

**HOUSE BILL No. 2261**

By Representative Kinzer

2-9

1 AN ACT enacting the revised uniform limited liability company act;  
2 amending K.S.A. 65-1522 and 65-1524 and K.S.A. 2010 Supp. 45-  
3 229 and repealing the existing sections; also repealing K.S.A. 17-  
4 7662, 17-7663, 17-7664, 17-7665, 17-7666, 17-7667, 17-7668, 17-  
5 7669, 17-7670, 17-7671, 17-7672, 17-7673, 17-7674, 17-7676, 17-  
6 7677, 17-7679, 17-7680, 17-7682, 17-7683, 17-7686, 17-7687, 17-  
7 7688, 17-7689, 17-7690, 17-7691, 17-7692, 17-7693, 17-7694, 17-  
8 7695, 17-7696, 17-7697, 17-7698, 17-7699, 17-76,100, 17-76,101, 17-  
9 76,102, 17-76,103, 17-76,104, 17-76,105, 17-76,106, 17-76,107, 17-  
10 76,108, 17-76,109, 17-76,110, 17-76,111, 17-76,112, 17-76,113, 17-  
11 76,114, 17-76,115, 17-76,116, 17-76,117, 17-76,118, 17-76,119, 17-  
12 76,120, 17-76,121, 17-76,122, 17-76,123, 17-76,124, 17-76,125, 17-  
13 76,126, 17-76,127, 17-76,128, 17-76,129, 17-76,130, 17-76,131, 17-  
14 76,132, 17-76,133, 17-76,134, 17-76,135, 17-76,136, 17-76,137, 17-  
15 76,138, 17-76,139, 17-76,140, 17-76,141, and 17-76,142, K.S.A. 2010  
16 Supp. 17-7675, 17-7678 and 17-7681.

17

18 *Be it enacted by the Legislature of the State of Kansas:*

19 New Section 1. This act may be cited as the revised uniform  
20 limited liability company act.

21 New Sec. 2. In this act:

22 (a)(1) "Certificate of organization" means the certificate  
23 required by section 17, and amendments thereto. The term includes the  
24 certificate as amended or restated.

25 (2) "Contribution" means any benefit provided by a person to  
26 a limited liability company:

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

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

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

36 (3) "Debtor in bankruptcy" means a person that is the subject

1 of:

2 (A) An order for relief under title 11 of the United States Code  
3 or a successor statute of general application; or

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

6 (4) "Designated office" means:

7 (A) The office that a limited liability company is required to  
8 designate and maintain under section 13, and amendments thereto; or

9 (B) the principal office of a foreign limited liability company.

10 (5) "Distribution," except as otherwise provided in section  
11 34(g), and amendments thereto, means a transfer of money or other  
12 property from a limited liability company to another person on account of  
13 a transferable interest.

14 (6) "Effective," with respect to a record required or permitted  
15 to be delivered to the secretary of state for filing under this act, means  
16 effective under section 21(c), and amendments thereto.

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

20 (8) "Limited liability company," except in the phrase "foreign  
21 limited liability company," means an entity formed under this act.

22 (9) "Manager" means a person that under the operating  
23 agreement of a manager-managed limited liability company is  
24 responsible, alone or in concert with others, for performing the  
25 management functions stated in section 36(c), and amendments thereto.

26 (10) "Manager-managed limited liability company" means a  
27 limited liability company that qualifies under section 36(a), and  
28 amendments thereto.

29 (11) "Member" means a person that has become a member of a  
30 limited liability company under section 30, and amendments thereto, and  
31 has not dissociated under section 46, and amendments thereto.

32 (12) "Member-managed limited liability company" means a  
33 limited liability company that is not a manager-managed limited liability  
34 company.

35 (13) "Operating agreement" means the agreement, whether or  
36 not referred to as an operating agreement and whether oral, in a record,  
37 implied or in any combination thereof, of all the members of a limited  
38 liability company, including a sole member, concerning the matters  
39 described in section 10(a), and amendments thereto. The term includes  
40 the agreement as amended or restated.

41 (14) "Organizer" means a person that acts under section 17,  
42 and amendments thereto, to form a limited liability company.

43 (15) "Person" means an individual, corporation, business trust,

1 estate, trust, partnership, limited liability company, association, joint  
2 venture, public corporation, government or governmental subdivision,  
3 agency, or instrumentality, or any other legal or commercial entity.

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

7 (17) “Record” means information that is inscribed on a  
8 tangible medium or that is stored in an electronic or other medium and is  
9 retrievable in perceivable form.

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

12 (A) To execute or adopt a tangible symbol; or

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

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

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

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

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

29 New Sec. 3. (a) A person knows a fact when the person:

30 (1) Has actual knowledge of it; or

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

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

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

36 (2) is deemed to have notice of the fact under subsection (d)  
37 (2).

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

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

42 (1) To know of a limitation on authority to transfer real  
43 property as provided in Section 27(g); and

- 1 (2) to have notice of a limited liability company's:  
2 (A) Dissolution, 90 days after a statement of dissolution under  
3 section 48(b)(2)(A), and amendments thereto, becomes effective;  
4 (B) termination, 90 days after a statement of termination under  
5 section 48(b)(2)(F) becomes effective; and  
6 (C) merger, conversion or domestication, 90 days after articles  
7 of merger, conversion, or domestication under sections 70 through 84,  
8 and amendments thereto, become effective.

9 New Sec. 4. (a) A limited liability company is an entity distinct from  
10 its members.

11 b) A limited liability company may have any lawful purpose,  
12 regardless of whether or not for profit.

13 (c) A limited liability company has perpetual duration.

14 New Sec. 5. A limited liability company has the capacity to sue and  
15 be sued in its own name and the power to do all things necessary or  
16 convenient to carry on its activities.

17 New Sec. 6. (a) The law of this state governs:

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

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

22 New Sec. 7. Unless displaced by particular provisions of this act, the  
23 principles of law and equity supplement this act.

24 New Sec. 8. (a) The name of a limited liability company must  
25 contain the words "limited liability company" or "limited company" or  
26 the abbreviation "L.L.C.," "LLC," "L.C." or "LC." "Limited" may be  
27 abbreviated as "Ltd." and "company" may be abbreviated as "Co."

28 (b) Unless authorized by subsection (c), the name of a limited  
29 liability company must be distinguishable in the records of the secretary  
30 of state from:

31 (1) The name of each person that is not an individual and that  
32 is incorporated, organized or authorized to transact business in this state;

33 (2) the limited liability company name stated in each  
34 certificate of organization that contains the statement as provided in  
35 section 17(b)(3), and amendments thereto, and that has not lapsed; and

36 (3) each name reserved under section 9, and amendments  
37 thereto, and K.S.A. 17-7402, 17-6002, 56-1a102, 56-1a103, 56-1a504,  
38 and amendments thereto.

39 (c) A limited liability company may apply to the secretary of  
40 state for authorization to use a name that does not comply with subsection

41 (b). The secretary of state shall authorize use of the name applied for if,  
42 as to each noncomplying name:

43 (1) The present user, registrant or owner of the noncomplying

1 name consents in a signed record to the use and submits an undertaking in  
2 a form satisfactory to the secretary of state to change the noncomplying  
3 name to a name that complies with subsection (b) and is distinguishable  
4 in the records of the secretary of state from the name applied for; or

5 (2) the applicant delivers to the secretary of state a certified  
6 copy of the final judgment of a court establishing the applicant's right to  
7 use in this state the name applied for.

8 (d) Subject to section 59, and amendments thereto, this section  
9 applies to a foreign limited liability company transacting business in this  
10 state which has a certificate of authority to transact business in this state  
11 or which has applied for a certificate of authority.

12 New Sec. 9. (a) A person may reserve the exclusive use of the name  
13 of a limited liability company, including a fictitious or assumed name for  
14 a foreign limited liability company whose name is not available, by  
15 delivering an application to the secretary of state for filing. The  
16 application must state the name and address of the applicant and the name  
17 proposed to be reserved. If the secretary of state finds that the name  
18 applied for is available, it must be reserved for the applicant's exclusive  
19 use for a 120-day period.

20 (b) The owner of a name reserved for a limited liability  
21 company may transfer the reservation to another person by delivering to  
22 the secretary of state for filing a signed notice of the transfer which states  
23 the name and address of the transferee.

24 New Sec. 10. (a) Except as otherwise provided in subsections (b)  
25 and (c), the operating agreement governs:

26 (1) Relations among the members as members and between the  
27 members and the limited liability company;

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

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

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

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

37 (c) An operating agreement may not:

38 (1) Vary a limited liability company's capacity under section 5  
39 to sue and be sued in its own name;

40 (2) vary the law applicable under section 6, and amendments  
41 thereto;

42 (3) vary the power of the court under section 20, and  
43 amendments thereto;

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

3 (5) subject to subsections (d) through (g), eliminate the  
4 contractual obligation of good faith and fair dealing under section 38(d),  
5 and amendments thereto;

6 (6) unreasonably restrict the duties and rights stated in section  
7 39, and amendments thereto;

8 (7) vary the power of a court to decree dissolution in the  
9 circumstances specified in section 47(a)(4) and (5), and amendments  
10 thereto;

11 (8) vary the requirement to wind up a limited liability  
12 company's business as specified in section 48(a) and (b)(1), and  
13 amendments thereto;

14 (9) unreasonably restrict the right of a member to maintain an  
15 action under sections 64 through 69, and amendments thereto;

16 (10) restrict the right to approve a merger, conversion or  
17 domestication under section 83 to a member that will have personal  
18 liability with respect to a surviving, converted or domesticated  
19 organization; or

20 (11) except as otherwise provided in section 12(b), and  
21 amendments thereto, restrict the rights under this act of a person other  
22 than a member or manager.

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

25 (1) Restrict or eliminate the duty:

26 (A) As required in section 38(b)(1) and (g), and amendments  
27 thereto, to account to the limited liability company and to hold as trustee  
28 for it any property, profit or benefit derived by the member in the conduct  
29 or winding up of the company's business, from a use by the member of  
30 the company's property, or from the appropriation of a limited liability  
31 company opportunity;

32 (B) as required in section 38(b)(2) and (g), and amendments  
33 thereto, to refrain from dealing with the company in the conduct or  
34 winding up of the company's business as or on behalf of a party having  
35 an interest adverse to the company; and

36 (C) as required by section 38(b)(3) and (g), and amendments  
37 thereto, to refrain from competing with the company in the conduct of the  
38 company's business before the dissolution of the company;

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

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

43 (4) alter any other fiduciary duty, including eliminating

1 particular aspects of that duty; and

2 (5) prescribe the standards by which to measure the  
3 performance of the contractual obligation of good faith and fair dealing  
4 under section 38(d), and amendments thereto.

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

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

16 (g) The operating agreement may alter or eliminate the  
17 indemnification for a member or manager provided by section 37(a), and  
18 amendments thereto, and may eliminate or limit a member or manager's  
19 liability to the limited liability company and members for money  
20 damages, except for:

21 (1) Breach of the duty of loyalty;

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

24 (3) a breach of a duty under section 35, and amendments  
25 thereto;

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

28 (5) an intentional violation of criminal law.

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

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

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

36 (A) The objective of the term is unreasonable; or

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

39 New Sec. 11. (a) A limited liability company is bound by and may  
40 enforce the operating agreement, whether or not the company has itself  
41 manifested assent to the operating agreement.

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

1 (c) Two or more persons intending to become the initial  
2 members of a limited liability company may make an agreement  
3 providing that upon the formation of the company the agreement will  
4 become the operating agreement. One person intending to become the  
5 initial member of a limited liability company may assent to terms  
6 providing that upon the formation of the company the terms will become  
7 the operating agreement.

8 New Sec. 12. (a) An operating agreement may specify that its  
9 amendment requires the approval of a person that is not a party to the  
10 operating agreement or the satisfaction of a condition. An amendment is  
11 ineffective if its adoption does not include the required approval or satisfy  
12 the specified condition.

13 (b) The obligations of a limited liability company and its  
14 members to a person in the person's capacity as a transferee or  
15 dissociated member are governed by the operating agreement. Subject  
16 only to any court order issued under section 42(b)(2), and amendments  
17 thereto, to effectuate a charging order, an amendment to the operating  
18 agreement made after a person becomes a transferee or dissociated  
19 member is effective with regard to any debt, obligation, or other liability  
20 of the limited liability company or its members to the person in the  
21 person's capacity as a transferee or dissociated member.

22 (c) If a record that has been delivered by a limited liability  
23 company to the secretary of state for filing and has become effective  
24 under this act contains a provision that would be ineffective under section  
25 10(c), and amendments thereto, if contained in the operating agreement,  
26 the provision is likewise ineffective in the record.

27 (d) Subject to subsection (c), if a record that has been  
28 delivered by a limited liability company to the secretary of state for filing  
29 and has become effective under this act conflicts with a provision of the  
30 operating agreement:

31 (1) The operating agreement prevails as to members,  
32 dissociated members, transferees, and managers; and

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

35 New Sec. 13. (a) A limited liability company shall designate and  
36 continuously maintain in this state:

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

39 (2) an agent for service of process.

40 (b) A foreign limited liability company that has a certificate of  
41 authority under section 56, and amendments thereto, shall designate and  
42 continuously maintain in this state an agent for service of process.

43 (c) An agent for service of process of a limited liability



1 company or foreign limited liability company must be an individual who  
2 is a resident of this state or other person with authority to transact  
3 business in this state.

4 New Sec. 14. (a) A limited liability company or foreign limited  
5 liability company may change its designated office, its agent for service  
6 of process, or the address of its agent for service of process by delivering  
7 to the secretary of state for filing a statement of change containing:

8 (1) The name of the company;

9 (2) the street and mailing addresses of its current designated  
10 office;

11 (3) if the current designated office is to be changed, the street  
12 and mailing addresses of the new designated office;

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

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

17 (b) Subject to section 21(c), and amendments thereto, a  
18 statement of change is effective when filed by the secretary of state.

19 New Sec. 15. (a) To resign as an agent for service of process of a  
20 limited liability company or foreign limited liability company, the agent  
21 must deliver to the secretary of state for filing a statement of resignation  
22 containing the company name and stating that the agent is resigning.

23 (b) The secretary of state shall file a statement of resignation  
24 delivered under subsection (a) and mail or otherwise provide or deliver a  
25 copy to the designated office of the limited liability company or foreign  
26 limited liability company and another copy to the principal office of the  
27 company if the mailing addresses of the principal office appears in the  
28 records of the secretary of state and is different from the mailing address  
29 of the designated office.

30 (c) An agency for service of process terminates on the earlier  
31 of:

32 (1) The 31st day after the secretary of state files the statement  
33 of resignation;

34 (2) when a record designating a new agent  
35 for service of process is delivered to the secretary of state for filing on  
36 behalf of the limited liability company and becomes effective.

37 New Sec. 16. (a) An agent for service of process appointed by a  
38 limited liability company or foreign limited liability company is an agent  
39 of the company for service of any process, notice or demand required or  
40 permitted by law to be served on the company.

41 (b) If a limited liability company or foreign limited liability  
42 company does not appoint or maintain an agent for service of process in  
43 this state or the agent for service of process cannot with reasonable  
44 diligence be found at the agent's street address, the secretary of state is an

1 agent of the company upon whom process, notice or demand may be  
2 served.

3 (c) Service of any process, notice, or demand on the secretary  
4 of state as agent for a limited liability company or foreign limited liability  
5 company may be made by delivering to the secretary of state duplicate  
6 copies of the process, notice or demand. If a process, notice or demand is  
7 served on the secretary of state, the secretary of state shall forward one of  
8 the copies by registered or certified mail, return receipt requested, to the  
9 company at its designated office.

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

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

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

15 (3) five days after the process, notice or demand is deposited  
16 with the United States postal service, if correctly addressed and with  
17 sufficient postage.

18 (e) The secretary of state shall keep a record of each process,  
19 notice and demand served pursuant to this section and record the time of,  
20 and the action taken regarding, the service.

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

23 New Sec. 17. (a) One or more persons may act as organizers to  
24 form a limited liability company by signing and delivering to the  
25 secretary of state for filing a certificate of organization.

26 (b) A certificate of organization must state:

27 (1) The name of the limited liability company, which must  
28 comply with section 8;

29 (2) the street and mailing addresses of the initial designated  
30 office and the name and street and mailing addresses of the initial agent  
31 for service of process of the company; and

32 (3) if the company will have no members when the secretary  
33 of state files the certificate, a statement to that effect.

34 (c) Subject to section 12(c), and amendments thereto, a  
35 certificate of organization may also contain statements as to matters other  
36 than those required by subsection (b). However, a statement in a  
37 certificate of organization is not effective as a statement of authority.

38 (d) Unless the filed certificate of organization contains the  
39 statement as provided in subsection (b)(3), the following rules apply:

40 (1) A limited liability company is formed when the secretary  
41 of state has filed the certificate of organization and the company has at  
42 least one member, unless the certificate states a delayed effective date  
43 pursuant to section 21(c), and amendments thereto.

1 (2) If the certificate states a delayed effective date, a limited  
2 liability company is not formed if, before the certificate takes effect, a  
3 statement of cancellation is signed and delivered to the secretary of state  
4 for filing and the secretary of state files the certificate.

5 (3) Subject to any delayed effective date and except in a  
6 proceeding by this state to dissolve a limited liability company, the filing  
7 of the certificate of organization by the secretary of state is conclusive  
8 proof that the organizer satisfied all conditions to the formation of a  
9 limited liability company.

10 (e) If a filed certificate of organization contains a statement as  
11 provided in subsection (b)(3), the following rules apply:

12 (1) The certificate lapses and is void unless, within 90 days  
13 from the date the secretary of state files the certificate, an organizer signs  
14 and delivers to the secretary of state for filing a notice stating:

15 (A) That the limited liability company has at least one  
16 member; and

17 (B) the date on which a person or persons became the  
18 company's initial member or members.

19 (2) If an organizer complies with paragraph (1), a limited  
20 liability company is deemed formed as of the date of initial membership  
21 stated in the notice delivered pursuant to paragraph (1).

22 (3) Except in a proceeding by this state to dissolve a limited  
23 liability company, the filing of the notice described in paragraph (1) by  
24 the secretary of state is conclusive proof that the organizer satisfied all  
25 conditions to the formation of a limited liability company.

26 New Sec. 18. (a) A certificate of organization may be amended or  
27 restated at any time.

28 (b) To amend its certificate of organization, a limited liability  
29 company must deliver to the secretary of state for filing an amendment  
30 stating:

31 (1) The name of the company;

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

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

35 (c) To restate its certificate of organization, a limited liability  
36 company must deliver to the secretary of state for filing a restatement,  
37 designated as such in its heading, stating:

38 (1) In the heading or an introductory paragraph, the company's  
39 present name and the date of the filing of the company's initial certificate  
40 of organization;

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

43 (3) the changes the restatement makes to the certificate as most

1 recently amended or restated.

2 (d) Subject to sections 12(c) and 21(c), and amendments  
3 thereto, an amendment to or restatement of a certificate of organization is  
4 effective when filed by the secretary of state.

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

10 (1) Cause the certificate to be amended; or

11 (2) if appropriate, deliver to the secretary of state for filing a  
12 statement of change under section 14, and amendments thereto, or a  
13 statement of correction under section 22, and amendments thereto.

14 New Sec. 19. (a) A record delivered to the secretary of state for  
15 filing pursuant to this act must be signed as follows:

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

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

21 (3) A notice under section 17(e)(1), and amendments thereto,  
22 must be signed by an organizer.

23 (4) A record filed on behalf of a dissolved limited liability  
24 company that has no members must be signed by the person winding up  
25 the company's activities under section 48(c), and amendments thereto, or  
26 a person appointed under section 48(d), and amendments thereto, to wind  
27 up those activities.

28 (5) A statement of cancellation under section 17(d)(2), and  
29 amendments thereto, must be signed by each organizer that signed the  
30 initial certificate of organization, but a personal representative of a  
31 deceased or incompetent organizer may sign in the place of the decedent  
32 or incompetent.

33 (6) A statement of denial by a person under section 28, and  
34 amendments thereto, must be signed by that person.

35 (7) Any other record must be signed by the person on whose  
36 behalf the record is delivered to the secretary of state.

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

38 New Sec. 20. (a) If a person required by this act to sign a record or  
39 deliver a record to the secretary of state for filing under this act does not  
40 do so, any other person that is aggrieved may petition the appropriate  
41 court to order:

42 (1) The person to sign the record;

43 (2) the person to deliver the record to the secretary of state for

1 filing; or

2 (3) the secretary of state to file the record unsigned.

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

6 New Sec. 21. (a) A record authorized or required to be delivered to  
7 the secretary of state for filing under this act must be captioned to  
8 describe the record's purpose, be in a medium permitted by the secretary  
9 of state, and be delivered to the secretary of state. If the filing fees have  
10 been paid, unless the secretary of state determines that a record does not  
11 comply with the filing requirements of this act, the secretary of state shall  
12 file the record and:

13 (1) For a statement of denial under section 28, and  
14 amendments thereto, send a copy of the filed statement and a receipt for  
15 the fees to the person on whose behalf the statement was delivered for  
16 filing and to the limited liability company; and

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

19 (b) Upon request and payment of the requisite fee, the  
20 secretary of state shall send to the requester a certified copy of a  
21 requested record.

22 (c) Except as otherwise provided in sections 15 and 22, and  
23 amendments thereto, and except for a certificate of organization that  
24 contains a statement as provided in section 17(b)(3), and amendments  
25 thereto, a record delivered to the secretary of state for filing under this act  
26 may specify an effective time and a delayed effective date. Subject to  
27 sections 15, 201(d)(1), and 22, and amendments thereto, a record filed by  
28 the secretary of state is effective:

29 (1) If the record does not specify either an effective time or a  
30 delayed effective date on the date and at the time the record is filed, as  
31 evidenced by the secretary of state's endorsement of the date and time on  
32 the record;

33 (2) if the record specifies an effective time, but not a delayed  
34 effective date, on the date the record is filed at the time specified in the  
35 record;

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

38 (A) The specified date; or

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

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

42 (A) The specified date; or

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

1 New Sec. 22. (a) A limited liability company or foreign limited  
2 liability company may deliver to the secretary of state for filing a  
3 statement of correction to correct a record previously delivered by the  
4 company to the secretary of state and filed by the secretary of state, if at  
5 the time of filing the record contained inaccurate information or was  
6 defectively signed.

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

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

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

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

14 (c) When filed by the secretary of state, a statement of  
15 correction under subsection (a) is effective retroactively as of the  
16 effective date of the record the statement corrects, but the statement is  
17 effective when filed:

18 (1) For the purposes of section 3(d), and amendments thereto;  
19 and

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

22 New Sec. 23. (a) If a record delivered to the secretary of state for  
23 filing under this act and filed by the secretary of state contains inaccurate  
24 information, a person that suffers a loss by reliance on the information  
25 may recover damages for the loss from:

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

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

32 (A) The record was delivered for filing on behalf of the  
33 company; and

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

37 (i) Effected an amendment under section 18, and amendments  
38 thereto;

39 (ii) filed a petition under section 20, and amendments thereto;  
40 or

41 (iii) delivered to the secretary of state for filing a statement of  
42 change under section 14, and amendments thereto, or a statement of  
43 correction under section 22, and amendments thereto.

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

9 (c) An individual who signs a record authorized or required to  
10 be filed under this act affirms under penalty of perjury that the  
11 information stated in the record is accurate.

12 New Sec. 24. (a) The secretary of state, upon request and payment  
13 of the requisite fee, shall furnish to any person a certificate of existence  
14 for a limited liability company if the records filed in the office of the  
15 secretary of state show that the company has been formed under section  
16 17, and amendments thereto, and the secretary of state has not filed a  
17 statement of termination pertaining to the company. A certificate of  
18 existence must state:

19 (1) The company's name;

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

22 (3) whether all fees, taxes and penalties due under this act or  
23 other law to the secretary of state have been paid;

24 (4) whether the company's most recent annual report required  
25 by section 25, and amendments thereto, has been filed by the secretary of  
26 state;

27 (5) whether the secretary of state has administratively  
28 dissolved the company;

29 (6) whether the company has delivered to the secretary of state  
30 for filing a statement of dissolution;

31 (7) that a statement of termination has not been filed by the  
32 secretary of state; and

33 (8) other facts of record in the office of the secretary of state  
34 which are specified by the person requesting the certificate.

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

41 (1) The company's name and any alternate name adopted  
42 under section 59(a), and amendments thereto, for use in this state;

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

1 state;

2 (3) whether all fees, taxes and penalties due under this act or  
3 other law to the secretary of state have been paid;

4 (4) whether the company's most recent annual report required  
5 by section 25, and amendments thereto, has been filed by the secretary of  
6 state;

7 (5) that the secretary of state has not revoked the company's  
8 certificate of authority and has not filed a notice of cancellation; and

9 (6) other facts of record in the office of the secretary of state  
10 which are specified by the person requesting the certificate.

11 (c) Subject to any qualification stated in the certificate, a  
12 certificate of existence or certificate of authorization issued by the  
13 secretary of state is conclusive evidence that the limited liability company  
14 is in existence or the foreign limited liability company is authorized to  
15 transact business in this state.

16 New Sec. 25. (a) Each year, a limited liability company or a foreign  
17 limited liability company authorized to transact business in this state shall  
18 deliver to the secretary of state for filing a report that states:

19 (1) The name of the company;

20 (2) the street and mailing addresses of the company's  
21 designated office and the name and street and mailing addresses of its  
22 agent for service of process in this state;

23 (3) the street and mailing addresses of its principal office; and

24 (4) in the case of a foreign limited liability company, the state  
25 or other jurisdiction under whose law the company is formed and any  
26 alternate name adopted under section 59(a), and amendments thereto.

27 (b) Information in an annual report under this section must be  
28 current as of the date the report is delivered to the secretary of state for  
29 filing.

30 (c) The first annual report under this section must be delivered  
31 to the secretary of state between January 1 and April 1 of the year  
32 following the calendar year in which a limited liability company was  
33 formed or a foreign limited liability company was authorized to transact  
34 business. A report must be delivered to the secretary of state between  
35 January 1 and April 1 of each subsequent calendar year.

36 (d) If an annual report under this section does not contain the  
37 information required in subsection (a), the secretary of state shall  
38 promptly notify the reporting limited liability company or foreign limited  
39 liability company and return the report to it for correction. If the report is  
40 corrected to contain the information required in subsection (a) and  
41 delivered to the secretary of state within 30 days after the effective date  
42 of the notice, it is timely delivered.

43 (e) If an annual report under this section contains an address of



1 a designated office or the name or address of an agent for service of  
2 process which differs from the information shown in the records of the  
3 secretary of state immediately before the annual report becomes effective,  
4 the differing information in the annual report is considered a statement of  
5 change under section 14, and amendments thereto.

6 New Sec. 26. (a) A member is not an agent of a limited liability  
7 company solely by reason of being a member.

8 (b) A person's status as a member does not prevent or restrict  
9 law other than this act from imposing liability on a limited liability  
10 company because of the person's conduct.

11 New Sec. 27. (a) A limited liability company may deliver to the  
12 secretary of state for filing a statement of authority. The statement:

13 (1) Must include the name of the company and the street and  
14 mailing addresses of its designated office;

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

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

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

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

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

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

28 (b) To amend or cancel a statement of authority filed by the  
29 secretary of state under section 21(a), and amendments thereto, a limited  
30 liability company must deliver to the secretary of state for filing an  
31 amendment or cancellation stating:

32 (1) The name of the company;

33 (2) the street and mailing addresses of the company's  
34 designated office;

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

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

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

41 (d) Subject to subsection (c) and section 3(d), and amendments  
42 thereto, and except as otherwise provided in subsections (f), (g), and (h),  
43 a limitation on the authority of a person or a position contained in an

1 effective statement of authority is not by itself evidence of knowledge or  
2 notice of the limitation by any person.

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

7 (1) The person has knowledge to the contrary;

8 (2) the statement has been cancelled or restrictively amended  
9 under subsection (b); or

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

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

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

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

27 (g) Subject to subsection (c), if a certified copy of an effective  
28 statement containing a limitation on the authority to transfer real property  
29 held in the name of a limited liability company is recorded in the office  
30 for recording transfers of that real property, all persons are deemed to  
31 know of the limitation.

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

36 (i) After a statement of dissolution becomes effective, a limited  
37 liability company may deliver to the secretary of state for filing and, if  
38 appropriate, may record a statement of authority that is designated as a  
39 post-dissolution statement of authority. The statement operates as  
40 provided in subsections (f) and (g).

41 (j) Unless earlier cancelled, an effective statement of authority  
42 is cancelled by operation of law five years after the date on which the  
43 statement, or its most recent amendment, becomes effective. This

1 cancellation operates without need for any recording under subsection (f)  
2 or (g).

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

6 New Sec. 28. (a) A person named in a filed statement of authority  
7 granting that person authority may deliver to the secretary of state for  
8 filing a statement of denial that:

9 (1) Provides the name of the limited liability company and the  
10 caption of the statement of authority to which the statement of denial  
11 pertains; and

12 (2) denies the grant of authority.

13 New Sec. 29. (a) The debts, obligations, or other liabilities of a  
14 limited liability company, whether arising in contract, tort or otherwise:

15 (1) Are solely the debts, obligations or other liabilities of the  
16 company; and

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

20 (b) The failure of a limited liability company to observe any  
21 particular formalities relating to the exercise of its powers or management  
22 of its activities is not a ground for imposing liability on the members or  
23 managers for the debts, obligations or other liabilities of the company.

24 New Sec. 30. (a) If a limited liability company is to have only one  
25 member upon formation, the person becomes a member as agreed by that  
26 person and the organizer of the company. That person and the organizer  
27 may be, but need not be, different persons. If different, the organizer acts  
28 on behalf of the initial member.

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

34 (c) If a filed certificate of organization contains the statement  
35 required by section 17(b)(3), and amendments thereto, a person becomes  
36 an initial member of the limited liability company with the consent of a  
37 majority of the organizers. The organizers may consent to more than one  
38 person simultaneously becoming the company's initial members.

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

41 (1) As provided in the operating agreement;

42 (2) as the result of a transaction effective under sections 70  
43 through 84, and amendments thereto;

1 (3) with the consent of all the members; or  
2 (4) if, within 90 consecutive days after the company ceases to  
3 have any members:

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

7 (B) the designated person consents to become a member.

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

11 New Sec. 31. A contribution may consist of tangible or intangible  
12 property or other benefit to a limited liability company, including money,  
13 services performed, promissory notes, other agreements to contribute  
14 money or property, and contracts for services to be performed.

15 New Sec. 32. (a) A person's obligation to make a contribution to a  
16 limited liability company is not excused by the person's death, disability  
17 or other inability to perform personally. If a person does not make a  
18 required contribution, the person or the person's estate is obligated to  
19 contribute money equal to the value of the part of the contribution which  
20 has not been made, at the option of the company.

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

24 New Sec. 33. (a) Any distributions made by a limited liability  
25 company before its dissolution and winding up must be in equal shares  
26 among members and dissociated members, except to the extent necessary  
27 to comply with any transfer effective under section 41, and amendments  
28 thereto, and any charging order in effect under section 42, and  
29 amendments thereto.

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

34 (c) A person does not have a right to demand or receive a  
35 distribution from a limited liability company in any form other than  
36 money. Except as otherwise provided in section 54(c), and amendments  
37 thereto, a limited liability company may distribute an asset in kind if each  
38 part of the asset is fungible with each other part and each person receives  
39 a percentage of the asset equal in value to the person's share of  
40 distributions.

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

1 respect to the distribution.

2 New Sec. 34. (a) A limited liability company may not make a  
3 distribution if after the distribution:

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

6 (2) the company's total assets would be less than the sum of its  
7 total liabilities plus the amount that would be needed, if the company  
8 were to be dissolved, wound up and terminated at the time of the  
9 distribution, to satisfy the preferential rights upon dissolution, winding  
10 up, and termination of members whose preferential rights are superior to  
11 those of persons receiving the distribution.

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

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

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

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

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

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

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

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

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

40 (g) In subsection (a), "distribution" does not include amounts  
41 constituting reasonable compensation for present or past services or  
42 reasonable payments made in the ordinary course of business under a  
43 bona fide retirement plan or other benefits program.

1 New Sec. 35. (a) Except as otherwise provided in subsection (b), if a  
2 member of a member-managed limited liability company or manager of a  
3 manager-managed limited liability company consents to a distribution  
4 made in violation of section 34, and amendments thereto, and in  
5 consenting to the distribution fails to comply with section 38, and  
6 amendments thereto, the member or manager is personally liable to the  
7 company for the amount of the distribution that exceeds the amount that  
8 could have been distributed without the violation of section 34, and  
9 amendments thereto.

10 (b) To the extent the operating agreement of a member-  
11 managed limited liability company expressly relieves a member of the  
12 authority and responsibility to consent to distributions and imposes that  
13 authority and responsibility on one or more other members, the liability  
14 stated in subsection (a) applies to the other members and not the member  
15 that the operating agreement relieves of authority and responsibility.

16 (c) A person that receives a distribution knowing that the  
17 distribution to that person was made in violation of section 34, and  
18 amendments thereto, is personally liable to the limited liability company  
19 but only to the extent that the distribution received by the person  
20 exceeded the amount that could have been properly paid under section 34,  
21 and amendments thereto.

22 (d) A person against which an action is commenced because  
23 the person is liable under subsection (a) may:

24 (1) Implead any other person that is subject to liability under  
25 subsection (a) and seek to compel contribution from the person; and

26 (2) implead any person that received a distribution in violation  
27 of subsection (c) and seek to compel contribution from the person in the  
28 amount the person received in violation of subsection (c).

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

31 New Sec. 36. (a) A limited liability company is a member-managed  
32 limited liability company unless the operating agreement:

33 (1) Expressly provides that:

34 (A) The company is or will be “manager-managed”;

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

36 (C) management of the company is or will be “vested in  
37 managers”; or

38 (2) includes words of similar import.

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

41 (1) The management and conduct of the company are vested in  
42 the members.

43 (2) Each member has equal rights in the management and

1 conduct of the company's activities.

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

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

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

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

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

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

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

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

20 (A) Sell, lease, exchange, or otherwise dispose of all, or  
21 substantially all, of the company's property, with or without the good  
22 will, outside the ordinary course of the company's activities;

23 (B) approve a merger, conversion, or domestication under  
24 sections 70 through 84, and amendments thereto;

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

27 (D) amend the operating agreement.

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

34 (6) A person need not be a member to be a manager, but the  
35 dissociation of a member that is also a manager removes the person as a  
36 manager. If a person that is both a manager and a member ceases to be a  
37 manager, that cessation does not by itself dissociate the person as a  
38 member.

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

42 (d) An action requiring the consent of members under this act  
43 may be taken without a meeting, and a member may appoint a proxy or

1 other agent to consent or otherwise act for the member by signing an  
2 appointing record, personally or by the member's agent.

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

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

11 New Sec. 37. (a) A limited liability company shall reimburse for  
12 any payment made and indemnify for any debt, obligation or other  
13 liability incurred by a member of a member-managed company, or the  
14 manager of a manager-managed company in the course of the member's  
15 or manager's activities on behalf of the company, if, in making the  
16 payment or incurring the debt, obligation or other liability, the member or  
17 manager complied with the duties stated in sections 34 and 38, and  
18 amendments thereto.

19 (b) A limited liability company may purchase and maintain  
20 insurance on behalf of a member or manager of the company against  
21 liability asserted against or incurred by the member or manager in that  
22 capacity or arising from that status even if, under section 10(g), and  
23 amendments thereto, the operating agreement could not eliminate or limit  
24 the person's liability to the company for the conduct giving rise to the  
25 liability.

26 New Sec. 38. (a) A member of a member-managed limited liability  
27 company owes to the company and, subject to section 64(b), and  
28 amendments thereto, the other members the fiduciary duties of loyalty  
29 and care stated in subsections (b) and (c).

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

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

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

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

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

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

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

43 (c) Subject to the business judgment rule, the duty of care of a



1 member of a member-managed limited liability company in the conduct  
2 and winding up of the company's activities is to act with the care that a  
3 person in a like position would reasonably exercise under similar  
4 circumstances and in a manner the member reasonably believes to be in  
5 the best interests of the company. In discharging this duty, a member may  
6 rely in good faith upon opinions, reports, statements or other information  
7 provided by another person that the member reasonably believes is a  
8 competent and reliable source for the information.

9 (d) A member in a member-managed limited liability company  
10 or a manager-managed limited liability company shall discharge the  
11 duties under this act or under the operating agreement and exercise any  
12 rights consistently with the contractual obligation of good faith and fair  
13 dealing.

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

17 (f) All of the members of a member-managed limited liability  
18 company or a manager-managed limited liability company may authorize  
19 or ratify, after full disclosure of all material facts, a specific act or  
20 transaction that otherwise would violate the duty of loyalty.

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

23 (1) Subsections (a), (b), (c), and (e) apply to the manager or  
24 managers and not the members.

25 (2) The duty stated under subsection (b)(3) continues until  
26 winding up is completed.

27 (3) Subsection (d) applies to the members and managers.

28 (4) Subsection (f) applies only to the members.

29 (5) A member does not have any fiduciary duty to the  
30 company or to any other member solely by reason of being a member.

31 New Sec. 39. (a) In a member-managed limited liability company,  
32 the following rules apply:

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

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

40 (A) Without demand, any information concerning the  
41 company's activities, financial condition and other circumstances which  
42 the company knows and is material to the proper exercise of the  
43 member's rights and duties under the operating agreement or this act,

1 except to the extent the company can establish that it reasonably believes  
2 the member already knows the information; and

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

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

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

12 (1) The informational rights stated in subsection (a) and the  
13 duty stated in subsection (a)(3) apply to the managers and not the  
14 members.

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

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

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

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

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

30 (A) Of the information that the company will provide in  
31 response to the demand and when and where the company will provide  
32 the information; and

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

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

40 (c) On 10 days' demand made in a record received by a limited  
41 liability company, a dissociated member may have access to information  
42 to which the person was entitled while a member if the information  
43 pertains to the period during which the person was a member, the person

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

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

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

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

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

24 New Sec. 40. A transferable interest is personal property.

25 New Sec. 41. (a) A transfer, in whole or in part, of a transferable  
26 interest:

27 (1) Is permissible;

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

31 (3) subject to section 43, and amendments thereto, does not  
32 entitle the transferee to:

33 (A) Participate in the management or conduct of the  
34 company's activities; or

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

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

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

42 (d) A transferable interest may be evidenced by a certificate of  
43 the interest issued by the limited liability company in a record, and,

1 subject to this section, the interest represented by the certificate may be  
2 transferred by a transfer of the certificate.

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

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

9 (g) Except as otherwise provided in section 45(4)(B), and  
10 amendments thereto, when a member transfers a transferable interest, the  
11 transferor retains the rights of a member other than the interest in  
12 distributions transferred and retains all duties and obligations of a  
13 member.

14 (h) When a member transfers a transferable interest to a person  
15 that becomes a member with respect to the transferred interest, the  
16 transferee is liable for the member's obligations under sections 32 and  
17 35(c), and amendments thereto, known to the transferee when the  
18 transferee becomes a member.

19 New Sec. 42. (a) On application by a judgment creditor of a member  
20 or transferee, a court may enter a charging order against the transferable  
21 interest of the judgment debtor for the unsatisfied amount of the  
22 judgment. A charging order constitutes a lien on a judgment debtor's  
23 transferable interest and requires the limited liability company to pay over  
24 to the person to which the charging order was issued any distribution that  
25 would otherwise be paid to the judgment debtor.

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

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

32 (2) make all other orders necessary to give effect to the  
33 charging order.

34 (c) Upon a showing that distributions under a charging order  
35 will not pay the judgment debt within a reasonable time, the court may  
36 foreclose the lien and order the sale of the transferable interest. The  
37 purchaser at the foreclosure sale obtains only the transferable interest,  
38 does not thereby become a member, and is subject to section 41, and  
39 amendments thereto.

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

1 the court that issued the charging order.

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

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

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

14 New Sec. 43. If a member dies, the deceased member's personal  
15 representative or other legal representative may exercise the rights of a  
16 transferee provided in section 41(c), and amendments thereto, and, for the  
17 purposes of settling the estate, the rights of a current member under  
18 section 39, and amendments thereto.

19 New Sec. 44. (a) A person has the power to dissociate as a member  
20 at any time, rightfully or wrongfully, by withdrawing as a member by  
21 express will under section 45(1), and amendments thereto.

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

24 (1) Is in breach of an express provision of the operating  
25 agreement; or

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

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

28 (B) the person is expelled as a member by judicial order under  
29 section 45(5), and amendments thereto;

30 (C) the person is dissociated under section 45(7)(A), and  
31 amendments thereto, by becoming a debtor in bankruptcy; or

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

36 (c) A person that wrongfully dissociates as a member is liable  
37 to the limited liability company and, subject to section 64, and  
38 amendments thereto, to the other members for damages caused by the  
39 dissociation. The liability is in addition to any other debt, obligation or  
40 other liability of the member to the company or the other members.

41 New Sec. 45. (a) A person is dissociated as a member from a limited  
42 liability company when:

43 (1) The company has notice of the person's express will to

1 withdraw as a member, but, if the person specified a withdrawal date later  
2 than the date the company had notice, on that later date;

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

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

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

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

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

13 (i) A transfer for security purposes; or

14 (ii) a charging order in effect under section 42, and  
15 amendments thereto, which has not been foreclosed;

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

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

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

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

30 (B) has willfully or persistently committed, or is willfully and  
31 persistently committing, a material breach of the operating agreement or  
32 the person's duties or obligations under section 38; or

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

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

37 (A) The person dies; or

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

39 (i) A guardian or general conservator for the person is  
40 appointed; or

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

- 1 (7) in a member-managed limited liability company, the  
2 person:
- 3 (A) Becomes a debtor in bankruptcy;  
4 (B) executes an assignment for the benefit of creditors; or  
5 (C) seeks, consents to or acquiesces in the appointment of a  
6 trustee, receiver or liquidator of the person or of all, or substantially all,  
7 of the person's property;
- 8 (8) in the case of a person that is a trust, or is acting as a  
9 member by virtue of being a trustee of a trust, the trust's entire  
10 transferable interest in the company is distributed;
- 11 (9) in the case of a person that is an estate, or is acting as a  
12 member by virtue of being a personal representative of an estate, the  
13 estate's entire transferable interest in the company is distributed;
- 14 (10) in the case of a member that is not an individual,  
15 partnership, limited liability company, corporation, trust, or estate, the  
16 termination of the member;
- 17 (11) the company participates in a merger under sections 70  
18 through 84, and amendments thereto, if:
- 19 (A) The company is not the surviving entity; or  
20 (B) otherwise as a result of the merger, the person ceases to be  
21 a member;
- 22 (12) the company participates in a conversion under sections  
23 70 through 84, and amendments thereto;
- 24 (13) the company participates in a domestication under  
25 sections 70 through 84, and amendments thereto, if, as a result of the  
26 domestication, the person ceases to be a member; or
- 27 (14) the company terminates.
- 28 New Sec. 46. (a) When a person is dissociated as a member of a  
29 limited liability company:
- 30 (1) The person's right to participate as a member in the  
31 management and conduct of the company's activities terminates;
- 32 (2) if the company is member-managed, the person's fiduciary  
33 duties as a member end with regard to matters arising and events  
34 occurring after the person's dissociation; and
- 35 (3) subject to section 43, and amendments thereto, and sections  
36 70 through 84, and amendments thereto, any transferable interest owned  
37 by the person immediately before dissociation in the person's capacity as  
38 a member is owned by the person solely as a transferee.
- 39 (b) A person's dissociation as a member of a limited liability  
40 company does not of itself discharge the person from any debt,  
41 obligation, or other liability to the company or the other members which  
42 the person incurred while a member.
- 43 New Sec. 47. (a) A limited liability company is dissolved, and its

1 activities must be wound up, upon the occurrence of any of the following:

2 (1) An event or circumstance that the operating agreement  
3 states causes dissolution;

4 (2) the consent of all the members;

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

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

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

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

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

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

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

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

23 New Sec. 48. (a) A dissolved limited liability company shall wind up  
24 its activities, and the company continues after dissolution only for the  
25 purpose of winding up.

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

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

30 (2) may:

31 (A) Deliver to the secretary of state for filing a statement of  
32 dissolution stating the name of the company and that the company is  
33 dissolved;

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

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

38 (D) transfer the company's property;

39 (E) settle disputes by mediation or arbitration;

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

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



1 up.

2 (c) If a dissolved limited liability company has no members,  
3 the legal representative of the last person to have been a member may  
4 wind up the activities of the company. If the person does so, the person  
5 has the powers of a sole manager under section 36(c), and amendments  
6 thereto, and is deemed to be a manager for the purposes of section 29(a)  
7 (2), and amendments thereto.

8 (d) If the legal representative under subsection (c) declines or  
9 fails to wind up the company's activities, a person may be appointed to  
10 do so by the consent of transferees owning a majority of the rights to  
11 receive distributions as transferees at the time the consent is to be  
12 effective. A person appointed under this subsection:

13 (1) Has the powers of a sole manager under section 36(c), and  
14 amendments thereto, and is deemed to be a manager for the purposes of  
15 section 29(a)(2), and amendments thereto; and

16 (2) shall promptly deliver to the secretary of state for filing an  
17 amendment to the company's certificate of organization to:

18 (A) State that the company has no members;

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

21 (C) provide the street and mailing addresses of the person.

22 (e) The appropriate court may order judicial supervision of the  
23 winding up of a dissolved limited liability company, including the  
24 appointment of a person to wind up the company's activities:

25 (1) On application of a member, if the applicant establishes  
26 good cause;

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

28 (A) The company does not have any members;

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

31 (C) within a reasonable time following the dissolution a person  
32 has not been appointed pursuant to subsection (D); or

33 (3) in connection with a proceeding under section 47(a)(4) or  
34 (5), and amendments thereto.

35 New Sec. 49. (a) Except as otherwise provided in subsection (d), a  
36 dissolved limited liability company may give notice of a known claim  
37 under subsection (b), which has the effect as provided in subsection (c).

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

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

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

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

1 and

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

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

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

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

8 (A) The company causes the claimant to receive a notice in a  
9 record stating that the claim is rejected and will be barred unless the  
10 claimant commences an action against the company to enforce the claim  
11 within 90 days after the claimant receives the notice; and

12 (B) the claimant does not commence the required action within  
13 the 90 days.

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

17 New Sec. 50. (a) A dissolved limited liability company may publish  
18 notice of its dissolution and request persons having claims against the  
19 company to present them in accordance with the notice.

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

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

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

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

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

36 (1) A claimant that did not receive notice in a record under  
37 section 49, and amendments thereto;

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

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

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

43 (1) Against a dissolved limited liability company, to the extent

1 of its undistributed assets; and

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

8 New Sec. 51. (a) The secretary of state may dissolve a limited  
9 liability company administratively if the company does not:

10 (1) Pay, within 60 days after the due date, any fee, tax or  
11 penalty due to the secretary of state under this act or law other than this  
12 act; or

13 (2) deliver, within 60 days after the due date, its annual report  
14 to the secretary of state.

15 (b) If the secretary of state determines that a ground exists for  
16 administratively dissolving a limited liability company, the secretary of  
17 state shall file a record of the determination and serve the company with a  
18 copy of the filed record.

19 (c) If within 60 days after service of the copy pursuant to  
20 subsection (b), a limited liability company does not correct each ground  
21 for dissolution or demonstrate to the reasonable satisfaction of the  
22 secretary of state that each ground determined by the secretary of state  
23 does not exist, the secretary of state shall dissolve the company  
24 administratively by preparing, signing, and filing a declaration of  
25 dissolution that states the grounds for dissolution. The secretary of state  
26 shall serve the company with a copy of the filed declaration.

27 (d) A limited liability company that has been administratively  
28 dissolved continues in existence but, subject to section 52, and  
29 amendments thereto, may carry on only activities necessary to wind up its  
30 activities and liquidate its assets under sections 48 and 54, and  
31 amendments thereto, and to notify claimants under sections 49 and 50,  
32 and amendments thereto.

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

36 New Sec. 52. (a) A limited liability company that has been  
37 administratively dissolved may apply to the secretary of state for  
38 reinstatement within two years after the effective date of dissolution. The  
39 application must be delivered to the secretary of state for filing and state:

40 (1) The name of the company and the effective date of its  
41 dissolution;

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

1 (3) that the company's name satisfies the requirements of  
2 section 8, and amendments thereto.

3 (b) If the secretary of state determines that an application  
4 under subsection (a) contains the required information and that the  
5 information is correct, the secretary of state shall prepare a declaration of  
6 reinstatement that states this determination, sign and file the original of  
7 the declaration of reinstatement, and serve the limited liability company  
8 with a copy.

9 (c) When a reinstatement becomes effective, it relates back to  
10 and takes effect as of the effective date of the administrative dissolution  
11 and the limited liability company may resume its activities as if the  
12 dissolution had not occurred.

13 New Sec. 53. (a) If the secretary of state rejects a limited liability  
14 company's application for reinstatement following administrative  
15 dissolution, the secretary of state shall prepare, sign, and file a notice that  
16 explains the reason for rejection and serve the company with a copy of  
17 the notice.

18 (b) Within 30 days after service of a notice of rejection of  
19 reinstatement under subsection (a), a limited liability company may  
20 appeal from the rejection by petitioning the appropriate court to set aside  
21 the dissolution. The petition must be served on the secretary of state and  
22 contain a copy of the secretary of state's declaration of dissolution, the  
23 company's application for reinstatement, and the secretary of state's  
24 notice of rejection.

25 (c) The court may order the secretary of state to reinstate a  
26 dissolved limited liability company or take other action the court  
27 considers appropriate.

28 New Sec. 54. (a) In winding up its activities, a limited liability  
29 company must apply its assets to discharge its obligations to creditors,  
30 including members that are creditors.

31 (b) After a limited liability company complies with subsection  
32 (a), any surplus must be distributed in the following order, subject to any  
33 charging order in effect under section 42, and amendments thereto:

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

37 (2) in equal shares among members and dissociated members,  
38 except to the extent necessary to comply with any transfer effective under  
39 section 41, and amendments thereto.

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

1 (d) All distributions made under subsections (b) and (c) must  
2 be paid in money.

3 New Sec. 55. (a) The law of the state or other jurisdiction under  
4 which a foreign limited liability company is formed governs:

5 (1) The internal affairs of the company; and

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

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

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

15 New Sec. 56. (a) A foreign limited liability company may apply for a  
16 certificate of authority to transact business in this state by delivering an  
17 application to the secretary of state for filing. The application must state:

18 (1) The name of the company and, if the name does not  
19 comply with section 8, and amendments thereto, an alternate name  
20 adopted pursuant to section 59(a), and amendments thereto;

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

23 (3) the street and mailing addresses of the company's principal  
24 office and, if the law of the jurisdiction under which the company is  
25 formed requires the company to maintain an office in that jurisdiction, the  
26 street and mailing addresses of the required office; and

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

29 (b) A foreign limited liability company shall deliver with a  
30 completed application under subsection (a) a certificate of existence or a  
31 record of similar import signed by the secretary of state or other official  
32 having custody of the company's publicly filed records in the state or  
33 other jurisdiction under whose law the company is formed.

34 New Sec. 57. (a) Activities of a foreign limited liability company  
35 which do not constitute transacting business in this state within the  
36 meaning of this article include:

37 (1) Maintaining, defending or settling an action or proceeding;

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

40 (3) maintaining accounts in financial institutions;

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

- 1 (5) selling through independent contractors;  
2 (6) soliciting or obtaining orders, whether by mail or electronic  
3 means or through employees or agents or otherwise, if the orders require  
4 acceptance outside this state before they become contracts;  
5 (7) creating or acquiring indebtedness, mortgages or security  
6 interests in real or personal property;  
7 (8) securing or collecting debts or enforcing mortgages or  
8 other security interests in property securing the debts and holding,  
9 protecting or maintaining property so acquired;  
10 (9) conducting an isolated transaction that is completed within  
11 30 days and is not in the course of similar transactions; and  
12 (10) transacting business in interstate commerce.

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

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

21 New Sec. 58. Unless the secretary of state determines that an  
22 application for a certificate of authority does not comply with the filing  
23 requirements of this act, the secretary of state, upon payment of all filing  
24 fees, shall file the application of a foreign limited liability company,  
25 prepare, sign, and file a certificate of authority to transact business in this  
26 state, and send a copy of the filed certificate, together with a receipt for  
27 the fees, to the company or its representative.

28 New Sec. 59. (a) A foreign limited liability company whose name  
29 does not comply with section 8, and amendments thereto, may not obtain  
30 a certificate of authority until it adopts, for the purpose of transacting  
31 business in this state, an alternate name that complies with section 8, and  
32 amendments thereto. After obtaining a certificate of authority with an  
33 alternate name, a foreign limited liability company shall transact business  
34 in this state under the alternate name unless the company is authorized  
35 under fictitious or assumed name statute to transact business in this state  
36 under another name.

37 (b) If a foreign limited liability company authorized to transact  
38 business in this state changes its name to one that does not comply with  
39 section 8, and amendments thereto, it may not thereafter transact business  
40 in this state until it complies with subsection (a) and obtains an amended  
41 certificate of authority.

42 New Sec. 60. (a) A certificate of authority of a foreign limited  
43 liability company to transact business in this state may be revoked by the

1 secretary of state in the manner provided in subsections (b) and (c) if the  
2 company does not:

3 (1) Pay, within 60 days after the due date, any fee, tax or  
4 penalty due to the secretary of state under this act or law other than this  
5 act;

6 (2) deliver, within 60 days after the due date, its annual report  
7 required under section 28, and amendments thereto;

8 (3) appoint and maintain an agent for service of process as  
9 required by section 13(b), and amendments thereto; or

10 (4) deliver for filing a statement of a change under section 14,  
11 and amendments thereto, within 30 days after a change has occurred in  
12 the name or address of the agent.

13 (b) To revoke a certificate of authority of a foreign limited  
14 liability company, the secretary of state must prepare, sign and file a  
15 notice of revocation and send a copy to the company's agent for service  
16 of process in this state, or if the company does not appoint and maintain a  
17 proper agent in this state, to the company's designated office. The notice  
18 must state:

19 (1) The revocation's effective date, which must be at least 60  
20 days after the date the secretary of state sends the copy; and

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

22 (c) The authority of a foreign limited liability company to  
23 transact business in this state ceases on the effective date of the notice of  
24 revocation unless before that date the company cures each ground for  
25 revocation stated in the notice filed under subsection (b). If the company  
26 cures each ground, the secretary of state shall file a record so stating.

27 New Sec. 61. To cancel its certificate of authority to transact  
28 business in this state, a foreign limited liability company must deliver to  
29 the secretary of state for filing a notice of cancellation stating the name of  
30 the company and that the company desires to cancel its certificate of  
31 authority. The certificate is cancelled when the notice becomes effective.

32 New Sec. 62. (a) A foreign limited liability company transacting  
33 business in this state may not maintain an action or proceeding in this  
34 state unless it has a certificate of authority to transact business in this  
35 state.

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

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

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

6 New Sec. 63. The attorney general may maintain an action to enjoin  
7 a foreign limited liability company from transacting business in this state  
8 in violation of this article.

9 New Sec. 64. (a) Subject to subsection (b), a member may maintain  
10 a direct action against another member, a manager, or the limited liability  
11 company to enforce the member's rights and otherwise protect the  
12 member's interests, including rights and interests under the operating  
13 agreement or this act or arising independently of the membership  
14 relationship.

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

19 New Sec. 65. A member may maintain a derivative action to enforce  
20 a right of a limited liability company if:

21 (1) The member first makes a demand on the other members in  
22 a member-managed limited liability company, or the managers of a  
23 manager-managed limited liability company, requesting that they cause  
24 the company to bring an action to enforce the right, and the managers or  
25 other members do not bring the action within a reasonable time; or

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

27 New Sec. 66. (a) Except as otherwise provided in subsection (b), a  
28 derivative action under section 65, and amendments thereto, may be  
29 maintained only by a person that is a member at the time the action is  
30 commenced and remains a member while the action continues.

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

34 New Sec. 67. In a derivative action under section 65, and  
35 amendments thereto, the complaint must state with particularity:

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

38 (2) if a demand has not been made, the reasons a demand  
39 under section 65(1), and amendments thereto, would be futile.

40 New Sec. 68. (a) If a limited liability company is named as or made  
41 a party in a derivative proceeding, the company may appoint a special  
42 litigation committee to investigate the claims asserted in the proceeding  
43 and determine whether pursuing the action is in the best interests of the



1 company. If the company appoints a special litigation committee, on  
2 motion by the committee made in the name of the company, except for  
3 good cause shown, the court shall stay discovery for the time reasonably  
4 necessary to permit the committee to make its investigation. This  
5 subsection does not prevent the court from enforcing a person's right to  
6 information under section 39, and amendments thereto, or, for good cause  
7 shown, granting extraordinary relief in the form of a temporary  
8 restraining order or preliminary injunction.

9 (b) A special litigation committee may be composed of one or  
10 more disinterested and independent individuals, who may be members.

11 (c) A special litigation committee may be appointed:

12 (1) In a member-managed limited liability company:

13 (A) By the consent of a majority of the members not named as  
14 defendants or plaintiffs in the proceeding; and

15 (B) if all members are named as defendants or plaintiffs in the  
16 proceeding, by a majority of the members named as defendants; or

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

18 (A) By a majority of the managers not named as defendants or  
19 plaintiffs in the proceeding; and

20 (B) if all managers are named as defendants or plaintiffs in the  
21 proceeding, by a majority of the managers named as defendants.

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

25 (1) Continue under the control of the plaintiff;

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

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

28 (4) be dismissed.

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

42 New Sec. 69. (a) Except as otherwise provided in subsection (b):

43 (1) Proceeds or other benefits of a derivative action under

1 section 65, and amendments thereto, whether by judgment, compromise,  
2 or settlement, belong to the limited liability company and not to the  
3 plaintiff; and

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

6 (b) If a derivative action under section 65, and amendments  
7 thereto, is successful in whole or in part, the court may award the plaintiff  
8 reasonable expenses, including reasonable attorney fees and costs, from  
9 the recovery of the limited liability company.

10 New Sec. 70. In this article:

11 (1) "Constituent limited liability company" means a  
12 constituent organization that is a limited liability company.

13 (2) "Constituent organization" means an organization that is  
14 party to a merger.

15 (3) "Converted organization" means the organization into which  
16 a converting organization converts pursuant to sections 75 through 78,  
17 and amendments thereto.

18 (4) "Converting limited liability company" means a converting  
19 organization that is a limited liability company.

20 (5) "Converting organization" means an organization that  
21 converts into another organization pursuant to section 75, and  
22 amendments thereto.

23 (6) "Domesticated company" means the company that exists  
24 after a domesticating foreign limited liability company or limited liability  
25 company effects a domestication pursuant to sections 79 through 82, and  
26 amendments thereto.

27 (7) "Domesticating company" means the company that effects  
28 a domestication pursuant to sections 79 through 82, and amendments  
29 thereto.

30 (8) "Governing statute" means the statute that governs an  
31 organization's internal affairs.

32 (9) "Organization" means a general partnership, including a  
33 limited liability partnership, limited partnership, including a limited  
34 liability limited partnership, limited liability company, business trust,  
35 corporation or any other person having a governing statute. The term  
36 includes a domestic or foreign organization regardless of whether  
37 organized for profit.

38 (10) "Organizational documents" means:

39 (A) For a domestic or foreign general partnership, its  
40 partnership agreement;

41 (B) for a limited partnership or foreign limited partnership, its  
42 certificate of limited partnership and partnership agreement;

43 (C) for a domestic or foreign limited liability company, its

1 certificate or articles of organization and operating agreement, or  
2 comparable records as provided in its governing statute;

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

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

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

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

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

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

23 (12) "Surviving organization" means an organization into  
24 which one or more other organizations are merged, whether the  
25 organization preexisted the merger or was created by the merger.

26 New Sec. 71. (a) A limited liability company may merge with one or  
27 more other constituent organizations pursuant to this section, sections 72  
28 through 74, and amendments thereto, and a plan of merger, if:

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

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

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

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

36 (1) The name and form of each constituent organization;

37 (2) the name and form of the surviving organization and, if the  
38 surviving organization is to be created by the merger, a statement to that  
39 effect;

40 (3) the terms and conditions of the merger, including the  
41 manner and basis for converting the interests in each constituent  
42 organization into any combination of money, interests in the surviving  
43 organization, and other consideration;

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

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

8       New Sec. 72. (a) Subject to section 83, and amendments thereto, a  
9 plan of merger must be consented to by all the members of a constituent  
10 limited liability company.

11           (b) Subject to section 83, and amendments thereto, and any  
12 contractual rights, after a merger is approved, and at any time before  
13 articles of merger are delivered to the secretary of state for filing under  
14 section 73, and amendments thereto, a constituent limited liability  
15 company may amend the plan or abandon the merger:

16           (1) As provided in the plan; or

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

19       New Sec. 73. (a) After each constituent organization has approved a  
20 merger, articles of merger must be signed on behalf of:

21           (1) Each constituent limited liability company, as provided in  
22 section 19(a), and amendments thereto; and

23           (2) each other constituent organization, as provided in its  
24 governing statute.

25           (b) Articles of merger under this section must include:

26           (1) The name and form of each constituent organization and  
27 the jurisdiction of its governing statute;

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

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

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

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

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

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

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

1 (7) if the surviving organization is a foreign organization not  
2 authorized to transact business in this state, the street and mailing  
3 addresses of an office that the secretary of state may use for the purposes  
4 of section 74(b), and amendments thereto; and

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

7 (c) Each constituent limited liability company shall deliver the  
8 articles of merger for filing in the office of the secretary of state.

9 (d) A merger becomes effective under this article:

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

12 (A) Compliance with subsection (c); or

13 (B) subject to section 21(c), and amendments thereto, as  
14 specified in the articles of merger; or

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

18 New Sec. 74. (a) When a merger becomes effective:

19 (1) The surviving organization continues or comes into  
20 existence;

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

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

25 (4) all debts, obligations or other liabilities of each constituent  
26 organization that ceases to exist continue as debts, obligations or other  
27 liabilities of the surviving organization;

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

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

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

36 (8) except as otherwise agreed, if a constituent limited liability  
37 company ceases to exist, the merger does not dissolve the limited liability  
38 company for the purposes of sections 47 through 54, and amendments  
39 thereto;

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

41 (A) If it is a limited liability company, the certificate of  
42 organization becomes effective; or

43 (B) if it is an organization other than a limited liability

1 company, the organizational document that creates the organization  
2 becomes effective; and

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

6 (b) A surviving organization that is a foreign organization  
7 consents to the jurisdiction of the courts of this state to enforce any debt,  
8 obligation or other liability owed by a constituent organization, if before  
9 the merger the constituent organization was subject to suit in this state on  
10 the debt, obligation or other liability. A surviving organization that is a  
11 foreign organization and not authorized to transact business in this state  
12 appoints the secretary of state as its agent for service of process for the  
13 purposes of enforcing a debt, obligation or other liability under this  
14 subsection. Service on the secretary of state under this subsection must  
15 be made in the same manner and has the same consequences as in section  
16 16(c) and (d), and amendments thereto.

17 New Sec. 75. (a) An organization other than a limited liability  
18 company or a foreign limited liability company may convert to a limited  
19 liability company, and a limited liability company may convert to an  
20 organization other than a foreign limited liability company pursuant to  
21 this section, sections 76 through 78, and amendments thereto, and a plan  
22 of conversion, if:

23 (1) The other organization's governing statute authorizes the  
24 conversion;

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

27 (3) the other organization complies with its governing statute  
28 in effecting the conversion.

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

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

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

32 (3) the terms and conditions of the conversion, including the  
33 manner and basis for converting interests in the converting organization  
34 into any combination of money, interests in the converted organization  
35 and other consideration; and

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

38 New Sec. 76. (a) Subject to section 83, and amendments thereto, a  
39 plan of conversion must be consented to by all the members of a  
40 converting limited liability company.

41 (b) Subject to section 83, and amendments thereto, and any  
42 contractual rights, after a conversion is approved, and at any time before  
43 articles of conversion are delivered to the secretary of state for filing

1 under section 77, and amendments thereto, a converting limited liability  
2 company may amend the plan or abandon the conversion:

- 3 (1) As provided in the plan; or
- 4 (2) except as otherwise prohibited in the plan, by the same  
5 consent as was required to approve the plan.

6 New Sec. 77. (a) After a plan of conversion is approved:

7 (1) A converting limited liability company shall deliver to the  
8 secretary of state for filing articles of conversion, which must be signed  
9 as provided in section 19(a), and amendments thereto, and must include:

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

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

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

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

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

20 (F) if the converted organization is a foreign organization not  
21 authorized to transact business in this state, the street and mailing  
22 addresses of an office which the secretary of state may use for the  
23 purposes of section 78(c), and amendments thereto; and

24 (2) if the converting organization is not a converting limited  
25 liability company, the converting organization shall deliver to the  
26 secretary of state for filing a certificate of organization, which must  
27 include, in addition to the information required by section 17(b), and  
28 amendments thereto:

29 (A) A statement that the converted organization was converted  
30 from another organization;

31 (B) the name and form of that converting organization and the  
32 jurisdiction of its governing statute; and

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

35 (b) A conversion becomes effective:

36 (1) If the converted organization is a limited liability company,  
37 when the certificate of organization takes effect; and

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

41 New Sec. 78. (a) An organization that has been converted pursuant  
42 to this article is for all purposes the same entity that existed before the  
43 conversion.

1 (b) When a conversion takes effect:

2 (1) All property owned by the converting organization remains  
3 vested in the converted organization;

4 (2) all debts, obligations, or other liabilities of the converting  
5 organization continue as debts, obligations, or other liabilities of the  
6 converted organization;

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

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

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

15 (6) except as otherwise agreed, the conversion does not  
16 dissolve a converting limited liability company for the purposes of  
17 sections 47 through 54, and amendments thereto.

18 (c) A converted organization that is a foreign organization  
19 consents to the jurisdiction of the courts of this state to enforce any debt,  
20 obligation or other liability for which the converting limited liability  
21 company is liable if, before the conversion, the converting limited  
22 liability company was subject to suit in this state on the debt, obligation  
23 or other liability. A converted organization that is a foreign organization  
24 and not authorized to transact business in this state appoints the secretary  
25 of state as its agent for service of process for purposes of enforcing a  
26 debt, obligation or other liability under this subsection. Service on the  
27 secretary of state under this subsection must be made in the same manner  
28 and has the same consequences as in section 16(c) and (d), and  
29 amendments thereto.

30 New Sec. 79. (a) A foreign limited liability company may become a  
31 limited liability company pursuant to this section, sections 80 through 82,  
32 and amendments thereto, and a plan of domestication, if:

33 (1) The foreign limited liability company's governing statute  
34 authorizes the domestication;

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

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

39 (b) A limited liability company may become a foreign limited  
40 liability company pursuant to this section, sections 80 through 82, and  
41 amendments thereto, and a plan of domestication, if:

42 (1) The foreign limited liability company's governing statute  
43 authorizes the domestication;



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

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

5 (c) A plan of domestication must be in a record and must  
6 include:

7 (1) The name of the domesticating company before  
8 domestication and the jurisdiction of its governing statute;

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

11 (3) the terms and conditions of the domestication, including  
12 the manner and basis for converting interests in the domesticating  
13 company into any combination of money, interests in the domesticated  
14 company and other consideration; and

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

17 New Sec. 80. (a) A plan of domestication must be consented to:

18 (1) By all the members, subject to section 83, and amendments  
19 thereto, if the domesticating company is a limited liability company; and

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

22 (b) Subject to any contractual rights, after a domestication is  
23 approved, and at any time before articles of domestication are delivered  
24 to the secretary of state for filing under section 81, a domesticating  
25 limited liability company may amend the plan or abandon the  
26 domestication:

27 (1) As provided in the plan; or

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

30 New Sec. 81. (a) After a plan of domestication is approved, a  
31 domesticating company shall deliver to the secretary of state for filing  
32 articles of domestication, which must include:

33 (1) A statement, as the case may be, that the company has been  
34 domesticated from or into another jurisdiction;

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

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

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

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

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

4 (7) if the domesticated company was a foreign limited liability  
5 company not authorized to transact business in this state, the street and  
6 mailing addresses of an office that the secretary of state may use for the  
7 purposes of section 82(b), and amendments thereto.

8 (b) A domestication becomes effective:

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

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

14 New Sec. 82. (a) When a domestication takes effect:

15 (1) The domesticated company is for all purposes the company  
16 that existed before the domestication;

17 (2) all property owned by the domesticating company remains  
18 vested in the domesticated company;

19 (3) all debts, obligations or other liabilities of the  
20 domesticating company continue as debts, obligations or other liabilities  
21 of the domesticated company;

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

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

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

30 (7) except as otherwise agreed, the domestication does not  
31 dissolve a domesticating limited liability company for the purposes of  
32 sections 47 through 54, and amendments thereto.

33 (b) A domesticated company that is a foreign limited liability  
34 company consents to the jurisdiction of the courts of this state to enforce  
35 any debt, obligation or other liability owed by the domesticating  
36 company, if, before the domestication, the domesticating company was  
37 subject to suit in this state on the debt, obligation or other liability. A  
38 domesticated company that is a foreign limited liability company and not  
39 authorized to transact business in this state appoints the secretary of state  
40 as its agent for service of process for purposes of enforcing a debt,  
41 obligation or other liability under this subsection. Service on the  
42 secretary of state under this subsection must be made in the same manner  
43 and has the same consequences as in section 16(c) and (d), and

1 amendments thereto.

2 (c) If a limited liability company has adopted and approved a  
3 plan of domestication under section 79, and amendments thereto,  
4 providing for the company to be domesticated in a foreign jurisdiction, a  
5 statement surrendering the company's certificate of organization must be  
6 delivered to the secretary of state for filing setting forth:

7 (1) The name of the company;

8 (2) a statement that the certificate of organization is being  
9 surrendered in connection with the domestication of the company in a  
10 foreign jurisdiction;

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

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

15 New Sec. 83. (a) If a member of a constituent, converting or  
16 domesticating limited liability company will have personal liability with  
17 respect to a surviving, converted or domesticated organization, approval  
18 or amendment of a plan of merger, conversion or domestication is  
19 ineffective without the consent of the member, unless:

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

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

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

29 New Sec. 84. This article does not preclude an entity from being  
30 merged, converted or domesticated under law other than this act.

31 New Sec. 85. In applying and construing this uniform act,  
32 consideration must be given to the need to promote uniformity of the law  
33 with respect to its subject matter among states that enact it.

34 New Sec. 86. This act modifies, limits and supersedes the federal  
35 electronic signatures in global and national commerce act, 15 U.S.C. §  
36 7001 et seq., but does not modify, limit or supersede section 101(c) of  
37 that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of  
38 the notices described in section 103(b) of that act, 15 U.S.C. § 7003(b).

39 New Sec. 87. This act does not affect an action commenced,  
40 proceeding brought, or right accrued before this act takes effect.

41 New Sec. 88. (a) Before July 1, 2011, this act governs only:

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

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

5 (b) Except as otherwise provided in subsection (c), on and  
6 after July 1, 2011 this act governs all limited liability companies.

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

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

11 (2) for the purposes of applying section 2(10), and  
12 amendments thereto, and subject to section 12(d), and amendments  
13 thereto, language in the company's articles of organization designating  
14 the company's management structure operates as if that language were in  
15 the operating agreement.

16 Sec. 89. K.S.A. 2010 Supp. 45-229 is hereby amended to read as  
17 follows: 45-229. (a) It is the intent of the legislature that exceptions to  
18 disclosure under the open records act shall be created or maintained only  
19 if:

20 (1) The public record is of a sensitive or personal nature concerning  
21 individuals;

22 (2) the public record is necessary for the effective and efficient  
23 administration of a governmental program; or

24 (3) the public record affects confidential information.

25 The maintenance or creation of an exception to disclosure must be  
26 compelled as measured by these criteria. Further, the legislature finds  
27 that the public has a right to have access to public records unless the  
28 criteria in this section for restricting such access to a public record are  
29 met and the criteria are considered during legislative review in connection  
30 with the particular exception to disclosure to be significant enough to  
31 override the strong public policy of open government. To strengthen the  
32 policy of open government, the legislature shall consider the criteria in  
33 this section before enacting an exception to disclosure.

34 (b) Subject to the provisions of subsection (h), all exceptions to  
35 disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and  
36 any new exception to disclosure or substantial amendment of an existing  
37 exception shall expire on July 1 of the fifth year after enactment of the  
38 new exception or substantial amendment, unless the legislature acts to  
39 continue the exception. A law that enacts a new exception or substantially  
40 amends an existing exception shall state that the exception expires at the  
41 end of five years and that the exception shall be reviewed by the  
42 legislature before the scheduled date.

43 (c) For purposes of this section, an exception is substantially

1 amended if the amendment expands the scope of the exception to include  
2 more records or information. An exception is not substantially amended if  
3 the amendment narrows the scope of the exception.

4 (d) This section is not intended to repeal an exception that has been  
5 amended following legislative review before the scheduled repeal of the  
6 exception if the exception is not substantially amended as a result of the  
7 review.

8 (e) In the year before the expiration of an exception, the revisor of  
9 statutes shall certify to the president of the senate and the speaker of the  
10 house of representatives, by July 15, the language and statutory citation  
11 of each exception which will expire in the following year which meets the  
12 criteria of an exception as defined in this section. Any exception that is  
13 not identified and certified to the president of the senate and the speaker  
14 of the house of representatives is not subject to legislative review and  
15 shall not expire. If the revisor of statutes fails to certify an exception that  
16 the revisor subsequently determines should have been certified, the  
17 revisor shall include the exception in the following year's certification  
18 after that determination.

19 (f) "Exception" means any provision of law which creates an  
20 exception to disclosure or limits disclosure under the open records act  
21 pursuant to K.S.A. 45-221, and amendments thereto, or pursuant to any  
22 other provision of law.

23 (g) A provision of law which creates or amends an exception to  
24 disclosure under the open records law shall not be subject to review and  
25 expiration under this act if such provision:

26 (1) Is required by federal law;

27 (2) applies solely to the legislature or to the state court system.

28 (h) (1) The legislature shall review the exception before its  
29 scheduled expiration and consider as part of the review process the  
30 following:

31 (A) What specific records are affected by the exception;

32 (B) whom does the exception uniquely affect, as opposed to the  
33 general public;

34 (C) what is the identifiable public purpose or goal of the exception;

35 *and*

36 (D) whether the information contained in the records may be  
37 obtained readily by alternative means and how it may be obtained;

38 (2) an exception may be created or maintained only if it serves an  
39 identifiable public purpose and may be no broader than is necessary to  
40 meet the public purpose it serves. An identifiable public purpose is served  
41 if the legislature finds that the purpose is sufficiently compelling to  
42 override the strong public policy of open government and cannot be  
43 accomplished without the exception and if the exception:

1 (A) Allows the effective and efficient administration of a  
2 governmental program, which administration would be significantly  
3 impaired without the exception;

4 (B) protects information of a sensitive personal nature concerning  
5 individuals, the release of which information would be defamatory to  
6 such individuals or cause unwarranted damage to the good name or  
7 reputation of such individuals or would jeopardize the safety of such  
8 individuals. Only information that would identify the individuals may be  
9 excepted under this paragraph; or

10 (C) protects information of a confidential nature concerning entities,  
11 including, but not limited to, a formula, pattern, device, combination of  
12 devices, or compilation of information, which is used to protect or further  
13 a business advantage over those who do not know or use it, the disclosure  
14 of which information would injure the affected entity in the marketplace.

15 (3) Records made before the date of the expiration of an exception  
16 shall be subject to disclosure as otherwise provided by law. In deciding  
17 whether the records shall be made public, the legislature shall consider  
18 whether the damage or loss to persons or entities uniquely affected by the  
19 exception of the type specified in paragraph (2)(B) or (2)(C) of this  
20 subsection (h) would occur if the records were made public.

21 (i) Exceptions contained in the following statutes as continued in  
22 existence in section 2 of chapter 126 of the 2005 Session Laws of Kansas  
23 and exceptions contained in the following statutes as certified by the  
24 revisor of statutes to the president of the senate and the speaker of the  
25 house of representatives pursuant to subsection (e) of this section during  
26 2009 are hereby continued in existence until July 1, 2015, at which time  
27 such exceptions shall expire: 1-401, 2-1202, 5-512, 9-1137, 9-1712, 9-  
28 2217, 10-630, 11-306, 12-189, 12-1,108, 12-1694, 12-1698, 12-2819, 12-  
29 4516, 16-715, 16a-2-304, 17-1312e, 17-2036, 17-2227, 17-5832, 17-  
30 7511, 17-7514, 17-76,139, *prior its repeal*, 19-4321, 21-2511, 22-3711,  
31 22-4707, 22-4909, 22a-243, 22a-244, 23-605, 23-9,312, 25-4161, 25-  
32 4165, 31-405, 34-251, 38-1664, 38-2212, 39-709b, 39-719e, 39-934, 39-  
33 1434, 39-1704, 40-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21,  
34 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-  
35 3403b, 40-3421, 40-3613, 40-3805, 40-4205, 40-5301, 44-510j, 44-550b,  
36 44-594, 44-635, 44-714, 44-817, 44-1005, 44-1019, subsections (a)(1)  
37 through (43), (a)(45) and (a)(46) of 45-221, 46-256, 46-259, 46-2201, 47-  
38 839, 47-844, 47-849, 47-1709, 48-1614, 49-406, 49-427, 55-1,102, 58-  
39 4114, 59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-3336, 60-3351,  
40 65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-1,113,  
41 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-1,171,  
42 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-1135, 65-  
43 1467, 65-1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a, 65-

1 2898a, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4922, 65-  
2 4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-67a05,  
3 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203, 66-  
4 1220a, 66-2010, 72-972a, 72-996, 72-4311, 72-4452, 72-5214, 72-  
5 53,106, 72-5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-  
6 4909, 74-50,131, 74-5515, 74-7308, 74-7338, 74-8104, 74-8307, 74-  
7 8705, 74-8804, 74-9805, 74-99d05, 75-104, 75-712, 75-7b15, 75-1267,  
8 75-2943, 75-4332, 75-4362, 75-5133, 75-5266, 75-53,105, 75-5665, 75-  
9 5666, 75-7310, 76-355, 76-359, 76-493, 76-12b11, 76-3305, 79-1119, 79-  
10 1437f, 79-3234, 79-3395, 79-3420, 79-3499, 79-34,113, 79-3614, 79-  
11 3657, 79-4301 and 79-5206.

12 (j) Exceptions contained in the following statutes as certified by the  
13 revisor of statutes to the president of the senate and the speaker of the  
14 house of representatives pursuant to subsection (e) of this section on June  
15 1, 2005, are hereby continued in existence until July 1, 2011, at which  
16 time such exceptions shall expire: 1-501, 9-1303, 12-4516a, 38-1692, 39-  
17 970, 40-4913, 65-525, 65-5117, 65-6016, 65-6017 and 74-7508.

18 (k) Exceptions contained in the following statutes as certified by the  
19 revisor of statutes to the president of the senate and the speaker of the  
20 house of representatives pursuant to subsection (e) during 2006, 2007 and  
21 2008 are hereby continued in existence until July 1, 2014, at which time  
22 such exceptions shall expire: 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-  
23 17,150, 12-2001, 12-5332, 17-12a607, 38-1008, 38-2209, 40-5006, 40-  
24 5108, 41-2905, 41-2906, 44-706, 44-1518, subsections (a)(44), (45), (46)  
25 and (47) of 45-221, 56-1a610, 56a-1204, 65-1,243, 65-3239, 66-1233,  
26 74-50,184, 74-8134, 74-99b06 and 82a-2210.

27 Sec. 90. K.S.A. 65-1522 is hereby amended to read as follows: 65-  
28 1522. (a) A licensee may practice optometry under the name of a  
29 professional corporation, authorized by K.S.A. 17-2706, and amendments  
30 thereto, or a limited liability company authorized by ~~K.S.A. 2002 Supp.~~  
31 ~~17-7668~~ and *the revised limited liability company act, sections 1 through*  
32 *90*, amendments thereto. Such professional corporate name or limited  
33 liability company name may contain a trade name or assumed name  
34 approved by the board.

35 (b) A licensee may practice as a sole practitioner or may associate  
36 with other licensees or health care providers licensed under the laws of  
37 the state of Kansas and may practice optometry as a sole practitioner or in  
38 such associations under a trade or assumed name approved by the board.

39 (c) A licensee may practice in a medical facility, medical care  
40 facility or a governmental institution or agency.

41 (d) A licensee shall not be limited in the number of locations from  
42 which the licensee may engage in the practice of optometry pursuant to  
43 subsections (a), (b) and (c).

- 1 (e) In all office locations a licensee shall:
- 2 (1) Provide adequate staff during the hours of its operation and shall
- 3 provide the necessary optometric equipment to enable a licensee to
- 4 provide adequate optometric care on the premises; and
- 5 (2) provide that there shall be present at the office location a person
- 6 licensed by optometry law when optometric practice acts requiring a
- 7 license are performed at the office location.
- 8 (f) Nothing herein contained shall be construed to permit the
- 9 franchised practice of optometry except that a licensee may purchase a
- 10 franchise to engage in the business of optical dispensing separate and
- 11 apart from any of the licensee's offices for the practice of optometry so
- 12 long as the terms of the franchise agreement do not violate the optometry
- 13 law.

14 Sec. 91. K.S.A. 65-1524 is hereby amended to read as follows: 65-  
 15 1524. Nothing contained herein shall be construed to allow a corporation  
 16 except as provided in K.S.A. 17-2706, and amendments thereto, or a  
 17 limited liability company except as provided in ~~K.S.A. 2002 Supp. 17-~~  
 18 ~~7668~~ *the revised limited liability company act, sections 1 through 90*, and  
 19 amendments thereto, to practice, offer, or undertake to practice or hold  
 20 itself out as practicing optometry.

21 Sec. 92. K.S.A. 17-7662, 17-7663, 17-7664, 17-7665, 17-7666, 17-  
 22 7667, 17-7668, 17-7669, 17-7670, 17-7671, 17-7672, 17-7673, 17-7674,  
 23 17-7676, 17-7677, 17-7679, 17-7680, 17-7682, 17-7683, 17-7686, 17-  
 24 7687, 17-7688, 17-7689, 17-7690, 17-7691, 17-7692, 17-7693, 17-7694,  
 25 17-7695, 17-7696, 17-7697, 17-7698, 17-76,105, 17-76,106, 17-76,107,  
 26 17-76,108, 17-76,109, 17-76,110, 17-76,111, 17-76,112, 17-76,113, 17-  
 27 76,114, 17-76,115, 17-76,116, 17-76,117, 17-76,118, 17-76,119, 17-  
 28 76,120, 17-76,121, 17-76,122, 17-76,123, 17-76,124, 17-76,125, 17-  
 29 76,126, 17-76,127, 17-76,128, 17-76,129, 17-76,130, 17-76,131, 17-  
 30 76,132, 17-76,133, 17-76,134, 17-76,135, 17-76,136, 17-76,137, 17-  
 31 76,138, 17-76,139, 17-76,140, 17-76,141, 17-76,142, 17-76,101,17-  
 32 76,102,17-76,103,17-76,104, 17-7699,17-76,100, 65-1522 and 65-1524  
 33 and K.S.A. 2010 Supp. 17-7675, 17-7678, 17-7681 and 45-229 are  
 34 hereby repealed.

35 Sec. 93. This act shall take effect and be in force from and after its  
 36 publication in the statute book.