

New Law Advisory

Advisory No. 2012- 33 (Corrected)

Issued: October 15, 2012

To: Assignment Judges

Subject: P.L. 2012, c.50 – Enacts the “Revised Uniform Limited Liability Company Act” (Corrected)

Enacted: September 19, 2012

Effective: March 18, 2013 – Law
March 1, 2014 - Repealer

Area of Law: Civil

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On September 19, 2012, Governor Christie signed A-1543 into law as P.L. 2012, c.50. The new law takes effect on March 18, 2013, but contains a special applicability provision as described below. The repealer in section 95 of the law takes effect on March 1, 2014. A copy of the law is attached and is available on the Judiciary Infonet under Legal Reference/Legislation Affecting Courts. Below is an overview of the law.

The “Revised Uniform Limited Liability Company Act,” or RULLCA, repeals the “New Jersey Limited Liability Company Act,” and replaces it with a more modern regulatory scheme for the creation and operation of LLCs in New Jersey. RULLCA was developed by the National Conference of Commissioners on Uniform State Laws and is intended to be a comprehensive, fully integrated “second generation” LLC statute.

The law contains a unique applicability provision which is tied to the date on which the repealer takes effect. Section 91 of the law provides that, before March 1, 2014, the repealer effective date, the RULLCA governs only: (1) a limited liability company formed on or after the effective date of this act; and (2) a limited liability company formed before the effective date of this act, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this act. Section 91 further provides that on and after March 1, 2014, the RULLCA governs all limited liability companies.

Some of the more significant changes in RULLCA are described below.

Perpetual duration. RULLCA eliminates the default rule that LLCs have a limited life. As is the case with corporations, RULLCA provides for LLCs to have perpetual duration.

Permissible form of operating agreement. RULLCA permits operating agreements to be oral, written, or implied based on the way an LLC has operated.

Distributions. Unless otherwise agreed, distributions are made on a per capita basis.

Statements of authority. RULLCA allows an LLC to file statements of authority with the Department of the Treasury (and in the case of real estate, in the office where real estate records are maintained) authorizing certain people or entities to bind the LLC.

Dissociation of a member. Under RULLCA, a resigning owner is no longer entitled to receive the fair value of an LLC interest as of the date of resignation. Rather, upon resignation, the resigning owner is dissociated as a member and only has the rights of an economic interest holder.

Remedies for deadlock and oppression. RULLCA provides remedies for oppressed minority owners. RULLCA permits a member to seek, or a court to order, dissolution of the company on the grounds that the managers or those members in control of the company have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the member. RULLCA also permits a member to seek or a court to order, in lieu of dissolution, a less drastic remedy such as the appointment of a custodian.

Domestication and conversion. RULLCA provides enhanced ease and flexibility for domesticating, merging, and converting an entity other than a domestic limited liability company, if permitted by the law under which it was formed.

Kindly advise appropriate staff of this new law. Please contact Kevin Wolfe, Assistant Director, AOC Civil Practice Division at 609-292-8470 if you have any questions regarding Chapter 50.

attachment

c: Glenn A. Grant

Patrick DeAlmeida

Civil Division Judges

Directors

Assistant Directors

Clerks of the Court

Trial Court Administrators

Civil Division Managers

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

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

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

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

ARTICLE 1
GENERAL PROVISIONS

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

2. Definitions. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Registered office” means:

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

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

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

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

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

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

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

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

“Transferable interest” means the right, as originally associated with a person’s capacity as a member, to receive distributions from a limited liability company in accordance with the

operating agreement, whether or not the person remains a member or continues to own any part of the right.

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

3. Knowledge; Notice.

a. A person knows a fact when the person:

(1) has actual knowledge of it; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. A limited liability company has perpetual duration.

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

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

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

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

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

8. Name.

a. The name of a limited liability company shall contain the words “limited liability company” or the abbreviation “L.L.C.” or “LLC”. “Limited” may be abbreviated as “Ltd.”, and “company” may be abbreviated as “Co.”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The alternate name;

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

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

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

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

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

d. This section shall not:

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

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

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

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

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

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

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

10. Reservation of Name.

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

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

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

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

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

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

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

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

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

c. An operating agreement may not:

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

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

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

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

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

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

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

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

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

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

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

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

(1) restrict or eliminate the duty:

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

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

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

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

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

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

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

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

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

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

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

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

- (1) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and
- (2) may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:
 - (a) the objective of the term is unreasonable; or
 - (b) the term is an unreasonable means to achieve the provision's objective.

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

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

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

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

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

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

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

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

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

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

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

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

14. Office and Agent for Service of Process.

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

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

(2) an agent for service of process.

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

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

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

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

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

b. ¹A registered agent may, with prior notice to the limited liability company for which it is the registered agent, change the address of the registered office of any domestic or foreign limited liability company for which the registered agent is registered agent to another address in this State by filing in the filing office a statement of change, executed by the registered agent, setting forth the names of each limited liability company, and the address at which the registered agent has maintained the registered office for each limited liability company, and further certifying to the new address to which the registered office will be changed on a given day, and at which new address the registered agent will thereafter maintain the registered office for each limited liability company recited in the statement of change. Upon the filing of such statement of change, the filing office shall furnish to the registered agent a filed copy of the same together with a receipt for the fees, and thereafter, or until further change of address, as authorized by law, the registered office in this State of each limited liability company recited in the statement of change shall be located at the new address of the registered agent thereof as given in such statement of change.

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

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

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

16. Resignation of Agent for Service of Process.

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

b. The filing office shall file a statement of resignation delivered under subsection a. of this section and mail or otherwise provide or deliver a copy to the registered office of the company or the principal office of the company if the mailing address of the principal office

appears in the records of the filing office and is different from the mailing address of the registered office.

- c. An agency for service of process terminates on the earlier of:
 - (1) the 31st day after the filing office files the statement of resignation;
 - (2) when a record designating a new agent for service of process is delivered to the filing office for filing on behalf of the limited liability company and becomes effective.

17. Service of Process.

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

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

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

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

- (1) the date the limited liability company or foreign limited liability company receives the process, notice, or demand;
- (2) the date shown on the return receipt, if signed on behalf of the company; or
- (3) five days after the process, notice, or demand is deposited with the United States Postal Service, if correctly addressed and with sufficient postage.

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

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

ARTICLE 2

FORMATION; CERTIFICATE OF FORMATION AND OTHER FILINGS

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

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

b. A certificate of formation shall state:

- (1) the name of the limited liability company, which complies with section 8 of this act; and
- (2) the street and mailing addresses of the initial registered office and the name of the initial agent at that office for service of process of the company.

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

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

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

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

19. Amendment or Restatement of Certificate of Formation.

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

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

- (1) the name of the company;
- (2) the date of filing of its certificate of formation;
- (3) such other information as may be required by the filing office to correctly identify the company; and
- (4) the changes the amendment makes to the certificate as most recently amended or restated.

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

- (1) in the heading or an introductory paragraph, the company's present name, the date of the filing of the company's initial certificate of formation and such other information as may be required by the filing office to correctly identify the company;
- (2) if the company's name has been changed at any time since the company's formation, each of the company's former names; and
- (3) the changes the restated certificate of formation makes to the certificate of formation as most recently amended or restated.

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

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

- (1) cause the certificate to be amended; or
- (2) if appropriate, deliver to the filing office for filing a statement of change under section 15 or a certificate of correction under section 23 of this act.

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

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

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

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

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

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

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

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

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

21. Signing and Filing Pursuant to Judicial Order.

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

- (1) the person to sign the record;
- (2) the person to deliver the record to the filing office for filing; or
- (3) the filing office to file the record unsigned.

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

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

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

- (1) for a statement of denial under section 29 of this act, send an acknowledgement confirming the filing and a receipt for the fees to the person who submitted the record; and
- (2) for all other records, send an acknowledgement confirming the filing and a receipt for the fees to the person who submitted the record.

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

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

- (1) if the record does not specify a delayed effective date, on the date the record is filed as evidenced by the filing office's endorsement of the date on the record; and
- (2) if the record specifies a delayed effective date after the date the record is filed as evidenced by the filing office's endorsement of the date on the record, on the delayed effective date.

23. Correcting Filed Record.

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

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

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

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

(3) correct the defective signature or inaccurate information.

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

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

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

24. Liability for Inaccurate Information in Filed Record.

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

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

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

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

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

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

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

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

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

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

25. Certificate of Standing.

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

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

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

- (1) the company's name and any alternate name adopted under subsection a. of section 61 of this act for use in this State;
- (2) that the company is authorized to transact business in this State;
- (3) whether all fees and penalties due to the filing office under this act or other law have been paid;
- (4) whether the company's most recent annual report required by section 26 of this act has been filed in the filing office;
- (5) that the filing office has not revoked the company's certificate of authority and has not filed a certificate of cancellation; and
- (6) other facts of record in the office of the filing office which are specified by the person requesting the certificate.

c. Subject to any qualification stated in the certificate, a certificate of standing issued by the filing office is conclusive evidence that the limited liability company is in existence or the foreign limited liability company is authorized to transact business in this State.

26. Annual Report for Filing Office.

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

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

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

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

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

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

delinquent annual report fees, and a late filing fee. The reinstatement relates back to the date of transfer of the certificate of a domestic limited liability company to the inactive list or to the date of revocation of the certificate of a foreign limited liability company, as the case may be, and shall validate all actions taken in the interim. In the event that in the interim the name of the limited liability company has become unavailable, the filing office shall reinstate the certificate upon, in the case of a domestic limited liability company, the filing of an amendment to its certificate of formation to change the name to an available name, and in the case of a foreign limited liability company, the filing of an amended certificate of authority changing the name to an available name. The filing office shall provide the forms necessary to effect annual report reinstatements.

ARTICLE 3

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

27. No Agency Power or Member as Member.

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

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

28. Statement of Authority.

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

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

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

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

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

and

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

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

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

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

(1) the name of the company;

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

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

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

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

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

d. Subject to subsection c. of this section and subsection d. of section 3 of this act, and except as otherwise provided in subsections f., g. and h. of this section, a limitation on the

authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

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

- (1) the person has knowledge to the contrary;
- (2) the statement has been canceled or restrictively amended under subsection b. of this section; or
- (3) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

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

- (1) the statement has been canceled or restrictively amended under subsection b. of this section and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or
- (2) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective and a certified copy of the later-effective statement is recorded in the office for recording transfers of the real property.

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

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

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

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

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

- a. Provides the name of the limited liability company and such other information as may be required by the filing office to correctly identify the company and the caption of the statement of authority to which the statement of denial pertains; and
- b. Denies the grant of authority.

30. Liability of Members and Managers.

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

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

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

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

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

31. Becoming a Member.

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

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

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

- (1) as provided in the operating agreement;
- (2) as the result of a transaction effective under Article 10 (sections 73 through 87 of this act);
- (3) with the consent of all the members; or
- (4) if, within 90 consecutive days after the company ceases to have any members:
 - (a) the last person to have been a member, or the legal representative of that person, designates a person to become a member; and
 - (b) the designated person consents to become a member.

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

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

33. Liability for Contributions.

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

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

34. Sharing of and Right to Distributions before Dissolution.

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

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

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

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

35. Limitations on Distribution.

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

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

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

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

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

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

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

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

or

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

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

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

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

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

36. Liability for Improper Distributions.

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

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

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

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

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

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

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

37. Management of Limited Liability Company.

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

(1) expressly provides that:

(a) the company is or will be "manager-managed;"

(b) the company is or will be "managed by managers;" or

(c) management of the company is or will be "vested in managers;" or

- (2) includes words of similar import.
- b. In a member-managed limited liability company, the following rules apply:
 - (1) The management and conduct of the company are vested in the members.
 - (2) Each member has equal rights in the management and conduct of the company's activities.
 - (3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members.
 - (4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.
 - (5) The operating agreement may be amended only with the consent of all members.
- c. In a manager-managed limited liability company, the following rules apply:
 - (1) Except as otherwise expressly provided in this act, any matter relating to the activities of the company is decided exclusively by the managers.
 - (2) Each manager has equal rights in the management and conduct of the activities of the company.
 - (3) A difference arising among managers as to a matter in the ordinary course of the activities of the company may be decided by a majority of the managers.
 - (4) The consent of all members is required to:
 - (a) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company's property, with or without the good will, outside the ordinary course of the company's activities;
 - (b) approve a merger, conversion, or domestication under Article 10 (section 73 through 87 of this act);
 - (c) undertake any other act outside the ordinary course of the company's activities; and
 - (d) amend the operating agreement.
 - (5) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.
 - (6) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.
 - (7) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.
- d. An action requiring the consent of members under this act may be taken without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.
- e. The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.
- f. This act does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

38. Indemnification and Insurance.

- a. As used in this section:

(1) “Company agent” means any person who is or was a member of a member-managed company, a manager of a manager-managed company, an officer, employee or agent of the indemnifying company or of any constituent company absorbed by the indemnifying company in a consolidation or merger and any person who is or was a member, manager, officer, director, trustee, employee or agent of any other enterprise, serving as such at the request of the indemnifying company, or any such constituent company, or the legal representatives of any such member, manager, officer, director, trustee, employee or agent.

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

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

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

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

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

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

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

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

39. Standards of Conduct for Members and Managers.

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

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

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

- (a) in the conduct or winding up of the company's activities;
- (b) from a use by the member of the company's property; or
- (c) from the appropriation of a company opportunity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The company shall furnish to each member:

(a) without demand, any information concerning the company's activities, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this act, except

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose

reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

ARTICLE 5

TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

41. Nature of Transferable Interest.

A transferable interest shall be personal property.

42. Transfer of Transferable Interest.

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

- (1) is permissible;
- (2) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities; and
- (3) subject to section 44 of this act, does not entitle the transferee to:
 - (a) participate in the management or conduct of the company's activities; or
 - (b) except as otherwise provided in subsection c. of this section, have access to records or other information concerning the company's activities.

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

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

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

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

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

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

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

43. Charging Order.

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

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

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

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

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

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

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

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

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

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

ARTICLE 6

MEMBER'S POWER TO DISSOCIATE; WRONGFUL DISSOCIATION

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

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

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

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

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

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

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

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

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

c. A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to section 67 of this act, to the other members for damages caused by

the dissociation. The liability is in addition to any other debt, obligation, or other liability of the member to the company or the other members.

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

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

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

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

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

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

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

(a) a transfer for security purposes; or

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

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

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

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

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

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

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

f. In the case of a person who is an individual:

(1) the person dies; or

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

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

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

g. In a member-managed limited liability company, the person:

(1) becomes a debtor in bankruptcy;

(2) executes an assignment for the benefit of creditors; or

(3) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;

h. In the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the company is distributed;

i. In the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is distributed;

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

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

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

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

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

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

n. The company terminates.

47. Effect of Person's Dissociation as Member.

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

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

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

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

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

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

ARTICLE 7
DISSOLUTION AND WINDING UP

48. Events Causing Dissolution.

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

- (1) an event or circumstance that the operating agreement states causes dissolution;
- (2) the consent of all the members;
- (3) the passage of 90 consecutive days during which the company has no members;
- (4) on application by a member, the entry by the Superior Court of an order dissolving the company on the grounds that:
 - (a) the conduct of all or substantially all of the company's activities is unlawful; or
 - (b) it is not reasonably practicable to carry on the company's activities in conformity with one or both of the certificate of formation and the operating agreement; or
- (5) on application by a member, the entry by the Superior Court of an order dissolving the company on the grounds that the managers or those members in control of the company:
 - (a) have acted, are acting, or will act in a manner that is illegal or fraudulent; or
 - (b) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.
- (6) A certificate of dissolution is filed before the delayed effective date of a certificate of formation pursuant to subsection e. of section 18 of this act.

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

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

49. Winding Up.

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

- b. In winding up its activities, a limited liability company:
- (1) shall discharge the company's debts, obligations, or other liabilities, settle and close the company's activities, and marshal and distribute the assets of the company; and
 - (2) shall:
 - (a) deliver to the filing office for filing a certificate of dissolution stating the name of the company and such other information as may be required by the filing office to correctly identify the company and that the company is dissolved;

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

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

(d) transfer the company's property;

(e) settle disputes by mediation or arbitration;

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

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

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

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

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

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

(a) state that the company has no members;

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

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

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

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

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

(a) the company does not have any members;

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

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

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

50. Known Claims Against Dissolved Limited Liability Company.

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

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

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

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

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

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

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

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

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

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

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

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

51. Other Claims Against Dissolved Limited Liability Company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. This section shall not:

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

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

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

53. Administrative Action.

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

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

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

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

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

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

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

54. Reinstatement Following Administrative Dissolution.

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

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

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

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

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

55. Appeal from Rejection of Reinstatement.

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

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

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

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

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

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

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

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

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

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

ARTICLE 8

FOREIGN LIMITED LIABILITY COMPANIES

57. Governing Law.

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

(1) the internal affairs of the company; and

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

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

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

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

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

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

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

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

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

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

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

59. Activities Not Constituting Transacting Business.

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

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

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

(3) maintaining accounts in financial institutions;

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

(5) selling through independent contractors;

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

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

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

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

(10) transacting business in interstate commerce.

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

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

60. Filing of Certificate of Authority. Unless the filing office determines that an application for a certificate of authority does not comply with the filing requirements of this act, the filing office, upon payment of all filing fees, shall file the application of a foreign

limited liability company, prepare and file a certificate of authority to transact business in this State, and provide a copy of the filed certificate, together with a receipt for the fees, to the company or its representative.

61. Noncomplying Name of Foreign Limited Liability Company.

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

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

62. Revocation of Certificate of Authority.

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

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

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

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

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

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

63. Reinstatement of Certificate of Authority.

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

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

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

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

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

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

65. Effect of Failure to Have Certificate of Authority.

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

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

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

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

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

ARTICLE 9 ACTIONS BY MEMBERS

67. Direct Action by Member.

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

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

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

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

69. Proper Plaintiff.

- a. Except as otherwise provided in subsection b. of this section, a derivative action under section 68 of this act may be maintained only by a person that is a member at the time the action is commenced and remains a member while the action continues.
- b. If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member of the limited liability company to be substituted as plaintiff.

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

- a. The date and content of plaintiff's demand and the response to the demand by the managers or other members; or
- b. If a demand has not been made, the reasons a demand under subsection a. of section 68 of this act would be futile.

71. Special Litigation Committee.

- a. If a limited liability company is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the company. If the company appoints a special litigation committee, on motion by the committee made in the name of the company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection shall not prevent the court from enforcing a person's right to information under section 40 of this act or, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.
- b. A special litigation committee may be composed of one or more disinterested and independent individuals, who may be members.
- c. A special litigation committee may be appointed:
 - (1) in a member-managed limited liability company:
 - (a) by the consent of a majority of the members not named as defendants or plaintiffs in the proceeding; and
 - (b) if all members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants; or
 - (2) in a manager-managed limited liability company:
 - (a) by a majority of the managers not named as defendants or plaintiffs in the proceeding; and
 - (b) if all managers are named as defendants or plaintiffs in the proceeding, by a majority of the managers named as defendants.
- d. After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:
 - (1) continue under the control of the plaintiff;
 - (2) continue under the control of the committee;

- (3) be settled on terms approved by the committee; or
- (4) be dismissed.

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

72. Proceeds and Expenses.

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

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

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

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

ARTICLE 10

MERGER, CONVERSION AND DOMESTICATION

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

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

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

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

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

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

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

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

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

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

“Organizational documents” means:

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

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

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

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

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

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

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

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

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

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

74. Merger.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

76. Filings Required for Merger; Effective Date.

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

- (1) each constituent limited liability company, as provided in subsection a. of section 20 of this act; and
- (2) each other constituent organization, as provided in its governing statute.

b. Articles of merger under this section shall include:

- (1) the name and form of each constituent organization and the jurisdiction of its governing statute;
- (2) the name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;
- (3) the date the merger is effective under the governing statute of the surviving organization;
- (4) if the surviving organization is to be created by the merger:
 - (a) if it will be a limited liability company, the company's certificate of formation; or
 - (b) if it will be an organization other than a limited liability company, the organizational document that creates the organization that is in a public record;
- (5) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record;
- (6) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;
- (7) if the surviving organization is a foreign organization not authorized to transact business in this State, the street and mailing addresses of an office that the filing office may use for the purposes of subsection b. of section 77 of this act; and
- (8) any additional information required by the governing statute of any constituent organization.

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

d. A merger becomes effective under this act:

- (1) if the surviving organization is a limited liability company, upon the later of:
 - (a) compliance with subsection c. of this section; or
 - (b) subject to subsection c. of section 22 of this act, as specified in the articles of merger; or
- (2) if the surviving organization is not a limited liability company, as provided by the governing statute of the surviving organization.

77. Effect of Merger.

a. When a merger becomes effective:

- (1) the surviving organization continues or comes into existence;
 - (2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;
 - (3) all property owned by each constituent organization that ceases to exist vests in the surviving organization;
 - (4) all debts, obligations, or other liabilities of each constituent organization that has ceased to exist continue as debts, obligations, or other liabilities of the surviving organization;
 - (5) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;
 - (6) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;
 - (7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect; and
 - (8) except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of Article 7, Dissolution and Winding Up (sections 48 through 56 of this act);
 - (9) if the surviving organization is created by the merger:
 - (a) if it is a limited liability company, the certificate of formation becomes effective; or
 - (b) if it is an organization other than a limited liability company, the organizational document that creates the organization becomes effective; and
 - (10) if the surviving organization preexisted the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.
- b. A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this State on the debt, obligation, or other liability. A surviving organization that is a foreign organization and not authorized to transact business in this State appoints the filing office as its agent for service of process for the purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the filing office under this subsection shall be made in the same manner and shall have the same consequences as in subsections c. and d. of section 17 of this act

78. Conversion.

- a. An organization, other than a limited liability company or a foreign limited liability company, may convert to a limited liability company, and a limited liability company may convert to an organization other than a foreign limited liability company pursuant to this section, sections 79 through 81 of this act, and a plan of conversion, if:
- (1) the other organization's governing statute authorizes the conversion;
 - (2) the conversion is not prohibited by the law of the jurisdiction that enacted the other organization's governing statute; and
 - (3) the other organization complies with its governing statute in effecting the conversion.
- b. A plan of conversion shall be in a record and shall include:
- (1) the name and form of the organization before conversion;
 - (2) the name and form of the organization after conversion;

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

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

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

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

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

(1) as provided in the plan; or

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

80. Filings Required for Conversion; Effective Date.

a. After a plan of conversion is approved:

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

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

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

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

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

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

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

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

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

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

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

b. A conversion becomes effective:

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

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

81. Effect of Conversion.

- a. An organization that has been converted pursuant to this Article 10 (sections 73 through 87 of this act) is for all purposes the same entity that existed before the conversion.
- b. When a conversion takes effect:
 - (1) all property owned by the converting organization remains vested in the converted organization;
 - (2) all debts, obligations, or other liabilities of the converting organization continue as debts, obligations, or other liabilities of the converted organization;
 - (3) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;
 - (4) except as prohibited by law other than this act, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;
 - (5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and
 - (6) except as otherwise agreed, the conversion does not dissolve a converting limited liability company for the purposes of Article 7, Dissolution and Winding Up (sections 48 through 56 of this act).
- c. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any debt, obligation, or other liability for which the converting limited liability company is liable if, before the conversion, the converting limited liability company was subject to suit in this State on the debt, obligation, or other liability. A converted organization that is a foreign organization and not authorized to transact business in this State appoints the filing office as its agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the filing office under this subsection shall be made in the same manner and has the same consequences as in subsections c. and d. of section 17 of this act.

82. Domestication.

- a. A foreign limited liability company may become a limited liability company pursuant to this section, sections 83 through 85 of this act, and a plan of domestication, if:
 - (1) the foreign limited liability company's governing statute authorizes the domestication;
 - (2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and
 - (3) the foreign limited liability company complies with its governing statute in effecting the domestication.
- b. A limited liability company may become a foreign limited liability company pursuant to this section, sections 83 through 85 of this act, and a plan of domestication, if:
 - (1) the foreign governing statute authorizes the domestication;
 - (2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and
 - (3) the limited liability company complies with the foreign governing statute in effecting the domestication.
- c. A plan of domestication shall be in a record and shall include:
 - (1) the name of the domesticating company before domestication and such other information as may be required by the filing office to correctly identify the company and the jurisdiction of its governing statute;

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

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

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

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

a. A plan of domestication shall be consented to:

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

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

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

(1) as provided in the plan; or

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

84. Filings Required for Domestication; Effective Date.

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

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

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

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

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

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

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

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

b. A domestication becomes effective:

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

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

85. Effect of Domestication.

a. When a domestication takes effect:

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

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

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

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

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

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

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

b. A domesticated company that is a foreign limited liability company consents to the jurisdiction of the courts of this State to enforce any debt, obligation, or other liability owed by the domesticating company, if, before the domestication, the domesticating company was subject to suit in this State on the debt, obligation, or other liability. A domesticated company that is a foreign limited liability company and not authorized to transact business in this State appoints the filing office as its agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the filing office under this subsection shall be made in the same manner and has the same consequences as in subsections c. and d. of section 17 of this act.

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

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

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

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

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

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

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

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

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

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

87. Article Not Exclusive.

¹a.¹ This Article 10 (¹[Section] sections¹ 73 through 87 of this act) does not preclude an entity from being merged, converted, or domesticated under law other than this act.

¹b. Without limiting the foregoing, it is intended that a limited liability company, whenever formed, that acquires the assets, liabilities and business of a predecessor organization with common ownership, shall be presumed to have the rights, privileges and perquisites of the predecessor organization. Furthermore, in computing time periods and continuity of ownership for determining eligibility for government grants, property rights, or other entitlements, there shall be a tacking of time periods with respect to the limited liability company and the predecessor organization.

c. Nothing in this section 87 is intended to require the assignment of a contract in violation of its express terms.¹

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

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

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

91. Application to Existing Relationships.

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

(1) a limited liability company formed on or after the effective date of this act; and
(2) a limited liability company formed before the effective date of this act, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this act.

b. On and after the first day of the 18th month next following the enactment date of this act, this act governs all limited liability companies.

92. Tax Classification.

a. For all purposes of taxation ¹[on income]¹ under the laws of this State ¹[and only for those purposes]¹, a limited liability company formed under this act or qualified to do business in this State as a foreign limited liability company with two or more members shall be classified as a partnership unless classified otherwise for federal income tax purposes, in which case the limited liability company shall be classified in the same manner as it is classified for federal income tax purposes. For all purposes of taxation under the laws of this State, a member or a transferee of a member of a limited liability company formed under this act or qualified to do business in this State as a foreign limited liability company shall be treated as a partner in a partnership unless the limited liability company is classified otherwise for federal income tax purposes, in which case the member or transferee of a

member shall have the same status as the member or transferee of a member has for federal income tax purposes.

b. For all purposes of taxation on income under the laws of this State and only for those purposes, a limited liability company formed under this act or qualified to do business in this State as a foreign limited liability company with one member is disregarded as an entity separate from its owner, unless classified otherwise for federal tax purposes, in which case the limited liability company will be classified in the same manner as it is classified for federal income tax purposes. For all purposes of taxation on income under the laws of this State and only for those purposes, the sole member or a transferee of all of the limited liability company interest of the sole member of a limited liability company formed under this act or qualified to do business in this State as a foreign limited liability company is treated as the direct owner of the underlying assets of the limited liability company and of its operations, unless the limited liability company is classified otherwise for federal income tax purposes, in which case the member or transferee of a member will have the same status as the member or transferee of a member has for federal income tax purposes.

93. Fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Required or permitted by this act, or,

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

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

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

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

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

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

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