the certificate.

(b) The [Secretary of State], upon request and payment of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited liability company if the records filed in the [office of the Secretary of State] show that the [Secretary of State] has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state:

(1) the company's name and any alternate name adopted under Section 805(a) for use in this state;

(2) that the company is authorized to transact business in this state;

(3) whether all fees, taxes, and penalties due under this [act] or other law to the [Secretary of State] have been paid;

(4) whether the foreign limited liability company's most recent annual report required by Section 209 has been filed by the [Secretary of State];

(5) that the [Secretary of State] has not revoked the company's certificate of authority and has not filed a notice of cancellation; and

(6) other facts of record in the [office of the Secretary of State] which are specified by the person requesting the certificate.

(c) Subject to any qualification stated in the certificate, a certificate of existence or certificate of authorization issued by the [Secretary of State] is conclusive evidence that the

limited liability company or foreign limited liability company is in existence or is authorized to transact business in this state.

SECTION 209. ANNUAL REPORT FOR [SECRETARY OF STATE].

(a) Each year a limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the [Secretary of State] for filing a report that states:

- (1) the name of the company;
- (2) the street and mailing address of the company's designated office and the name and street and mailing address of its agent for service of process in this state;
- (3) the street and mailing address of its principal office; and
- (4) in the case of a foreign limited liability company, the state or other jurisdiction under whose law the company is formed and any alternate name adopted under Section 805(a).

(b) Information in an annual report under this section must be current as of the date the report is delivered to the [Secretary of State] for filing.

(c) The first annual report under this section must be delivered to the [Secretary of State] between [January 1 and April 1] of the year following the calendar year in which a limited liability company was formed or a foreign limited liability company was authorized to transact business. A report must be delivered to the [Secretary of State] between [January 1 and April 1] of each subsequent calendar year.

(d) If an annual report under this section does not contain the information required in subsection (a), the [Secretary of State] shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) and delivered to the [Secretary of State] within 30 days after the effective date of the notice, it is timely delivered.

(e) If a filed annual report under this section contains an address of a designated office or the name or address of an agent for service of process which differs from the information shown in the records of the [Secretary of State] immediately before the filing, the differing information in the annual report is considered a statement of change under Section 113.

[ARTICLE] 3
RELATIONS OF MEMBERS AND MANAGERS
TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

SECTION 301. NO AGENCY POWER OF MEMBER AS MEMBER.

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

(b) A person's status as a member does not prevent or restrict other law from imposing liability on a limited liability company on account of the person's conduct.

SECTION 302. STATEMENT OF AUTHORITY.

(a) A limited liability company may deliver to the [Secretary of State] for filing a statement of authority. The statement:

(1) must include the name of the company and the street and mailing address of its designated office;

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

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

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

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

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

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

(b) To amend or cancel a statement of authority filed by the [Secretary of State] under Section 205(a), a limited liability company must deliver to the [Secretary of State] for filing an amendment or cancellation stating:

(1) the name of the company;

(2) the street and mailing address of the company's designated office;

(3) the caption of the statement being amended or canceled and the date the statement being affected became effective; and

(4) the contents of the amendment or a declaration that the statement being affected is canceled.

(c) A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

(d) Subject to subsection (c) and Section 103(e) and except as otherwise provided in subsections (f), (g) and (h), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself knowledge or notice of the limitation by any person.

(e) Subject to subsection (c), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

(1) the person has knowledge to the contrary;

(2) the statement has been canceled or restrictively amended under subsection (b);

or

(3) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

(f) Subject to subsection (c), an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company and that is recorded by certified copy in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

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

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

(g) Subject to subsection (c), if a certified copy of an effective statement containing the

limitation on authority recorded in the office for recording transfers of that real property, all persons are deemed to know of a limitation on the authority to transfer real property held in the name of the company.

(h) Subject to subsection (i), an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of subsections (f) and (g) and is a limitation on authority for the purposes of subsection (g).

(i) After a statement of dissolution becomes effective, a limited liability company may deliver to the [Secretary of State] for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority. The statement operates as provided in subsections (f) and (g).

(j) Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under subsections (f) and (g).

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

SECTION 303. STATEMENT OF DENIAL. A person named in a filed statement of authority granting that person authority may deliver to the [Secretary of State] for filing a statement of denial that:

(1) provides the name of the limited liability company and the caption of the statement;
and

(2) denies the grant of authority.

SECTION 304. LIABILITY OF MEMBERS AND MANAGERS.

(a) The debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise:

(1) are solely the debts, obligations, and liabilities of the limited liability company; and

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

(b) The failure of a limited liability company to observe any particular formalities

relating to the exercise of its powers or management of its activities is not a ground for imposing liability on the members or managers for the debts, obligations, or liabilities of the limited liability company.

[ARTICLE] 4
RELATIONS OF MEMBERS TO EACH OTHER AND
TO LIMITED LIABILITY COMPANY

SECTION 401. BECOMING A MEMBER.

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

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

(c) If a filed certificate of organization contains the statement required by Section 201(b)(3), a person becomes the initial member of the limited liability company with the consent of a majority of the organizers. The organizers may consent to more than one person becoming simultaneously the company's initial members.

(d) After formation of a limited liability company, a person becomes a member:

- (1) as provided in the operating agreement;
- (2) as the result of a transaction effective under [Article] 10;
- (3) with the consent of all the members; or
- (4) if within 90 consecutive days after the company ceases to have any members,

the legal representative of the last person to have been a member consents to have the person become a member and the person consents to become a member.

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

SECTION 402. FORM OF CONTRIBUTION. A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.

SECTION 403. LIABILITY FOR CONTRIBUTIONS.

(a) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate is obligated, at the option of the company, to contribute money equal to the value of the part of the contribution which has not been made.

(b) A creditor of a limited liability company which extends credit or otherwise acts in reliance on an obligation described in subsection (a) may enforce the obligation.

SECTION 404. SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE DISSOLUTION.

(a) Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under Section 502 and any charging order in effect under Section 503.

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

(c) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than cash. Except as otherwise provided in Section 708(c), a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

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

SECTION 405. LIMITATIONS ON DISTRIBUTION.

(a) A limited liability company may not make a distribution if after the distribution:

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

(2) the company's total assets would be less than the sum of its total liabilities

plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(c) Except as otherwise provided in subsection (f), the effect of a distribution under subsection (a) is measured:

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

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

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

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

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

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

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

(g) For purposes of subsection (a), "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the

ordinary course of business under a bona fide retirement plan or other benefits program.

SECTION 406. LIABILITY FOR IMPROPER DISTRIBUTIONS.

(a) Except as provided in subsection (b), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of Section 405 and in consenting to the distribution fails to comply with Section 409, the member or manager is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without the violation of Section 405.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under subsection (a) and imposes that responsibility on one or more other members, the liability stated in subsection (a) applies to the other members and not the member which the operating agreement relieves of responsibility.

(c) A person that receives a distribution knowing that the distribution to that person was made in violation of Section 405 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 405.

(d) A person against which an action is commenced under subsection (a) may:

(1) implead in the action any other person that is subject to liability under subsection (a) and compel contribution from the person; and

(2) implead in the action any person that received a distribution in violation of subsection (c) and compel contribution from the person in the amount the person received in violation of subsection (c).

(e) An action under this section is barred if it is not commenced within two years after the distribution.

SECTION 407. MANAGEMENT OF LIMITED LIABILITY COMPANY.

(a) A limited liability company is a member-managed limited liability company unless the company qualifies as a manager-managed limited liability company under Section 110(10).

(b) In a member-managed limited liability company, the following rules apply:

(1) The management and conduct of the limited liability company is vested in the

members collectively.

(2) Each member has equal rights in the management and conduct of the limited liability company's activities.

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

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

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

(c) In a manager-managed limited liability company, the following rules apply:

(1) Except as otherwise expressly provided in this [act], any matter relating to the activities of the company may be exclusively decided by the managers.

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

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

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

(A) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company's property, with or without the good will, other than in the usual and regular course of the company's activities;

(B) approve a merger, conversion or domestication under [Article] 10;

(C) undertake any other act outside the ordinary course of activities of the company; and

(D) amend the operating agreement.

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

(6) A person need not be a member in order to be a manager, but the dissociation

of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself cause the person to dissociate as a member.

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

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

(e) The dissolution of a limited liability company does not affect the application of this section. However, a person that wrongfully causes dissolution of the limited liability company loses the right to participate in management as a member and a manager.

(f) This [act] does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

SECTION 408. INDEMNIFICATION AND INSURANCE.

(a) A member-managed limited liability company shall reimburse a member, and a manager-managed limited liability company shall reimburse a manager, for any payment made and indemnify the member or manager for any debt, obligation, or liability incurred in the course of the member's or manager's activities on behalf of the company, if in making the payment or incurring the debt, obligation, or liability the member or manager complied with the duties stated in Sections 406 and 409.

(b) A limited liability company may purchase and maintain insurance on behalf of a member or manager against liability asserted against or incurred by the member or manager in that capacity or arising from that status whether or not the operating agreement is permitted to provide for the member or manager to be indemnified against the liability.

SECTION 409. STANDARDS OF CONDUCT FOR MEMBERS AND MANAGERS.

(a) A member of a member-managed limited liability company owes to the limited liability company and, subject to Section 901(b), the other members the fiduciary duties of loyalty and care stated in subsections (b) and (c).

(b) The duty of loyalty of a member in a member-managed limited liability company includes the duties:

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

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

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

(C) from the appropriation of a limited liability company opportunity;

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

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

(c) Subject to the business judgment rule, the duty of care of a member of a member-managed limited liability company in the conduct and winding up of the company's activities is to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the company. In discharging duties under this subsection, a member may rely in good faith upon opinions, reports, statements, or other information provided by another person that the member reasonably believes is a competent and reliable source for the information.

(d) A member shall discharge the duties under this [act] or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) It is a defense to a claim under subsection (b)(2) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

(f) All of the members may authorize or ratify after full disclosure of all material facts a specific act or transaction that otherwise would violate the duty of loyalty.

(g) In a manager-managed limited liability company:

(1) subsections (a), (b), (c) and (e) apply to the manager or managers and not the members;

(2) the duty stated under subsection (b)(3) continues until winding up is completed;

(3) subsection (d) applies both to members and managers;

(4) subsection (f) applies only to members; and

(5) A member of a manager-managed limited liability company does not have any fiduciary duty to the limited liability company or to any other member solely by reason of being a member.

SECTION 410. RIGHT OF MEMBERS, MANAGERS, AND DISSOCIATED MEMBERS TO INFORMATION.

(a) In a member-managed limited liability company, the following rules apply:

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

(2) The limited liability company shall furnish to each member:

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

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

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

(b) In a manager-managed limited liability company, the following rules apply:

(1) The informational rights and obligations stated in subsection (a) apply to the managers instead of the members.

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

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

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

(C) the information sought is directly connected to the member's purpose.

(3) Within 10 days after receiving a demand pursuant to paragraph (2)(B), the limited liability company shall in a record inform the member that made the demand:

(A) of the information that the company will provide in response to the demand;

(B) when and where the company will provide the information; and

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

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

(c) On 10 days' demand made in a record received by the limited liability company, a dissociated member may have access to whatever information the person was entitled to while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by subsection (b)(2). The company shall respond to a demand made pursuant to this subsection in the same manner as provided in subsection (b)(3).

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

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

(f) The rights provided in this section do not extend to a person as transferee.

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

[ARTICLE] 5

TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

SECTION 501. MEMBER'S TRANSFERABLE INTEREST. A transferable interest in a limited liability company is personal property.

SECTION 502. TRANSFER OF TRANSFERABLE INTEREST.

(a) A transfer, in whole or in part, of a transferable interest:

(1) is permissible;

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

(3) subject to Section 504, does not entitle the transferee to:

(A) participate in the management or conduct of the company's activities;

or

(B) except as otherwise provided in subsection (c), have access to records or other information concerning the company's activities.

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

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

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

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

(f) A transfer of a transferable interest in a limited liability company in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(g) Except as otherwise provided in Section 602(4)(B), when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in

distributions transferred and retains all duties and obligations of a member.

(h) When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under Sections 403 and 406(c) known to the transferee when the transferee becomes a member.

SECTION 503. CHARGING ORDER.

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

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a), the court may:

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

(2) make all other orders that the circumstances of the case may require to give effect to the charging order.

(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a member, and is subject to Section 502.

(d) At any time before foreclosure, the member or transferee whose transferable interest is subject to a charging order under subsection (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) At any time before foreclosure, a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) This [act] does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

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

SECTION 504. POWER OF PERSONAL REPRESENTATIVE OF DECEASED MEMBER. If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in Section 502(c) and, for the purposes of settling the estate, the rights of a current member under Section 410.

[ARTICLE] 6
MEMBER'S DISSOCIATION

SECTION 601. MEMBER'S POWER TO DISSOCIATE; WRONGFUL DISSOCIATION.

(a) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by express will under Section 602(1).

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

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

(2) it occurs before the termination of the limited liability company and:

(A) the person withdraws as a member by express will;

(B) the person is expelled as a member by judicial determination under Section 602(5);

(C) the person is dissociated under Section 602(7)(A) by becoming a debtor in bankruptcy; or

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

(c) A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to Section 901, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or liability of the member to the limited liability company or the other members.

SECTION 602. EVENTS CAUSING DISSOCIATION. A person is dissociated as a member from a limited liability company when:

(1) the company has notice of the person's express will to withdraw as a member, except that, if the person specified a withdrawal date later than the date the company had notice, on that later date;

(2) an event stated in the operating agreement as causing the person's dissociation occurs;

(3) the person is expelled as a member pursuant to the operating agreement;

(4) the person is expelled as a member by the unanimous consent of the other members if:

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

(B) there has been a transfer of all of the person's transferable interest in the limited liability company, other than:

(i) a transfer for security purposes; or

(ii) a charging order in effect under Section 503 which has not been foreclosed;

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

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

(5) on application by the company, the person is expelled as a member by judicial order because the person:

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

(B) has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under Section 409; or

(C) has engaged in, or is engaging, in conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member;

(6) in the case of a person who is an individual:

(A) the person dies;

(B) in a member-managed limited liability company:

(i) a guardian or general conservator for the person is appointed; or

(ii) there is a judicial determination that the person has otherwise become incapable of performing the person's duties as a member under [this act] or the operating agreement;

(7) in a member-managed limited liability company, the person:

- (A) became a debtor in bankruptcy;
- (B) executed an assignment for the benefit of creditors;
- (C) sought, consented to, or acquiesced in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;

(8) in the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the company is distributed, but not solely by reason of the substitution of a successor trustee;

(9) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is distributed, but not solely by reason of the substitution of a successor personal representative;

(10) in the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member;

(11) the company participates in a merger or conversion under [Article] 10, if:

(A) the company is not the surviving or converted entity; or

(B) otherwise as a result of the merger or conversion, the person ceases to be a member;

(12) the company's participation in a domestication under [Article] 10, if as a result of the domestication the person ceases to be a member; or

(13) the company terminates.

SECTION 603. EFFECT OF PERSON'S DISSOCIATION AS A MEMBER.

(a) When a person is dissociated as a member of a limited liability company:

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

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

(3) subject to Section 504 and [Article] 10, any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person as a mere transferee.

(b) A person's dissociation as a member does not of itself discharge the person from any debt,

obligation, or liability to a limited liability company or the other members which the person incurred while a member.

[ARTICLE] 7
DISSOLUTION AND WINDING UP

SECTION 701. EVENTS CAUSING DISSOLUTION.

(a) A limited liability company is dissolved, and its business must be wound up, upon the occurrence of any of the following:

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

(2) the consent of all the members;

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

(4) on application by a member, the entry by [appropriate court] of an order dissolving the company on the grounds that:

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

(B) it is not reasonably practicable to carry on the limited liability company's activities in conformity with the certificate of organization and the operating agreement; or

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

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

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

(b) In a proceeding brought under subsection (a)(5), the court may order a remedy other than dissolution.

SECTION 702. WINDING UP.

(a) A limited liability company continues after dissolution only for the purpose of

winding up its activities.

(b) In winding up its activities, a limited liability company:

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

(2) may:

(A) file a statement of dissolution stating the name of the company and that the company is dissolved;

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

(C) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(D) transfer the limited liability company's property;

(E) settle disputes by mediation or arbitration;

(F) file a statement of termination stating the name of the company and that the company is terminated; and

(G) perform other acts necessary or appropriate to the winding up.

(c) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities of the company and has the powers of a sole manager under Section 407(b). If the legal representative declines or fails to wind up the company's activities, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

(1) has the powers of a sole manager under Section 407(b); and

(2) shall promptly amend the limited liability company's certificate of organization to:

(A) state that the company has no members;

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

(C) provide the street and mailing address of the person appointed.

(d) The [appropriate court] may order judicial supervision of the winding up of a

dissolved limited liability company, including the appointment of a person to wind up the company's activities:

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

(2) on the application of a transferee, if the company does not have any members, the legal representative of the last person to have been a member declines or fails to wind up the company's activities, and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (c); or

(3) in connection with a proceeding under Section 701(a)(4) or (5).

SECTION 703. KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.

(a) Except as otherwise provided in subsection (d), a dissolved limited liability company may dispose of the known claims against it by following the procedure described in subsection (b).

(b) A dissolved limited liability company may in a record notify its known claimants of the dissolution. The notice must:

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

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

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

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

(c) A claim against a dissolved limited liability company is barred if the requirements of subsection (b) are met and:

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

(2) in the case of a claim that is timely received but rejected by the dissolved limited liability company, the claimant does not commence an action to enforce the claim against the company within 90 days after the receipt of the notice of the rejection.

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

SECTION 704. OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.

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

(b) The notice authorized by subsection (a) must:

(1) be published at least once in a newspaper of general circulation in the [county] in which the dissolved limited liability company's principal office is located or, if it has none in this state, in the [county] in which company's designated office is or was last located;

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

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

(c) If a dissolved limited liability company publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the company within five years after the publication date of the notice:

(1) a claimant that did not receive notice in a record under Section 703;

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

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

(d) A claim not barred under this section may be enforced:

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

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

SECTION 705. ADMINISTRATIVE DISSOLUTION.

(a) The [Secretary of State] may dissolve a limited liability company administratively if the company does not, within 60 days after the due date:

(1) pay any fee, tax, or penalty due under this [act] or other law to the [Secretary of State]; or

(2) deliver its annual report to the [Secretary of State].

(b) If the [Secretary of State] determines that a ground exists for administratively dissolving a limited liability company, the [Secretary of State] shall file a record of the determination and serve the company with a copy of the filed record.

(c) If within 60 days after service of the copy pursuant to subsection (b) the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the [Secretary of State] that each ground determined by the [Secretary of State] does not exist, the [Secretary of State] shall administratively dissolve the company by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The [Secretary of State] shall serve the company with a copy of the filed declaration.

(d) A limited liability company administratively dissolved continues its existence but, subject to Section 706, may carry on only activities necessary to wind up its activities and liquidate its assets under Sections 702 and 708 and to notify claimants under Sections 703 and 704.

(e) The administrative dissolution of a limited liability company does not terminate the authority of its agent for service of process.

SECTION 706. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.

(a) A limited liability company that has been administratively dissolved may apply to the [Secretary of State] for reinstatement within two years after the effective date of dissolution. The application must be delivered to the [Secretary of State] for filing and state:

(1) the name of the company and the effective date of its administrative dissolution;

(2) that the grounds for dissolution did not exist or have been eliminated; and

(3) that the company's name satisfies the requirements of Section 108.

(b) If the [Secretary of State] determines that an application contains the information required by subsection (a) and that the information is correct, the [Secretary of State] shall prepare a declaration of reinstatement that states this determination, sign, and file the original of the declaration of reinstatement and serve the limited liability company with a copy.

(c) When reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume its activities as if the administrative dissolution had never occurred.

SECTION 707. APPEAL FROM REJECTION OF REINSTATEMENT.

(a) If the [Secretary of State] rejects a limited liability company's application for reinstatement following administrative dissolution, the [Secretary of State] shall prepare, sign, and file a notice that explains the reason or reasons for rejection and serve the company with a copy of the notice.

(b) Within 30 days after service of a notice of rejection, the limited liability company may appeal from the rejection of reinstatement by petitioning the [appropriate court] to set aside the dissolution. The petition must be served on the [Secretary of State] and contain a copy of the [Secretary of State's] declaration of dissolution, the company's application for reinstatement, and the [Secretary of State's] notice of rejection.

(c) The court may order the [Secretary of State] to reinstate the dissolved limited liability company or may take other action the court considers appropriate.

SECTION 708. DISTRIBUTION OF ASSETS IN WINDING UP LIMITED LIABILITY COMPANY'S BUSINESS.

(a) In winding up a limited liability company's business, the assets of the company must be applied to discharge its obligations to creditors, including members that are creditors.

(b) Any surplus remaining after a limited liability company complies with subsection (a) must be distributed, subject to any charging order in effect under Section 503:

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

(2) then in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under Section 502.

(c) If the limited liability company does not have sufficient surplus to comply with subsection (b)(1), any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

(d) All distributions made under subsection (b) and (c) must be paid in cash.

[ARTICLE] 8
FOREIGN LIMITED LIABILITY COMPANIES

SECTION 801. GOVERNING LAW.

(a) The laws of the state or other jurisdiction under which a foreign limited liability company is formed govern:

- (1) the internal affairs of the company; and
- (2) the liability of a member as member and a manager as manager.

(b) A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the company is formed and the laws of this state.

(c) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this state.

SECTION 802. APPLICATION FOR CERTIFICATE OF AUTHORITY.

(a) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the [Secretary of State] for filing. The application must state:

(1) the name of the company and, if the name does not comply with Section 108, an alternate name adopted pursuant to Section 805(a);

(2) the name of the state or other jurisdiction under whose law the company is formed;

(3) the street and mailing address of the company's principal office and, if the laws of the jurisdiction under which the company is formed require the foreign company to maintain an office in that jurisdiction, the street and mailing address of the required office; and

(4) the name and street and mailing address of the company's initial agent for service of process in this state.

(b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import signed by the [Secretary of State] or other official having custody of the company's publicly filed records in the state or other jurisdiction

under whose law the company is formed.

SECTION 803. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS.

(a) Activities of a foreign limited liability company which do not constitute transacting business in this state within the meaning of this [article] include:

- (1) maintaining, defending, and settling an action or proceeding;
- (2) carrying on any activity concerning its internal affairs, including holding meetings of its members or managers;
- (3) maintaining accounts in financial institutions;
- (4) maintaining offices or agencies for the transfer, exchange, and registration of the company's own securities or maintaining trustees or depositories with respect to those securities;
- (5) selling through independent contractors;
- (6) soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
- (8) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
- (9) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions of a like manner; and
- (10) transacting business in interstate commerce.

(b) For purposes of this [article], the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (a), constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under law of this state other than this [act].

SECTION 804. FILING OF CERTIFICATE OF AUTHORITY. Unless the

[Secretary of State] determines that an application for a certificate of authority does not comply with the filing requirements of this [act], the [Secretary of State], upon payment of all filing fees, shall file the application of a foreign limited liability company, prepare, sign, and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the company or its representative.

SECTION 805. NONCOMPLYING NAME OF FOREIGN LIMITED LIABILITY COMPANY.

(a) A foreign limited liability company whose name does not comply with Section 108 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with Section 108. A foreign limited liability company that adopts an alternate name under this subsection and then obtains a certificate of authority with the alternate name need not comply with [fictitious or assumed name statute]. After obtaining a certificate of authority with an alternate name, a foreign limited liability company shall transact business in this state under the alternate name unless the company is authorized under [fictitious name statute] to transact business in this state under another name.

(b) If a foreign limited liability company authorized to transact business in this state changes its name to one that does not comply with Section 108, it may not thereafter transact business in this state until it complies with subsection (a) and obtains an amended certificate of authority.

SECTION 806. REVOCATION OF CERTIFICATE OF AUTHORITY.

(a) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the [Secretary of State] in the manner provided in subsections (b) and (c) if the company does not:

(1) pay, within 60 days after the due date, any fee, tax, or penalty due under this [act] or other law to the [Secretary of State];

(2) deliver, within 60 days after the due date, its annual report required under Section 209;

(3) appoint and maintain an agent for service of process as required by Section 113(b); or

(4) deliver for filing a statement of a change under Section 114 within 30 days

after a change has occurred in the name or address of the agent.

(b) In order to revoke a certificate of authority of a foreign limited liability company, the [Secretary of State] shall prepare, sign, and file a notice of revocation and send a copy to the company's agent for service of process in this state, or if the company does not appoint and maintain a proper agent in this state, to the company's designated office. The notice must state:

(1) the revocation's effective date, which must be at least 60 days after the date the [Secretary of State] sends the copy; and

(2) the grounds for revocation under subsection (a).

(c) The authority of a foreign limited liability company to transact business in this state ceases on the effective date of the notice of revocation unless before that date the company cures each ground for revocation stated in the notice. If the company cures each ground, the [Secretary of State] shall so indicate on the notice filed under subsection (b).

SECTION 807. CANCELLATION OF CERTIFICATE OF AUTHORITY. To cancel its certificate of authority to transact business in this state, a foreign limited liability company must deliver to the [Secretary of State] for filing a notice of cancellation. The certificate is canceled when the notice becomes effective.

SECTION 808. EFFECT OF FAILURE TO HAVE CERTIFICATE OF AUTHORITY.

(a) A foreign limited liability company transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

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

(c) A member or manager of a foreign limited liability company is not liable for the debts, obligations, or liabilities of the foreign limited liability company solely because the company transacted business in this state without a certificate of authority.

(d) If a foreign limited liability company transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the [Secretary of State] as its agent for service of process for rights of action arising out of the transaction of business in

this state.

SECTION 809. ACTION BY [ATTORNEY GENERAL]. The [Attorney General] may maintain an action to restrain a foreign limited liability company from transacting business in this state in violation of this [article].

[ARTICLE] 9
ACTIONS BY MEMBERS

SECTION 901. DIRECT ACTION BY MEMBER.

(a) Subject to subsection (b), 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.

(b) A member maintaining a direct action under this section must 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.

SECTION 902. DERIVATIVE ACTION. A member may maintain a derivative action to enforce a right of a limited liability company if:

(1) 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

(2) a demand under paragraph (1) would be futile.

SECTION 903. PROPER PLAINTIFF.

(a) Except as provided in subsection (b), a derivative action 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.

SECTION 904. PLEADING. In a derivative action, the complaint must state with particularity:

(1) the date and content of plaintiff's demand and the response to the demand by the managers or other members; or

(2) the reasons the demand should be excused as futile.

SECTION 905. 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 claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the company. If the company appoints a special litigation committee, on motion by the committee made in the name of the company, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from enforcing a person's rights to information under Section 410 or, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee may be composed of one or more disinterested and independent persons, who may, but need not be, members.

(c) A special litigation committee may be appointed:

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

(A) the consent of a majority of those members that are not named as defendants or plaintiffs in the proceeding; and

(B) if there are none, by a majority of members that are not named as plaintiffs; or

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

(A) a majority of those managers that are not named as defendants or plaintiffs in the proceeding; and

(B) if there are none, by a majority of the managers that are not named as plaintiffs in the proceeding.

(c) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

(1) continue under the control of the plaintiff;

(2) continue under the control of the committee;

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

(4) be dismissed.

(d) After making a determination under subsection (d), a special litigation committee shall file with the court a statement of its determination and its report supporting its

determination, giving notice to the plaintiff. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently and with reasonable care, the court shall adopt and enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) and allow the action to proceed under the direction of the plaintiff.

SECTION 906. PROCEEDS AND EXPENSES.

(a) Except as otherwise provided in subsection (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

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

(b) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.

[ARTICLE] 10
MERGER, CONVERSION, AND DOMESTICATION

SECTION 1001. DEFINITIONS. In this [article]:

- (1) “Constituent limited liability company” means a constituent organization that is a limited liability company.
- (2) “Constituent organization” means an organization that is party to a merger.
- (3) “Converted organization” means the organization into which a converting organization converts pursuant to Sections 1006 through 1009.
- (4) “Converting limited liability company” means a converting organization that is a limited liability company.
- (5) “Converting organization” means an organization that converts into another organization pursuant to Section 1006.
- (6) “Domesticated limited liability company” means the limited liability company or foreign limited liability company into which a domesticating limited liability company domesticates pursuant to Sections 1010 through 1013.
- (7) “Domesticating limited liability company” means the limited liability company or foreign limited liability company that domesticates into a domesticated limited liability company pursuant to Sections 1010 through 1013.
- (8) “Governing statute” of an organization means the statute that governs the organization’s internal affairs.
- (9) “Organization” means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other person having a governing statute. The term includes a domestic or foreign organization whether or not organized for profit.
- (10) “Organizational documents” means:
 - (A) for a domestic or foreign general partnership, its partnership agreement;
 - (B) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;
 - (C) for a domestic or foreign limited liability company, its articles of organization

and operating agreement, or comparable records as provided in its governing statute;

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

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

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

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

(A) by the organization’s governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

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

(12) “Surviving organization” means an organization into which one or more other organizations are merged. A surviving organization may preexist the merger or be created by the merger.

SECTION 1002. MERGER.

(a) A limited liability company may merge with one or more other constituent organizations pursuant to this section, Sections 1003 through 1005, and a plan of merger, if:

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

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

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

(b) A plan of merger must be in a record and must include:

- (1) the name and form of each constituent organization;
- (2) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;
- (3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;
- (4) if the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record; and
- (5) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

SECTION 1003. ACTION ON PLAN OF MERGER BY CONSTITUENT LIMITED LIABILITY COMPANY.

(a) Subject to Section 1014, a plan of merger must be consented to by all the members of a constituent limited liability company.

(b) Subject to Section 1014 and any contractual rights, after a merger is approved, and at any time before a filing is made under Section 1004, a constituent limited liability company may amend the plan or abandon the planned merger:

- (1) as provided in the plan; or
- (2) except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

SECTION 1004. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.

(a) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

- (1) each preexisting constituent limited liability company, as provided in Section 203(a)(3); and
- (2) each other preexisting constituent organization, as provided in its governing statute.

(b) The articles of merger must include:

- (1) the name and form of each constituent organization and the jurisdiction of its

governing statute;

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

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

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

(A) if it will be a limited liability company, the company's certificate of organization; or

(B) if it will be an organization other than a limited liability company, the organizational document that creates the organization that are in a public record;

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

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

(7) if the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office which the [Secretary of State] may use for the purposes of Section 1005(b); and

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

(c) Each constituent limited liability company shall deliver the articles of merger for filing in the [office of the Secretary of State].

(d) A merger becomes effective under this [article]:

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

(A) compliance with subsection (c); or

(B) subject to Section 201(c), as specified in the articles of merger; or

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

SECTION 1005. EFFECT OF MERGER.

(a) When a merger becomes effective:

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

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

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

(4) all debts, obligations, and liabilities of each constituent organization that ceases to exist continue as obligations of the surviving organization;

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

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

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

(8) except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of [Article] 7;

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

(A) if it is a limited liability company, the articles of organization becomes effective; or

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

(10) if the surviving organization preexists the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(b) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or liability. A surviving organization that is a foreign organization and not

authorized to transact business in this state appoints the [Secretary of State] as its agent for service of process for the purposes of enforcing an debt, obligation, or liability under this subsection. Service on the [Secretary of State] under this subsection must be made in the same manner and has the same consequences as in Section 116(c) and (d).

SECTION 1006. CONVERSION.

(a) An organization other than a limited liability company or a foreign limited liability company may convert to a limited liability company, and a limited liability company may convert to another organization other than a foreign limited liability company pursuant to this section, Sections 1007 through 1009, and a plan of conversion, if:

- (1) the other organization’s governing statute authorizes the conversion;
- (2) the conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and
- (3) the other organization complies with its governing statute in effecting the conversion.

(b) A plan of conversion must be in a record and must include:

- (1) the name and form of the organization before conversion;
- (2) the name and form of the organization after conversion;
- (3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and
- (4) the organizational documents of the converted organization that are, or are proposed to be, in a record.

SECTION 1007. ACTION ON PLAN OF CONVERSION BY CONVERTING LIMITED LIABILITY COMPANY.

(a) Subject to Section 1014, a plan of conversion must be consented to by all the members of a converting limited liability company.

(b) Subject to Section 1014 and any contractual rights, after a conversion is approved, and at any time before a filing is made under Section 1008, a converting limited liability company may amend the plan or abandon the planned conversion:

- (1) as provided in the plan; or

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

SECTION 1008. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.

(a) After a plan of conversion is approved:

(1) a converting limited liability company shall deliver to the [Secretary of State] for filing articles of conversion, which must be signed as provided in Section 203(a)(3) and must include;

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

(B) the name and form of the organization and the jurisdiction of its governing statute;

(C) the date the conversion is effective under the governing statute of the converted organization;

(D) a statement that the conversion was approved as required by this [act];

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

(F) if the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office which the [Secretary of State] may use for the purposes of Section 1009(c); and

(2) if the converting organization is not a converting limited liability company, the converting organization shall deliver to the [Secretary of State] for filing articles of organization, which must include, in addition to the information required by Section 201(b):

(A) a statement that the company was converted from another organization;

(B) the name and form of the organization and the jurisdiction of its governing statute; and

(C) a statement that the conversion was approved in a manner that complied with the organization's governing statute.

(b) A conversion becomes effective:

(1) if the converted organization is a limited liability company, when the articles of organization take effect; and

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

SECTION 1009. EFFECT OF CONVERSION.

(a) An organization that has been converted pursuant to this [article] is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

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

(2) all debts, obligations, and liabilities of the converting organization continue as obligations of the converted organization;

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

(4) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

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

(6) except as otherwise agreed, the conversion does not dissolve a converting limited liability company for the purposes of [Article] 7.

(c) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited liability company, if before the conversion the converting limited liability company was subject to suit in this state on the debt, obligation, or liability. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the [Secretary of State] as its agent for service of process for purposes of enforcing an debt, obligation, or liability under this subsection. Service on the [Secretary of State] under this subsection must be made in the same manner and has the same consequences as in Section 116(c) and (d).

SECTION 1010. DOMESTICATION.

(a) A foreign limited liability company may become a domestic limited liability company, and a domestic limited liability company may become a foreign limited liability company pursuant to this section, Sections 1011 through 1013, and a plan of domestication, if:

- (1) the foreign limited liability company's governing statute authorizes the domestication;
- (2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and
- (3) the foreign limited liability company complies with its governing statute in effecting the domestication.

(b) A plan of domestication must be in a record and must include:

- (1) the name of the domesticating limited liability company before domestication and the jurisdiction of its governing statute;
- (2) the name of the domesticated limited liability company after domestication and the jurisdiction of its governing statute;
- (3) the terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating limited liability company or foreign limited liability company into any combination of money, interests in the domesticated limited liability company, and other consideration; and
- (4) the organizational documents of the domesticated limited liability company that are, or are proposed to be, in a record.

SECTION 1011. ACTION ON PLAN OF DOMESTICATION BY DOMESTICATING LIMITED LIABILITY COMPANY.

(a) Subject to Section 1014, a plan of domestication must be consented to:

- (1) by all the members of a domesticating limited liability company that is a limited liability company; and
- (2) as provided in the governing statute of a domesticating limited liability company that is a foreign limited liability company.

(b) Subject to any contractual rights, after a domestication is approved, and at any time before a filing is made under Section 1012, a domesticating limited liability company that is a

limited liability company may amend the plan or abandon the planned domestication:

(1) as provided in the plan; or

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

SECTION 1012. FILINGS REQUIRED FOR DOMESTICATION; EFFECTIVE DATE.

(a) After a plan of domestication is approved, a domesticating limited liability company shall deliver to the [Secretary of State] for filing articles of domestication, which must include:

(1) a statement that the company has been domesticated from or into another jurisdiction;

(2) the name of the domesticating company and the jurisdiction of its governing statute;

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

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

(5) a statement that the domestication was approved as required by this [act];

(6) a statement that the domestication was approved as required by the governing statute of the other jurisdiction; and

(7) if the domesticated is a foreign limited liability company not authorized to transact business in this state, the street and mailing address of an office which the [Secretary of State] may use for the purposes of Section 1013(c).

(b) A domestication becomes effective:

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

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

SECTION 1013. EFFECT OF DOMESTICATION.

(a) A domesticated limited liability company that has been domesticated pursuant to this [article] is for all purposes the same domesticating limited liability company that existed before

the domestication.

(b) When a domestication takes effect:

(1) all property owned by the domesticating limited liability company remains vested in the domesticated limited liability company;

(2) all debts, obligations, and liabilities of the domesticating limited liability company continue as obligations of the domesticated limited liability company;

(3) an action or proceeding pending by or against the domesticating limited liability company may be continued as if the domestication had not occurred;

(4) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the domesticating limited liability company remain vested in the domesticated limited liability company;

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

(6) except as otherwise agreed, the domestication does not dissolve a domesticating limited liability company for the purposes of [Article] 7.

(c) A domesticated limited liability company that is a foreign limited liability company consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or liability owed by the domesticating limited liability company, if before the domestication the domesticating limited liability company was subject to suit in this state on the debt, obligation, or liability. A domesticated limited liability company that is a foreign limited liability company and not authorized to transact business in this state appoints the [Secretary of State] as its agent for service of process for purposes of enforcing an debt, obligation, or liability under this subsection. Service on the [Secretary of State] under this subsection must be made in the same manner and has the same consequences as in Section 116(c) and (d).

(d) If a limited liability company has adopted and approved a Section 1010 plan of domestication providing for the company to be domesticated in a foreign jurisdiction, a certificate of organization surrender must be delivered to the [Secretary of State] for filing setting forth:

(1) the name of the limited liability company;

(2) a statement that the certificate of organization surrender is being filed in

connection with the domestication of the limited liability company in a foreign jurisdiction;

(3) a statement the domestication was duly adopted and approved; and

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

**SECTION 1014. RESTRICTIONS ON APPROVAL OF MERGERS,
CONVERSIONS, AND DOMESTICATIONS.**

(a) If a member of a constituent, converting, or domesticating limited liability company will have personal liability with respect to a surviving, converted or domesticated organization, approval and amendment of a plan of merger, conversion, or domestication are ineffective without the consent of the member, unless:

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

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

(b) A member does not give the consent required by subsection (a) merely by consenting to a provision of the operating agreement which permits the operating agreement to be amended with the consent of fewer than all the members.

SECTION 1015. [ARTICLE] NOT EXCLUSIVE. This [article] does not preclude an entity from being merged, converted or domesticated under other law.

[ARTICLE] 11
MISCELLANEOUS PROVISIONS

SECTION 1101. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 1102. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 1103. SAVINGS CLAUSE. This [act] does not affect an action commenced, proceeding brought, or right accrued before this [act] takes effect.

SECTION 1104. APPLICATION TO EXISTING RELATIONSHIPS.

(a) Before [all-inclusive date], this [act] governs only:

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

and

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

(b) Except as otherwise provided in subsection (c), on and after [all-inclusive date] this [act] governs all limited liability companies.

(c) For the purposes applying this [act] to a limited liability company formed before [the effective date of this [act]]:

(1) the company's articles of organization are deemed to be the company's certificate of organization; and

(2) for the purposes of applying Section 102(10) and subject to Section 112(d), language in the limited liability company's articles of organization designating the company's management structure will operate as if that language were in the operating agreement.

Legislative Note: *Each enacting state should consider whether: (i) this Act makes material changes to the “default” (or “gap filler”) rules of state’s predecessor statute; and (ii) if so, whether subsection (c) should carry forward any of those rules for pre-existing limited liability companies. In this assessment, the focus is on pre-existing limited liability companies that have left default rules in place, whether advisedly or not. The central question is whether, for such limited liability companies, expanding subsection (c) is necessary to prevent material changes to the members’ “deal.”*

For an example of this type of analysis in the context of another business entity act, see the Uniform Limited Partnership Act (2001), § 1206(c).

In the judgment of the Conference, it is unnecessary to expand subsection (c) of this Act if the state’s predecessor act is the original Uniform Limited Liability Company Act.

SECTION 1105. REPEALS. Effective [all-inclusive date], the following acts and parts of acts are repealed: [the state limited liability company Act as amended and in effect immediately before the effective date of this [act]].

SECTION 1106. EFFECTIVE DATE. This [act] takes effect on [effective date].