

THIRTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

SECOND REGULAR SESSION, 2002

S. B. NO. _____

A BILL FOR AN ACT

To amend Division 4, Title 4 of the Commonwealth Code to add a new Part adopting the Uniform Limited Liability Company Act (1996), as drafted by the National Conference of Commissioners on Uniform State Laws and by it approved and recommended for enactment in all states at its annual conference meeting in San Antonio, Texas July 12-July 19, 1996; and for other purposes.

BE IT ENACTED BY THE THIRTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

1 **Section 1. Findings and Purpose.** Borrowing from abroad, Wyoming initiated a
2 national movement in 1977 by enacting this country's first limited liability company act.
3 The movement started slowly as the Internal Revenue Service took more than ten years to
4 announce finally that a Wyoming limited liability company would be taxed like a
5 partnership. Since that time, every State has adopted or is considering its own distinct
6 limited liability company act, many of which have already been amended one or more
7 times.

8 The allure of the limited liability company is its unique ability to bring together in
9 a single business organization the best features of all other business forms - properly
10 structured, its owners obtain both a corporate-styled liability shield and the pass-through
11 tax benefits of a partnership. General and limited partnerships do not offer their partners a
12 corporate-styled liability shield. Corporations, including those having made a Subchapter
13 Selection, do not offer their shareholders all the pass-through tax benefits of a
14 partnership. All state limited liability company acts contain provisions for a liability
15 shield and partnership tax status.

16 Despite these two common themes, state limited liability company acts display a
17 dazzling array of diversity. Multistate activities of businesses are widespread.

1 Recognition of out-of-state limited liability companies varies. Unfortunately, this lack of
2 uniformity manifests itself in basic but fundamentally important questions, such as: may
3 a company be formed and operated by only one owner; may it be formed for purposes
4 other than to make a profit; whether owners have the power and right to withdraw from a
5 company and receive a distribution of the fair value of their interests; who has the
6 apparent authority to bind the company and the limits of that authority; what are the
7 fiduciary duties of owners and managers to a company and each other; how are the rights
8 to manage a company allocated among its owners and managers; do the owners have the
9 right to sue a company and its other owners in their own right as well as derivatively on
10 behalf of the company; may general and limited partnerships be converted to limited
11 liability companies and may limited liability companies merge with other limited liability
12 companies and other business organizations; what is the law governing foreign limited
13 liability companies; and are any or all of these and other rules simply default rules that
14 may be modified by agreement or are they nonwaivable.

15 Practitioners and entrepreneurs struggle to understand the law governing limited
16 liability companies organized in their own State and to understand the burgeoning law of
17 other States. Simple questions concerning where to organize are increasingly complex.
18 Since most state limited liability company acts are in their infancy, little if any
19 interpretative case law exists. Even when case law develops, it will have limited
20 precedential value because of the diversity of the state acts.

21 Accordingly, uniform legislation in this area of the law appeared to have become
22 urgent.

23 After a Study Committee appointed by the National Conference of
24 Commissioners in late 1991 recommended that a comprehensive project be undertaken,
25 the Conference appointed a Drafting Committee which worked on a Uniform Limited
26 Liability Company Act (ULLCA) from early 1992 until its adoption by the Conference at
27 its Annual Meeting in August 1994. A blue ribbon panel of national experts and other
28 interested and affected parties and organizations assisted the Drafting Committee. Many,

1 if not all, of those assisting the Committee brought substantial experience from drafting
2 limited liability company legislation in their own States. Many are also authors of leading
3 treatises and articles in the field. Those represented in the drafting process included an
4 American Bar Association (ABA) liaison, four advisors representing the three separate
5 ABA Sections of Business Law, Taxation, and Real Property, Trust and Probate, the
6 United States Treasury Department, the Internal Revenue Service, and many observers
7 representing several other organizations, including the California Bar Association, the
8 New York City Bar Association, the American College of Real Estate Lawyers, the
9 National Association of Certified Public Accountants, the National Association of
10 Secretaries of State, the Chicago and Lawyers Title Companies, the American Land Title
11 Association, and several university law and business school faculty members.

12 The Committee met nine times and engaged in numerous national telephonic
13 conferences to discuss policies, review over fifteen drafts, evaluate legal developments
14 and consider comments by our many knowledgeable advisers and observers, as well as an
15 ABA subcommittee's earlier work on a prototype. In examining virtually every aspect of
16 each state limited liability company act, the Committee maintained a single policy
17 vision - to draft a flexible act with a comprehensive set of default rules designed to
18 substitute as the essence of the bargain for small entrepreneurs and others.

19 This Act is flexible in the sense that the owners may modify the vast majority of
20 its provisions in a private agreement. To simplify, those nonwaivable provisions are set
21 forth in a single subsection. Helped thereby, sophisticated parties will negotiate their own
22 deal with the benefit of counsel.

23 The Committee also recognized that small entrepreneurs without the benefit of
24 counsel should also have access to the Act. To that end, the great bulk of the Act sets
25 forth default rules designed to operate a limited liability company without sophisticated
26 agreements and to recognize that members may also modify the default rules by oral
27 agreements defined in part by their own conduct. Uniquely, the Act combines two simple

1 default structures that depend upon the presence of designations in the articles of
2 organization. All default rules under the Act flow from these two designations.

3 First, unless the articles reflect that a limited liability company is a term company
4 and the duration of that term, the company will be an at-will company. Generally, an at-
5 will company dissolves more easily than a term company. Its owners may demand a
6 payment of the fair value of their interests at any time. Owners of a term company must
7 generally wait until the expiration of the term to obtain the value of their interests.
8 Secondly, unless the articles reflect that managers will manage a company, its members
9 will manage the company. This designation controls whether the members or managers
10 have apparent agency authority, management authority, the nature of fiduciary duties in
11 the company, and important dissolution characteristics.

12 In January of 1995 the Executive Committee of the Conference adopted an
13 amendment to harmonize the Act with new and important Internal Revenue Service
14 announcements, and the National Conference at its Annual Meeting ratified the
15 amendment in August of 1995. The amendment modifies the Act's dissolution provision.

16 The adoption of ULLCA will provide much needed consistency among the States,
17 with flexible default rules, and multistate recognition of limited liability on the part of
18 company owners. It will also promote the development of precedential case law.

19 **Section 2. Amendments.** Division 4 of Title 4 of the Commonwealth Code is
20 hereby amended to add a new Part adopting the Uniform Limited Liability Company Act
21 (1996), as drafted by the National Conference of Commissioners on Uniform State Laws
22 and by it approved and recommended for enactment in all states at its annual conference
23 meeting in San Antonio, Texas July 12-July 19, 1996 as follows:

“ARTICLE 1 GENERAL PROVISIONS

- 1 Section 101. Definitions.
- 2 Section 102. Knowledge and Notice.
- 3 Section 103. Effect of Operating Agreement; Nonwaivable Provisions.
- 4 Section 104. Supplemental Principles of Law.
- 5 Section 105. Name.
- 6 Section 106. Reserved Name.
- 7 Section 107. Registered Name.
- 8 Section 108. Designated Office and Agent for Service of Process.
- 9 Section 109. Change of Designated Office or Agent for Service of Process.
- 10 Section 110. Resignation of Agent for Service of Process.
- 11 Section 111. Service of Process.
- 12 Section 112. Nature of Business and Powers.

13 **Section 101. Definitions.** In this Act:

14 (1) "Articles of organization" means initial, amended, and restated articles
15 of organization and articles of merger. In the case of a foreign limited liability
16 company, the term includes all records serving a similar function required to be
17 filed in the office of the Registrar of Corporations or other official having custody
18 of company records in the State or country under whose law it is organized.

19 (2) "At-will company" means a limited liability company other than a term
20 company.

21 (3) "Business" includes every trade, occupation, profession, and other
22 lawful purpose, whether or not carried on for profit.

23 (4) "Debtor in bankruptcy" means a person who is the subject of an order
24 for relief under Title 11 of the United States Code or a comparable order under a
25 successor statute of general application or a comparable order under federal, state,
26 or foreign law governing insolvency.

1 (5) "Distribution" means a transfer of money, property, or other benefit
2 from a limited liability company to a member in the member's capacity as a
3 member or to a transferee of the member's distributional interest.

4 (6) "Distributional interest" means all of a member's interest in
5 distributions by the limited liability company.

6 (7) "Entity" means a person other than an individual.

7 (8) "Foreign limited liability company" means an unincorporated entity
8 organized under laws other than the laws of this State which afford limited
9 liability to its owners comparable to the liability under Section 303 and is not
10 required to obtain a certificate of authority to transact business under any law of
11 this State other than this Act.

12 (9) "Limited liability company" means a limited liability company
13 organized under this Act.

14 (10) "Manager" means a person, whether or not a member of a manager-
15 managed company, who is vested with authority under Section 301.

16 (11) "Manager-managed company" means a limited liability company that
17 is so designated in its articles of organization.

18 (12) "Member-managed company" means a limited liability company
19 other than a manager-managed company.

20 (13) "Operating agreement" means the agreement under Section 103
21 concerning the relations among the members, managers, and limited liability
22 company. The term includes amendments to the agreement.

23 (14) "Person" means an individual, corporation, business trust, estate,
24 trust, partnership, limited liability company, association, joint venture,
25 government, governmental subdivision, agency, or instrumentality, or any other
26 legal or commercial entity.

1 (15) "Principal office" means the office, whether or not in this State,
2 where the principal executive office of a domestic or foreign limited liability
3 company is located.

4 (16) "Record" means information that is inscribed on a tangible medium
5 or that is stored in an electronic or other medium and is retrievable in perceivable
6 form.

7 (17) "Sign" means to identify a record by means of a signature, mark, or
8 other symbol, with intent to authenticate it.

9 (18) "State" means a State of the United States, the District of Columbia,
10 the Commonwealth of Puerto Rico, or any territory or insular possession subject
11 to the jurisdiction of the United States.

12 (19) "Term company" means a limited liability company in which its
13 members have agreed to remain members until the expiration of a term specified
14 in the articles of organization.

15 (20) "Transfer" includes an assignment, conveyance, deed, bill of sale,
16 lease, mortgage, security interest, encumbrance, and gift.

17 ***Section 102. Knowledge and Notice.***

18 (a) A person knows a fact if the person has actual knowledge of it.

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

- 20 (1) knows the fact;
- 21 (2) has received a notification of the fact; or
- 22 (3) has reason to know the fact exists from all of the facts known to
23 the person at the time in question.

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

27 (d) A person receives a notification when the notification:

- 28 (1) comes to the person's attention; or

1 (2) is duly delivered at the person's place of business or at any
2 other place held out by the person as a place for receiving
3 communications.

4 (e) An entity knows, has notice, or receives a notification of a fact for
5 purposes of a particular transaction when the individual conducting the
6 transaction for the entity knows, has notice, or receives a notification of the fact,
7 or in any event when the fact would have been brought to the individual's
8 attention had the entity exercised reasonable diligence. An entity exercises
9 reasonable diligence if it maintains reasonable routines for communicating
10 significant information to the individual conducting the transaction for the entity
11 and there is reasonable compliance with the routines. Reasonable diligence does
12 not require an individual acting for the entity to communicate information unless
13 the communication is part of the individual's regular duties or the individual has
14 reason to know of the transaction and that the transaction would be materially
15 affected by the information.

16 ***Section 103. Effect of Operating Agreement; Nonwaivable Provisions.***

17 (a) Except as otherwise provided in subsection (b), all members of a
18 limited liability company may enter into an operating agreement, which need not
19 be in writing, to regulate the affairs of the company and the conduct of its
20 business, and to govern relations among the members, managers, and company.
21 To the extent the operating agreement does not otherwise provide, this Act
22 governs relations among the members, managers, and company.

23 (b) The operating agreement may not:

24 (1) unreasonably restrict a right to information or access to records
25 under Section 408;

26 (2) eliminate the duty of loyalty under Section 409(b) or 603(b)(3),
27 but the agreement may:

1 (i) identify specific types or categories of activities that do
2 not violate the duty of loyalty, if not manifestly unreasonable; and

3 (ii) specify the number or percentage of members or
4 disinterested managers that may authorize or ratify, after full
5 disclosure of all material facts, a specific act or transaction that
6 otherwise would violate the duty of loyalty;

7 (3) unreasonably reduce the duty of care under Section 409(c) or
8 603(b)(3);

9 (4) eliminate the obligation of good faith and fair dealing under
10 Section 409(d), but the operating agreement may determine the standards
11 by which the performance of the obligation is to be measured, if the
12 standards are not manifestly unreasonable;

13 (5) vary the right to expel a member in an event specified in
14 Section 601(6);

15 (6) vary the requirement to wind up the limited liability company's
16 business in a case specified in Section 801(a)(3) or(a)(4); or

17 (7) restrict rights of a person, other than a manager, member, and
18 transferee of a member's distributional interest, under this Act.

19 ***Section 104. Supplemental Principals of Law.***

20 (a) Unless displaced by particular provisions of this Act, the principles of
21 law and equity supplement this Act.

22 (b) If an obligation to pay interest arises under this Act and the rate is not
23 specified, the then existing rate is that specified for the payment of money
24 judgments, currently codified at 7 CMC § 4101.

25 ***Section 105. Name.***

26 (a) The name of a limited liability company must contain "limited liability
27 company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", or

1 "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be
2 abbreviated as "Co."

3 (b) Except as authorized by subsections (c) and (d), the name of a limited
4 liability company must be distinguishable upon the records of the Registrar of
5 Corporations from:

- 6 (1) the name of any corporation, limited partnership, or company
7 incorporated, organized or authorized to transact business, in this State;
- 8 (2) a name reserved or registered under Section 106 or 107;
- 9 (3) a fictitious name approved under Section 1005 for a foreign
10 company authorized to transact business in this State because its real name
11 is unavailable.

12 (c) A limited liability company may apply to the Registrar of Corporations
13 for authorization to use a name that is not distinguishable upon the records of the
14 Registrar of Corporations from one or more of the names described in subsection
15 (b). The Registrar of Corporations shall authorize use of the name applied for if:

- 16 (1) the present user, registrant, or owner of a reserved name
17 consents to the use in a record and submits an undertaking in form
18 satisfactory to the Registrar of Corporations to change the name to a name
19 that is distinguishable upon the records of the Registrar of Corporations
20 from the name applied for; or
- 21 (2) the applicant delivers to the Registrar of Corporations a
22 certified copy of the final judgment of a court of competent jurisdiction
23 establishing the applicant's right to use the name applied for in this State.

24 (d) A limited liability company may use the name, including a fictitious
25 name, of another domestic or foreign company that is used in this State if the
26 other company is organized or authorized to transact business in this State and the
27 company proposing to use the name has:

- 28 (1) merged with the other company;

- 1 (2) been formed by reorganization with the other company; or
- 2 (3) acquired substantially all of the assets, including the name, of
- 3 the other company.

4 **Section 106. Reserved Name.**

5 (a) A person may reserve the exclusive use of the name of a limited
6 liability company, including a fictitious name for a foreign company whose name
7 is not available, by delivering an application to the Registrar of Corporations for
8 filing. The application must set forth the name and address of the applicant and
9 the name proposed to be reserved. If the Registrar of Corporations finds that the
10 name applied for is available, it must be reserved for the applicant's exclusive use
11 for a nonrenewable 120-day period.

12 (b) The owner of a name reserved for a limited liability company may
13 transfer the reservation to another person by delivering to the Registrar of
14 Corporations a signed notice of the transfer which states the name and address of
15 the transferee.

16 **Section 107. Registered Name.**

17 (a) A foreign limited liability company may register its name subject to the
18 requirements of Section 1005, if the name is distinguishable upon the records of
19 the Registrar of Corporations from names that are not available under Section
20 105(b).

21 (b) A foreign limited liability company registers its name, or its name with
22 any addition required by Section 1005, by delivering to the Registrar of
23 Corporations for filing an application:

24 (1) setting forth its name, or its name with any addition required by
25 Section 1005, the State or country and date of its organization, and a brief
26 description of the nature of the business in which it is engaged; and

27 (2) accompanied by a certificate of existence, or a record of similar
28 import, from the State or country of organization.

1 (c) A foreign limited liability company whose registration is effective may
2 renew it for successive years by delivering for filing in the office of the Registrar
3 of Corporations a renewal application complying with subsection (b) between
4 October 1 and December 31 of the preceding year. The renewal application
5 renews the registration for the following calendar year.

6 (d) A foreign limited liability company whose registration is effective may
7 qualify as a foreign company under its name or consent in writing to the use of its
8 name by a limited liability company later organized under this Act or by another
9 foreign company later authorized to transact business in this State. The registered
10 name terminates when the limited liability company is organized or the foreign
11 company qualifies or consents to the qualification of another foreign company
12 under the registered name.

13 ***Section 108. Designated Office and Agent for Service of Process.***

14 (a) A limited liability company and a foreign limited liability company
15 authorized to do business in this State shall designate and continuously maintain
16 in this State:

- 17 (1) an office, which need not be a place of its business in this State;
- 18 and
- 19 (2) an agent and street address of the agent for service of process
- 20 on the company.

21 (b) An agent must be an individual resident of this State, a domestic
22 corporation, another limited liability company, or a foreign corporation or foreign
23 company authorized to do business in this State.

24 ***Section 109. Change of Designated Office or Agent for Service of Process.*** A

25 limited liability company may change its designated office or agent for service of process
26 by delivering to the Registrar of Corporations for filing a statement of change that sets
27 forth:

- 28 (1) the name of the company;

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

8 ***Section 110. Resignation of Agent for Service of Process.***

9 (a) An agent for service of process of a limited liability company may
10 resign by delivering to the Registrar of Corporations for filing a record of the
11 statement of resignation.

12 (b) After filing a statement of resignation, the Registrar of Corporations
13 shall mail a copy to the designated office and another copy to the limited liability
14 company at its principal office.

15 (c) An agency is terminated on the 31st day after the statement is filed in
16 the office of the Registrar of Corporations.

17 ***Section 111. Service of Process.***

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

22 (b) If a limited liability company or foreign limited liability company fails
23 to appoint or maintain an agent for service of process in this State or the agent for
24 service of process cannot with reasonable diligence be found at the agent's
25 address, the Registrar of Corporations is an agent of the company upon whom
26 process, notice, or demand may be served.

27 (c) Service of any process, notice, or demand on the Registrar of
28 Corporations may be made by delivering to and leaving with the Registrar of

1 Corporations, the Registrar of Corporation’s official designee, or clerk having
2 charge of the limited liability company department of the Registrar of
3 Corporations’ office duplicate copies of the process, notice, or demand. If the
4 process, notice, or demand is served on the Registrar of Corporations, the
5 Registrar of Corporations shall forward one of the copies by registered or certified
6 mail, return receipt requested, to the company at its designated office. Service is
7 effected under this subsection at the earliest of:

- 8 (1) the date the company receives the process, notice, or demand;
- 9 (2) the date shown on the return receipt, if signed on behalf of the
10 company; or
- 11 (3) five days after its deposit in the mail, if mailed postpaid and
12 correctly addressed.

13 (d) The Registrar of Corporations shall keep a record of all processes,
14 notices, and demands served pursuant to this section and record the time of and
15 the action taken regarding the service.

16 (e) This section does not affect the right to serve process, notice, or
17 demand in any manner otherwise provided by law.

18 ***Section 112. Nature of Business and Powers.***

19 (a) A limited liability company may be organized under this Act for any
20 lawful purpose, subject to any law of this State governing or regulating business.

21 (b) Unless its articles of organization provide otherwise, a limited liability
22 company has the same powers as an individual to do all things necessary or
23 convenient to carry on its business or affairs, including power to:

- 24 (1) sue and be sued, and defend in its name;
- 25 (2) purchase, receive, lease, or otherwise acquire, and own, hold,
26 improve, use, and otherwise deal with real or personal property, or any
27 legal or equitable interest in property, wherever located;

1 (3) sell, convey, mortgage, grant a security interest in, lease,
2 exchange, and otherwise encumber or dispose of all or any part of its
3 property;

4 (4) purchase, receive, subscribe for, or otherwise acquire, own,
5 hold, vote, use, sell, mortgage, lend, grant a security interest in, or
6 otherwise dispose of and deal in and with, shares or other interests in or
7 obligations of any other entity;

8 (5) make contracts and guarantees, incur liabilities, borrow money,
9 issue its notes, bonds, and other obligations, which may be convertible
10 into or include the option to purchase other securities of the limited
11 liability company, and secure any of its obligations by a mortgage on or a
12 security interest in any of its property, franchises, or income;

13 (6) lend money, invest and reinvest its funds, and receive and hold
14 real and personal property as security for repayment;

15 (7) be a promoter, partner, member, associate, or manager of any
16 partnership, joint venture, trust, or other entity;

17 (8) conduct its business, locate offices, and exercise the powers
18 granted by this Act within or without this State;

19 (9) elect managers and appoint officers, employees, and agents of
20 the limited liability company, define their duties, fix their compensation,
21 and lend them money and credit;

22 (10) pay pensions and establish pension plans, pension trusts,
23 profit sharing plans, bonus plans, option plans, and benefit or incentive
24 plans for any or all of its current or former members, managers, officers,
25 employees, and agents;

26 (11) make donations for the public welfare or for charitable,
27 scientific, or educational purposes; and

1 (12) make payments or donations, or do any other act, not
2 inconsistent with law, that furthers the business of the limited liability
3 company.

4 **ARTICLE 2. ORGANIZATION**

5 Section 201. Limited Liability Company as Legal Entity.

6 Section 202. Organization.

7 Section 203. Articles of Organization.

8 Section 204. Amendment or Restatement of Articles of Organization.

9 Section 205. Signing of Records.

10 Section 206. Filing in Office of Registrar of Corporations.

11 Section 207. Correcting Filed Record.

12 Section 208. Certificate of Existence or Authorization.

13 Section 209. Liability for False Statement in Filed Record.

14 Section 210. Filing By Judicial Act.

15 Section 211. Annual Report for Registrar of Corporations.

16 **Section 201. Limited Liability Company as Legal Entity.** A limited liability
17 company is a legal entity distinct from its members.

18 **Section 202. Organization.**

19 (a) One or more persons may organize a limited liability company,
20 consisting of one or more members, by delivering articles of organization to the
21 office of the Registrar of Corporations for filing.

22 (b) Unless a delayed effective date is specified, the existence of a limited
23 liability company begins when the articles of organization are filed.

24 (c) The filing of the articles of organization by the Registrar of
25 Corporations is conclusive proof that the organizers satisfied all conditions
26 precedent to the creation of a limited liability company.

27 **Section 203. Articles of Organization.**

28 (a) Articles of organization of a limited liability company must set forth:

- 1 (1) the name of the company;
- 2 (2) the address of the initial designated office;
- 3 (3) the name and street address of the initial agent for service of
- 4 process;
- 5 (4) the name and address of each organizer;
- 6 (5) whether the company is to be a term company and, if so, the
- 7 term specified;
- 8 (6) whether the company is to be manager-managed, and, if so, the
- 9 name and address of each initial manager; and
- 10 (7) whether one or more of the members of the company are to be
- 11 liable for its debts and obligations under Section 303(c).

- 12 (b) Articles of organization of a limited liability company may set forth:
- 13 (1) provisions permitted to be set forth in an operating agreement;
- 14 or
- 15 (2) other matters not inconsistent with law.

16 (c) Articles of organization of a limited liability company may not vary the
17 nonwaivable provisions of Section 103(b). As to all other matters, if any provision
18 of an operating agreement is inconsistent with the articles of organization:

- 19 (1) the operating agreement controls as to managers, members, and
- 20 members' transferees; and
- 21 (2) the articles of organization control as to persons, other than
- 22 managers, members and their transferees, who reasonably rely on the
- 23 articles to their detriment.

24 ***Section 204. Amendment or Restatement of Articles of Organization.***

25 (a) Articles of organization of a limited liability company may be
26 amended at any time by delivering articles of amendment to the Registrar
27 of Corporations for filing. The articles of amendment must set forth the:

- 28 (1) name of the limited liability company;

- 1 (2) date of filing of the articles of organization; and
- 2 (3) amendment to the articles.

3 (b) A limited liability company may restate its articles of organization at
4 any time. Restated articles of organization must be signed and filed in the same
5 manner as articles of amendment. Restated articles of organization must be
6 designated as such in the heading and state in the heading or in an introductory
7 paragraph the limited liability company's present name and, if it has been
8 changed, all of its former names and the date of the filing of its initial articles of
9 organization.

10 ***Section 205. Signing of Records.***

11 (a) Except as otherwise provided in this Act, a record to be filed by or on
12 behalf of a limited liability company in the office of the Registrar of Corporations
13 must be signed in the name of the company by a:

- 14 (1) manager of a manager-managed company;
- 15 (2) member of a member-managed company;
- 16 (3) person organizing the company, if the company has not been
17 formed; or
- 18 (4) fiduciary, if the company is in the hands of a receiver, trustee,
19 or other court-appointed fiduciary.

20 (b) A record signed under subsection (a) must state adjacent to the
21 signature the name and capacity of the signer.

22 (c) Any person may sign a record to be filed under subsection (a) by an
23 attorney-in-fact. Powers of attorney relating to the signing of records to be filed
24 under subsection (a) by an attorney-in-fact need not be filed in the office of the
25 Registrar of Corporations as evidence of authority by the person filing but must
26 be retained by the company.

27 ***Section 206. Filing in Office of Registrar of Corporations.***

1 (a) Articles of organization or any other record authorized to be filed
2 under this Act must be in a medium permitted by the Registrar of Corporations
3 and must be delivered to the office of the Registrar of Corporations. Unless the
4 Registrar of Corporations determines that a record fails to comply as to form with
5 the filing requirements of this Act, and if all filing fees have been paid, the
6 Registrar of Corporations shall file the record and send a receipt for the record
7 and the fees to the limited liability company or its representative.

8 (b) Upon request and payment of a fee, the Registrar of Corporations shall
9 send to the requester a certified copy of the requested record.

10 (c) Except as otherwise provided in subsection (d) and Section 207(c), a
11 record accepted for filing by the Registrar of Corporations is effective:

12 (1) at the time of filing on the date it is filed, as evidenced by the
13 Registrar of Corporation's date and time endorsement on the original
14 record; or

15 (2) at the time specified in the record as its effective time on the
16 date it is filed.

17 (d) A record may specify a delayed effective time and date, and if it does
18 so the record becomes effective at the time and date specified. If a delayed
19 effective date but no time is specified, the record is effective at the close of
20 business on that date. If a delayed effective date is later than the 90th day after the
21 record is filed, the record is effective on the 90th day.

22 ***Section 207. Correcting Filed Record.***

23 (a) A limited liability company or foreign limited liability company may
24 correct a record filed by the Registrar of Corporations if the record contains a
25 false or erroneous statement or was defectively signed.

26 (b) A record is corrected:

27 (1) by preparing articles of correction that:

1 (i) describe the record, including its filing date, or attach a
2 copy of it to the articles of correction;

3 (ii) specify the incorrect statement and the reason it is
4 incorrect or the manner in which the signing was defective; and

5 (iii) correct the incorrect statement or defective signing;
6 and

7 (2) by delivering the corrected record to the Registrar of
8 Corporations for filing.

9 (c) Articles of correction are effective retroactively on the effective date of
10 the record they correct except as to persons relying on the uncorrected record and
11 adversely affected by the correction. As to those persons, articles of correction are
12 effective when filed.

13 ***Section 208. Certificate of Existence or Authorization.***

14 (a) A person may request the Registrar of Corporations to furnish a
15 certificate of existence for a limited liability company or a certificate of
16 authorization for a foreign limited liability company.

17 (b) A certificate of existence for a limited liability company must set forth:

18 (1) the company's name;

19 (2) that it is duly organized under the laws of this State, the date of
20 organization, whether its duration is at-will or for a specified term, and, if
21 the latter, the period specified;

22 (3) if payment is reflected in the records of the Registrar of
23 Corporations and if nonpayment affects the existence of the company, that
24 all fees, taxes, and penalties owed to this State have been paid;

25 (4) whether its most recent annual report required by Section 211
26 has been filed with the Registrar of Corporations;

27 (5) that articles of termination have not been filed; and

1 (6) other facts of record in the office of the Registrar of
2 Corporations that may be requested by the applicant.

3 (c) A certificate of authorization for a foreign limited liability company
4 must set forth:

5 (1) the company's name used in this State;

6 (2) that it is authorized to transact business in this State;

7 (3) if payment is reflected in the records of the Registrar of
8 Corporations and if nonpayment affects the authorization of the company,
9 that all fees, taxes, and penalties owed to this State have been paid;

10 (4) whether its most recent annual report required by Section 211
11 has been filed with the Registrar of Corporations;

12 (5) that a certificate of cancellation has not been filed; and

13 (6) other facts of record in the office of the Registrar of
14 Corporations that may be requested by the applicant.

15 (d) Subject to any qualification stated in the certificate, a certificate of
16 existence or authorization issued by the Registrar of Corporations may be relied
17 upon as conclusive evidence that the domestic or foreign limited liability
18 company is in existence or is authorized to transact business in this State.

19 **Section 209. Liability for False Statement in Filed Record.** If a record
20 authorized or required to be filed under this Act contains a false statement, one who
21 suffers loss by reliance on the statement may recover damages for the loss from a person
22 who signed the record or caused another to sign it on the person's behalf and knew the
23 statement to be false at the time the record was signed.

24 **Section 210. Filing by Judicial Act.** If a person required by Section 205 to sign
25 any record fails or refuses to do so, any other person who is adversely affected by the
26 failure or refusal may petition the Commonwealth Superior Court to direct the signing of
27 the record. If the court finds that it is proper for the record to be signed and that a person

1 so designated has failed or refused to sign the record, it shall order the Registrar of
2 Corporations to sign and file an appropriate record.

3 ***Section 211. Annual Report for Registrar of Corporations.***

4 (a) A limited liability company, and a foreign limited liability company
5 authorized to transact business in this State, shall deliver to the Registrar of
6 Corporations for filing an annual report that sets forth:

7 (1) the name of the company and the State or country under whose law it is
8 organized;

9 (2) the address of its designated office and the name and address of its agent for
10 service of process in this State;

11 (3) the address of its principal office; and

12 (4) the names and business addresses of any managers.

13 (b) Information in an annual report must be current as of the date the
14 annual report is signed on behalf of the limited liability company.

15 (c) The first annual report and all succeeding annual reports must be
16 delivered to the Registrar of Corporations in accordance with the provisions
17 governing corporations in 4 CMC § 4693 (c) of each year following the calendar
18 year in which a limited liability company was organized .

19 (d) If an annual report does not contain the information required in
20 subsection (a), the Registrar of Corporations shall promptly notify the reporting
21 limited liability company or foreign limited liability company and return the
22 report to it for correction. If the report is corrected to contain the information
23 required in subsection (a) and delivered to the Registrar of Corporations within 30
24 days after the effective date of the notice, it is timely filed.

25 ***ARTICLE 3. RELATIONS OF MEMBERS AND MANAGERS TO PERSONS***
26 ***DEALING WITH LIMITED LIABILITY COMPANY***

27 Section 301. Agency of Members and Managers.

1 Section 302. Limited Liability Company Liable for Member's or Manager's
2 Actionable Conduct.

3 Section 303. Liability of Members and Managers.

4 ***Section 301. Agency of Members and Managers.***

5 (a) Subject to subsections (b) and (c):

6 (1) Each member is an agent of the limited liability company for
7 the purpose of its business, and an act of a member, including the signing
8 of an instrument in the company's name, for apparently carrying on in the
9 ordinary course the company's business or business of the kind carried on
10 by the company binds the company, unless the member had no authority
11 to act for the company in the particular matter and the person with whom
12 the member was dealing knew or had notice that the member lacked
13 authority.

14 (2) An act of a member which is not apparently for carrying on in
15 the ordinary course the company's business or business of the kind carried
16 on by the company binds the company only if the act was authorized by
17 the other members.

18 (b) Subject to subsection (c), in a manager-managed company:

19 (1) A member is not an agent of the company for the purpose of its
20 business solely by reason of being a member. Each manager is an agent of
21 the company for the purpose of its business, and an act of a manager,
22 including the signing of an instrument in the company's name, for
23 apparently carrying on in the ordinary course the company's business or
24 business of the kind carried on by the company binds the company, unless
25 the manager had no authority to act for the company in the particular
26 matter and the person with whom the manager was dealing knew or had
27 notice that the manager lacked authority.

1 (2) An act of a manager which is not apparently for carrying on in
2 the ordinary course the company's business or business of the kind carried
3 on by the company binds the company only if the act was authorized
4 under Section 404.

5 (c) Unless the articles of organization limit their authority, any member of
6 a member-managed company or manager of a manager-managed company may
7 sign and deliver any instrument transferring or affecting the company's interest in
8 real property. The instrument is conclusive in favor of a person who gives value
9 without knowledge of the lack of the authority of the person signing and
10 delivering the instrument.

11 ***Section 302. Limited Liability Company Liable for Member's or Manager's***
12 ***Actionable Conduct.*** A limited liability company is liable for loss or injury caused to a
13 person, or for a penalty incurred, as a result of a wrongful act or omission, or other
14 actionable conduct, of a member or manager acting in the ordinary course of business of
15 the company or with authority of the company.

16 ***Section 303. Liability of Members and Managers.***

17 (a) Except as otherwise provided in subsection (c), the debts, obligations,
18 and liabilities of a limited liability company, whether arising in contract, tort, or
19 otherwise, are solely the debts, obligations, and liabilities of the company. A
20 member or manager is not personally liable for a debt, obligation, or liability of
21 the company solely by reason of being or acting as a member or manager.

22 (b) The failure of a limited liability company to observe the usual
23 company formalities or requirements relating to the exercise of its company
24 powers or management of its business is not a ground for imposing personal
25 liability on the members or managers for liabilities of the company.

26 (c) All or specified members of a limited liability company are liable in
27 their capacity as members for all or specified debts, obligations, or liabilities of
28 the company if:

(1) a provision to that effect is contained in the articles of organization; and

(2) a member so liable has consented in writing to the adoption of the provision or to be bound by the provision.

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

- Section 401. Form of Contribution.
- Section 402. Member's Liability for Contributions.
- Section 403. Member's and Manager's Rights to Payments and Reimbursement.
- Section 404. Management of Limited Liability Company.
- Section 405. Sharing of and Right to Distributions.
- Section 406. Limitations on Distributions.
- Section 407. Liability for Unlawful Distributions.
- Section 408. Member's Right to Information.
- Section 409. General Standards of Member's and Manager's Conduct.
- Section 410. Actions by Members.
- Section 411. Continuation of Term Company After Expiration of Specified Term.

Section 401. Form of Contribution. A contribution of a member of a limited liability company may consist of tangible or intangible property or other benefit to the company, including money, promissory notes, services performed, or other agreements to contribute cash or property, or contracts for services to be performed.

Section 402. Member's Liability for Contributions.

(a) A member's obligation to contribute money, property, or other benefit to, or to perform services for, a limited liability company is not excused by the member's death, disability, or other inability to perform personally. If a member does not make the required contribution of property or services, the member is obligated at the option of the company to contribute money equal to the value of that portion of the stated contribution that has not been made.

1 (b) A creditor of a limited liability company who extends credit or
2 otherwise acts in reliance on an obligation described in subsection (a), and
3 without notice of any compromise under Section 404(c)(5), may enforce the
4 original obligation.

5 ***Section 403. Member's and Manager's Rights to Payments and***
6 ***Reimbursement.***

7 (a) A limited liability company shall reimburse a member or manager for
8 payments made and indemnify a member or manager for liabilities incurred by the
9 member or manager in the ordinary course of the business of the company or for
10 the preservation of its business or property.

11 (b) A limited liability company shall reimburse a member for an advance
12 to the company beyond the amount of contribution the member agreed to make.

13 (c) A payment or advance made by a member that gives rise to an
14 obligation of a limited liability company under subsection (a) or (b) constitutes a
15 loan to the company upon which interest accrues from the date of the payment or
16 advance.

17 (d) A member is not entitled to remuneration for services performed for a
18 limited liability company, except for reasonable compensation for services
19 rendered in winding up the business of the company.

20 ***Section 404. Management of Limited Liability Company.***

21 (a) In a member-managed company:

22 (1) each member has equal rights in the management and conduct
23 of the company's business; and

24 (2) except as otherwise provided in subsection (c), any matter
25 relating to the business of the company may be decided by a majority of
26 the members.

27 (b) In a manager-managed company:

1 (1) each manager has equal rights in the management and conduct
2 of the company's business;

3 (2) except as otherwise provided in subsection (c), any matter
4 relating to the business of the company may be exclusively decided by the
5 manager or, if there is more than one manager, by a majority of the
6 managers; and

7 (3) a manager:

8 (i) must be designated, appointed, elected, removed, or
9 replaced by a vote, approval, or consent of a majority of the
10 members; and

11 (ii) holds office until a successor has been elected and
12 qualified, unless the manager sooner resigns or is removed.

13 (c) The only matters of a member or manager-managed company's
14 business requiring the consent of all of the members are:

15 (1) the amendment of the operating agreement under Section 103;

16 (2) the authorization or ratification of acts or transactions under
17 Section 103(b)(2)(ii) which would otherwise violate the duty of loyalty;

18 (3) an amendment to the articles of organization under Section
19 204;

20 (4) the compromise of an obligation to make a contribution under
21 Section 402(b);

22 (5) the compromise, as among members, of an obligation of a
23 member to make a contribution or return money or other property paid or
24 distributed in violation of this Act;

25 (6) the making of interim distributions under Section 405(a),
26 including the redemption of an interest;

27 (7) the admission of a new member;

1 (8) the use of the company's property to redeem an interest subject
2 to a charging order;

3 (9) the consent to dissolve the company under Section 801(b)(2);

4 (10) a waiver of the right to have the company's business wound
5 up and the company terminated under Section 802(b);

6 (11) the consent of members to merge with another entity under
7 Section 904(c)(1); and

8 (12) the sale, lease, exchange, or other disposal of all, or
9 substantially all, of the company's property with or without goodwill.

10 (d) Action requiring the consent of members or managers under this Act
11 may be taken without a meeting.

12 (e) A member or manager may appoint a proxy to vote or otherwise act for
13 the member or manager by signing an appointment instrument, either personally
14 or by the member's or manager's attorney-in-fact.

15 ***Section 405. Sharing of and Right to Distributions.***

16 (a) Any distributions made by a limited liability company before its
17 dissolution and winding up must be in equal shares.

18 (b) A member has no right to receive, and may not be required to accept, a
19 distribution in kind.

20 (c) If a member becomes entitled to receive a distribution, the member has
21 the status of, and is entitled to all remedies available to, a creditor of the limited
22 liability company with respect to the distribution.

23 ***Section 406. Limitations on Distributions.***

24 (a) A distribution may not be made if:

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

27 (2) the company's total assets would be less than the sum of its
28 total liabilities plus the amount that would be needed, if the company were

1 to be dissolved, wound up, and terminated at the time of the distribution,
2 to satisfy the preferential rights upon dissolution, winding up, and
3 termination of members whose preferential rights are superior to those
4 receiving the distribution.

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

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

12 (1) in the case of distribution by purchase, redemption, or other
13 acquisition of a distributional interest in a limited liability company, as of
14 the date money or other property is transferred or debt incurred by the
15 company; and

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

17 (i) distribution is authorized if the payment occurs within
18 120 days after the date of authorization; or

19 (ii) payment is made if it occurs more than 120 days after
20 the date of authorization.

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

24 (e) Indebtedness of a limited liability company, including indebtedness
25 issued in connection with or as part of a distribution, is not considered a liability
26 for purposes of determinations under subsection (a) if its terms provide that
27 payment of principal and interest are made only if and to the extent that payment
28 of a distribution to members could then be made under this section. If the

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

4 ***Section 407. Liability for Unlawful Distributions.***

5 (a) A member of a member-managed company or a member or manager of
6 a manager-managed company who votes for or assents to a distribution made in
7 violation of Section 406, the articles of organization, or the operating agreement is
8 personally liable to the company for the amount of the distribution which exceeds
9 the amount that could have been distributed without violating Section 406, the
10 articles of organization, or the operating agreement if it is established that the
11 member or manager did not perform the member's or manager's duties in
12 compliance with Section 409.

13 (b) A member of a manager-managed company who knew a distribution
14 was made in violation of Section 406, the articles of organization, or the operating
15 agreement is personally liable to the company, but only to the extent that the
16 distribution received by the member exceeded the amount that could have been
17 properly paid under Section 406.

18 (c) A member or manager against whom an action is brought under this
19 section may implead in the action all:

20 (1) other members or managers who voted for or assented to the
21 distribution in violation of subsection (a) and may compel contribution
22 from them; and

23 (2) members who received a distribution in violation of subsection
24 (b) and may compel contribution from the member in the amount received
25 in violation of subsection (b).

26 (d) A proceeding under this section is barred unless it is commenced
27 within two years after the distribution.

28 ***Section 408. Member's Right to Information.***

1 (a) A limited liability company shall provide members and their agents
2 and attorneys access to its records, if any, at the company's principal office or
3 other reasonable locations specified in the operating agreement. The company
4 shall provide former members and their agents and attorneys access for proper
5 purposes to records pertaining to the period during which they were members.
6 The right of access provides the opportunity to inspect and copy records during
7 ordinary business hours. The company may impose a reasonable charge, limited
8 to the costs of labor and material, for copies of records furnished.

9 (b) A limited liability company shall furnish to a member, and to the legal
10 representative of a deceased member or member under legal disability:

11 (1) without demand, information concerning the company's
12 business or affairs reasonably required for the proper exercise of the
13 member's rights and performance of the member's duties under the
14 operating agreement or this Act; and

15 (2) on demand, other information concerning the company's
16 business or affairs, except to the extent the demand or the information
17 demanded is unreasonable or otherwise improper under the circumstances.

18 (c) A member has the right upon written demand given to the limited
19 liability company to obtain at the company's expense a copy of any written
20 operating agreement.

21 ***Section 409. General Standards of Member's and Manager's Conduct.***

22 (a) The only fiduciary duties a member owes to a member-managed
23 company and its other members are the duty of loyalty and the duty of care
24 imposed by subsections (b) and (c).

25 (b) A member's duty of loyalty to a member-managed company and its
26 other members is limited to the following:

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

1 winding up of the company's business or derived from a use by the
2 member of the company's property, including the appropriation of a
3 company's opportunity;

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

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

9 (c) A member's duty of care to a member-managed company and its other
10 members in the conduct of and winding up of the company's business is limited to
11 refraining from engaging in grossly negligent or reckless conduct, intentional
12 misconduct, or a knowing violation of law.

13 (d) A member shall discharge the duties to a member-managed company
14 and its other members under this Act or under the operating agreement and
15 exercise any rights consistently with the obligation of good faith and fair dealing.

16 (e) A member of a member-managed company does not violate a duty or
17 obligation under this Act or under the operating agreement merely because the
18 member's conduct furthers the member's own interest.

19 (f) A member of a member-managed company may lend money to and
20 transact other business with the company. As to each loan or transaction, the
21 rights and obligations of the member are the same as those of a person who is not
22 a member, subject to other applicable law.

23 (g) This section applies to a person winding up the limited liability
24 company's business as the personal or legal representative of the last surviving
25 member as if the person were a member.

26 (h) In a manager-managed company:

27 (1) a member who is not also a manager owes no duties to the
28 company or to the other members solely by reason of being a member;

1 (2) a manager is held to the same standards of conduct prescribed
2 for members in subsections (b) through (f);

3 (3) a member who pursuant to the operating agreement exercises
4 some or all of the rights of a manager in the management and conduct of
5 the company's business is held to the standards of conduct in subsections
6 (b) through (f) to the extent that the member exercises the managerial
7 authority vested in a manager by this Act; and

8 (4) a manager is relieved of liability imposed by law for violation
9 of the standards prescribed by subsections (b) through (f) to the extent of
10 the managerial authority delegated to the members by the operating
11 agreement.

12 ***Section 410. Actions by Members.***

13 (a) A member may maintain an action against a limited liability company
14 or another member for legal or equitable relief, with or without an accounting as
15 to the company's business, to enforce:

- 16 (1) the member's rights under the operating agreement;
17 (2) the member's rights under this Act; and
18 (3) the rights and otherwise protect the interests of the member, including rights
19 and interests arising independently of the member's relationship to the company.

20 (b) The accrual, and any time limited for the assertion, of a right of action
21 for a remedy under this section is governed by other law. A right to an accounting
22 upon a dissolution and winding up does not revive a claim barred by law.

23 ***Section 411. Continuation of Term Company After Expiration of Specified***
24 ***Term.***

25 (a) If a term company is continued after the expiration of the specified
26 term, the rights and duties of the members and managers remain the same as they
27 were at the expiration of the term except to the extent inconsistent with rights and
28 duties of members and managers of an at-will company.

1 (b) If the members in a member-managed company or the managers in a
2 manager-managed company continue the business without any winding up of the
3 business of the company, it continues as an at-will company.

4 **ARTICLE 5. TRANSFEREES AND CREDITORS OF MEMBER**

5 Section 501. Member's Distributional Interest.

6 Section 502. Transfer of Distributional Interest.

7 Section 503. Rights of Transferee.

8 Section 504. Rights of Creditor.

9 **Section 501. Member's Distributional Interest.**

10 (a) A member is not a co-owner of, and has no transferable interest in,
11 property of a limited liability company.

12 (b) A distributional interest in a limited liability company is personal
13 property and, subject to Sections 502 and 503, may be transferred in whole or in
14 part.

15 (c) An operating agreement may provide that a distributional interest may
16 be evidenced by a certificate of the interest issued by the limited liability
17 company and, subject to Section 503, may also provide for the transfer of any
18 interest represented by the certificate.

19 **Section 502. Transfer of Distributional Interest.** A transfer of a distributional
20 interest does not entitle the transferee to become or to exercise any rights of a member. A
21 transfer entitles the transferee to receive, to the extent transferred, only the distributions
22 to which the transferor would be entitled.

23 **Section 503. Rights of Transferee.**

24 (a) A transferee of a distributional interest may become a member of a
25 limited liability company if and to the extent that the transferor gives the
26 transferee the right in accordance with authority described in the operating
27 agreement or all other members consent.

1 (b) A transferee who has become a member, to the extent transferred, has
2 the rights and powers, and is subject to the restrictions and liabilities, of a member
3 under the operating agreement of a limited liability company and this Act. A
4 transferee who becomes a member also is liable for the transferor member's
5 obligations to make contributions under Section 402 and for obligations under
6 Section 407 to return unlawful distributions, but the transferee is not obligated for
7 the transferor member's liabilities unknown to the transferee at the time the
8 transferee becomes a member.

9 (c) Whether or not a transferee of a distributional interest becomes a
10 member under subsection (a), the transferor is not released from liability to the
11 limited liability company under the operating agreement or this Act.

12 (d) A transferee who does not become a member is not entitled to
13 participate in the management or conduct of the limited liability company's
14 business, require access to information concerning the company's transactions, or
15 inspect or copy any of the company's records.

16 (e) A transferee who does not become a member is entitled to:
17 (1) receive, in accordance with the transfer, distributions to which
18 the transferor would otherwise be entitled;
19 (2) receive, upon dissolution and winding up of the limited liability
20 company's business:
21 (i) in accordance with the transfer, the net amount
22 otherwise distributable to the transferor;
23 (ii) a statement of account only from the date of the latest
24 statement of account agreed to by all the members;
25 (3) seek under Section 801(a)(5) a judicial determination that it is
26 equitable to dissolve and wind up the company's business.

27 (f) A limited liability company need not give effect to a transfer until it has
28 notice of the transfer.

1 ***Section 504. Rights of Creditor.***

2 (a) On application by a judgment creditor of a member of a limited
3 liability company or of a member's transferee, a court having jurisdiction may
4 charge the distributional interest of the judgment debtor to satisfy the judgment.
5 The court may appoint a receiver of the share of the distributions due or to
6 become due to the judgment debtor and make all other orders, directions,
7 accounts, and inquiries the judgment debtor might have made or which the
8 circumstances may require to give effect to the charging order.

9 (b) A charging order constitutes a lien on the judgment debtor's
10 distributional interest. The court may order a foreclosure of a lien on a
11 distributional interest subject to the charging order at any time. A purchaser at the
12 foreclosure sale has the rights of a transferee.

13 (c) At any time before foreclosure, a distributional interest in a limited
14 liability company that is charged may be redeemed:

- 15 (1) by the judgment debtor;
- 16 (2) with property other than the company's property, by one or
17 more of the other members; or
- 18 (3) with the company's property, but only if permitted by the
19 operating agreement.

20 (d) This Act does not affect a member's right under exemption laws with
21 respect to the member's distributional interest in a limited liability company.

22 (e) This section provides the exclusive remedy by which a judgment
23 creditor of a member or a transferee may satisfy a judgment out of the judgment
24 debtor's distributional interest in a limited liability company.

25 ***ARTICLE 6. MEMBER'S DISSOCIATION***

- 26 Section 601. Events Causing Member's Dissociation.
- 27 Section 602. Member's Power to Dissociate; Wrongful Dissociation.
- 28 Section 603. Effect of Member's Dissociation.

1 **Section 601. Events Causing Member's Dissociation.** A member is dissociated
2 from a limited liability company upon the occurrence of any of the following events:

3 (1) the company's having notice of the member's express will to withdraw
4 upon the date of notice or on a later date specified by the member;

5 (2) an event agreed to in the operating agreement as causing the member's
6 dissociation;

7 (3) upon transfer of all of a member's distributional interest, other than a
8 transfer for security purposes or a court order charging the member's
9 distributional interest which has not been foreclosed;

10 (4) the member's expulsion pursuant to the operating agreement;

11 (5) the member's expulsion by unanimous vote of the other members if:

12 (i) it is unlawful to carry on the company's business with the
13 member;

14 (ii) there has been a transfer of substantially all of the member's
15 distributional interest, other than a transfer for security purposes or a court
16 order charging the member's distributional interest that has not been
17 foreclosed;

18 (iii) within 90 days after the company notifies a corporate member
19 that it will be expelled because it has filed a certificate of dissolution or
20 the equivalent, its charter has been revoked, or its right to conduct
21 business has been suspended by the jurisdiction of its incorporation, the
22 member fails to obtain a revocation of the certificate of dissolution or a
23 reinstatement of its charter or its right to conduct business; or

24 (iv) a partnership or a limited liability company that is a member
25 has been dissolved and its business is being wound up;

26 (6) on application by the company or another member, the member's
27 expulsion by judicial determination because the member:

1 (i) engaged in wrongful conduct that adversely and materially
2 affected the company's business;

3 (ii) willfully or persistently committed a material breach of the
4 operating agreement or of a duty owed to the company or the other
5 members under Section 409; or

6 (iii) engaged in conduct relating to the company's business that
7 makes it not reasonably practicable to carry on the business with the
8 member;

9 (7) the member's:

10 (i) becoming a debtor in bankruptcy;

11 (ii) executing an assignment for the benefit of creditors;

12 (iii) seeking, consenting to, or acquiescing in the appointment of a
13 trustee, receiver, or liquidator of the member or of all or substantially all
14 of the member's property; or

15 (iv) failing, within 90 days after the appointment, to have vacated
16 or stayed the appointment of a trustee, receiver, or liquidator of the
17 member or of all or substantially all of the member's property obtained
18 without the member's consent or acquiescence, or failing within 90 days
19 after the expiration of a stay to have the appointment vacated;

20 (8) in the case of a member who is an individual:

21 (i) the member's death;

22 (ii) the appointment of a guardian or general conservator for the
23 member; or

24 (iii) a judicial determination that the member has otherwise
25 become incapable of performing the member's duties under the operating
26 agreement;

27 (9) in the case of a member that is a trust or is acting as a member by
28 virtue of being a trustee of a trust, distribution of the trust's entire rights to receive

1 distributions from the company, but not merely by reason of the substitution of a
2 successor trustee;

3 (10) in the case of a member that is an estate or is acting as a member by
4 virtue of being a personal representative of an estate, distribution of the estate's
5 entire rights to receive distributions from the company, but not merely the
6 substitution of a successor personal representative; or

7 (11) termination of the existence of a member if the member is not an
8 individual, estate, or trust other than a business trust.

9 ***Section 602. Member's Power to Dissociate; Wrongful Dissociation.***

10 (a) Unless otherwise provided in the operating agreement, a member has
11 the power to dissociate from a limited liability company at any time, rightfully or
12 wrongfully, by express will pursuant to Section 601(1).

13 (b) If the operating agreement has not eliminated a member's power to
14 dissociate, the member's dissociation from a limited liability company is wrongful
15 only if:

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

17 (2) before the expiration of the specified term of a term
18 company:

19 (i) the member withdraws by express will;

20 (ii) the member is expelled by judicial determination under
21 Section 601(6);

22 (iii) the member is dissociated by becoming a debtor in
23 bankruptcy; or

24 (iv) in the case of a member who is not an individual, trust
25 other than a business trust, or estate, the member is expelled or
26 otherwise dissociated because it willfully dissolved or terminated
27 its existence.

1 (c) A member who wrongfully dissociates from a limited liability
2 company is liable to the company and to the other members for damages caused
3 by the dissociation. The liability is in addition to any other obligation of the
4 member to the company or to the other members.

5 (d) If a limited liability company does not dissolve and wind up its
6 business as a result of a member's wrongful dissociation under subsection (b),
7 damages sustained by the company for the wrongful dissociation must be offset
8 against distributions otherwise due the member after the dissociation.

9 ***Section 603. Effect of Member's Dissociation.***

10 (a) Upon a member's dissociation:

11 (1) in an at-will company, the company must cause the dissociated
12 member's distributional interest to be purchased under Article 7; and

13 (2) in a term company:

14 (i) if the company dissolves and winds up its business on or
15 before the expiration of its specified term, Article 8 applies to
16 determine the dissociated member's rights to distributions; and

17 (ii) if the company does not dissolve and wind up its
18 business on or before the expiration of its specified term, the
19 company must cause the dissociated member's distributional
20 interest to be purchased under Article 7 on the date of the
21 expiration of the term specified at the time of the member's
22 dissociation.

23 (b) Upon a member's dissociation from a limited liability company:

24 (1) the member's right to participate in the management and
25 conduct of the company's business terminates, except as otherwise
26 provided in Section 803, and the member ceases to be a member and is
27 treated the same as a transferee of a member;

1 (2) the member's duty of loyalty under Section 409(b)(3)
2 terminates; and

3 (3) the member's duty of loyalty under Section 409(b)(1) and (2)
4 and duty of care under Section 409(c) continue only with regard to matters
5 arising and events occurring before the member's dissociation, unless the
6 member participates in winding up the company's business pursuant to
7 Section 803.

8 **ARTICLE 7. MEMBER'S DISSOCIATION WHEN BUSINESS NOT**
9 **WOUND UP**

10 Section 701. Company Purchase of Distributional Interest.

11 Section 702. Court Action to Determine Fair Value of Distributional Interest.

12 Section 703. Dissociated Member's Power to Bind Limited Liability Company.

13 Section 704. Statement of Dissociation.

14 **Section 701. Company Purchase of Distributional Interest.**

15 (a) A limited liability company shall purchase a distributional interest of a:

16 (1) member of an at-will company for its fair value determined as
17 of the date of the member's dissociation if the member's dissociation does
18 not result in a dissolution and winding up of the company's business under
19 Section 801; or

20 (2) member of a term company for its fair value determined as of
21 the date of the expiration of the specified term that existed on the date of
22 the member's dissociation if the expiration of the specified term does not
23 result in a dissolution and winding up of the company's business under
24 Section 801.

25 (b) A limited liability company must deliver a purchase offer to the
26 dissociated member whose distributional interest is entitled to be purchased not
27 later than 30 days after the date determined under subsection (a). The purchase
28 offer must be accompanied by:

1 (1) a statement of the company's assets and liabilities as of the date
2 determined under subsection (a);

3 (2) the latest available balance sheet and income statement, if any;
4 and

5 (3) an explanation of how the estimated amount of the payment
6 was calculated.

7 (c) If the price and other terms of a purchase of a distributional interest are
8 fixed or are to be determined by the operating agreement, the price and terms so
9 fixed or determined govern the purchase unless the purchaser defaults. If a default
10 occurs, the dissociated member is entitled to commence a proceeding to have the
11 company dissolved under Section 801(a)(4)(iv).

12 (d) If an agreement to purchase the distributional interest is not made
13 within 120 days after the date determined under subsection (a), the dissociated
14 member, within another 120 days, may commence a proceeding against the
15 limited liability company to enforce the purchase. The company at its expense
16 shall notify in writing all of the remaining members, and any other person the
17 court directs, of the commencement of the proceeding. The jurisdiction of the
18 court in which the proceeding is commenced under this subsection is plenary and
19 exclusive.

20 (e) The court shall determine the fair value of the distributional interest in
21 accordance with the standards set forth in Section 702 together with the terms for
22 the purchase. Upon making these determinations, the court shall order the limited
23 liability company to purchase or cause the purchase of the interest.

24 (f) Damages for wrongful dissociation under Section 602(b), and all other
25 amounts owing, whether or not currently due, from the dissociated member to a
26 limited liability company, must be offset against the purchase price.

27 ***Section 702. Court Action to Determine Fair Value of Distributional Interest.***

1 (a) In an action brought to determine the fair value of a distributional
2 interest in a limited liability company, the court shall:

3 (1) determine the fair value of the interest, considering among
4 other relevant evidence the going concern value of the company, any
5 agreement among some or all of the members fixing the price or
6 specifying a formula for determining value of distributional interests for
7 any other purpose, the recommendations of any appraiser appointed by the
8 court, and any legal constraints on the company's ability to purchase the
9 interest;

10 (2) specify the terms of the purchase, including, if appropriate,
11 terms for installment payments, subordination of the purchase obligation
12 to the rights of the company's other creditors, security for a deferred
13 purchase price, and a covenant not to compete or other restriction on a
14 dissociated member; and

15 (3) require the dissociated member to deliver an assignment of the
16 interest to the purchaser upon receipt of the purchase price or the first
17 installment of the purchase price.

18 (b) After the dissociated member delivers the assignment, the dissociated
19 member has no further claim against the company, its members, officers, or
20 managers, if any, other than a claim to any unpaid balance of the purchase price
21 and a claim under any agreement with the company or the remaining members
22 that is not terminated by the court.

23 (c) If the purchase is not completed in accordance with the specified
24 terms, the company is to be dissolved upon application under Section
25 801(b)(5)(iv). If a limited liability company is so dissolved, the dissociated
26 member has the same rights and priorities in the company's assets as if the sale
27 had not been ordered.

1 (d) If the court finds that a party to the proceeding acted arbitrarily,
2 vexatiously, or not in good faith, it may award one or more other parties their
3 reasonable expenses, including attorney's fees and the expenses of appraisers or
4 other experts, incurred in the proceeding. The finding may be based on the
5 company's failure to make an offer to pay or to comply with Section 701(b).

6 (e) Interest must be paid on the amount awarded from the date determined
7 under Section 701(a) to the date of payment.

8 ***Section 703. Dissociated Member's Power to Bind Limited Liability Company.***

9 For two years after a member dissociates without the dissociation resulting in a
10 dissolution and winding up of a limited liability company's business, the company,
11 including a surviving company under Article 9, is bound by an act of the dissociated
12 member which would have bound the company under Section 301 before dissociation
13 only if at the time of entering into the transaction the other party:

- 14 (1) reasonably believed that the dissociated member was then a member;
- 15 (2) did not have notice of the member's dissociation; and
- 16 (3) is not deemed to have had notice under Section 704.

17 ***Section 704. Statement of Dissociation.***

18 (a) A dissociated member or a limited liability company may file in the
19 office of the Registrar of Corporations a statement of dissociation stating the
20 name of the company and that the member is dissociated from the company.

21 (b) For the purposes of Sections 301 and 703, a person not a member is
22 deemed to have notice of the dissociation 90 days after the statement of
23 dissociation is filed.

24 ***ARTICLE 8. WINDING UP COMPANY'S BUSINESS***

25 Section 801. Events Causing Dissolution and Winding Up of Company's
26 Business.

27 Section 802. Limited Liability Company Continues After Dissolution.

28 Section 803. Right to Wind Up Limited Liability Company's Business.

1 Section 804. Member's or Manager's Power and Liability as Agent After
2 Dissolution.

3 Section 805. Articles of Termination.

4 Section 806. Distribution of Assets in Winding Up Limited Liability Company's
5 Business.

6 Section 807. Known Claims Against Dissolved Limited Liability Company.

7 Section 808. Other Claims Against Dissolved Limited Liability Company.

8 Section 809. Grounds for Administrative Dissolution.

9 Section 810. Procedure for and Effect of Administrative Dissolution.

10 Section 811. Restatement Following Administrative Dissolution.

11 Section 812. Appeal from Denial of Reinstatement.

12 ***Section 801. Events Causing Dissolution and Winding Up of Company's***
13 ***Business.***

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

16 (1) an event specified in the operating agreement;

17 (2) consent of the number or percentage of members specified in
18 the operating agreement;

19 (3) an event that makes it unlawful for all or substantially all of the
20 business of the company to be continued, but any cure of illegality within
21 90 days after notice to the company of the event is effective retroactively
22 to the date of the event for purposes of this section;

23 (4) on application by a member or a dissociated member, upon
24 entry of a judicial decree that:

25 (i) the economic purpose of the company is likely to be
26 unreasonably frustrated;

1 (ii) another member has engaged in conduct relating to the
2 company's business that makes it not reasonably practicable to
3 carry on the company's business with that member;

4 (iii) it is not otherwise reasonably practicable to carry on
5 the company's business in conformity with the articles of
6 organization and the operating agreement;

7 (iv) the company failed to purchase the petitioner's
8 distributional interest as required by Section 701; or

9 (v) the managers or members in control of the company
10 have acted, are acting, or will act in a manner that is illegal,
11 oppressive, fraudulent, or unfairly prejudicial to the petitioner; or

12 (5) on application by a transferee of a member's interest, a judicial
13 determination that it is equitable to wind up the company's business:

14 (i) after the expiration of the specified term, if the company
15 was for a specified term at the time the applicant became a
16 transferee by member dissociation, transfer, or entry of a charging
17 order that gave rise to the transfer; or

18 (ii) at any time, if the company was at will at the time the
19 applicant became a transferee by member dissociation, transfer, or
20 entry of a charging order that gave rise to the transfer.

21 ***Section 802. Limited Liability Company Continues After Dissolution.***

22 (a) Subject to subsection (b), a limited liability company continues after
23 dissolution only for the purpose of winding up its business.

24 (b) At any time after the dissolution of a limited liability company and
25 before the winding up of its business is completed, the members, including a
26 dissociated member whose dissociation caused the dissolution, may unanimously
27 waive the right to have the company's business wound up and the company
28 terminated. In that case:

1 (1) the limited liability company resumes carrying on its business
2 as if dissolution had never occurred and any liability incurred by the
3 company or a member after the dissolution and before the waiver is
4 determined as if the dissolution had never occurred; and

5 (2) the rights of a third party accruing under Section 804(a) or
6 arising out of conduct in reliance on the dissolution before the third party
7 knew or received a notification of the waiver are not adversely affected.

8 ***Section 803. Right to Wind Up Limited Liability Company's Business.***

9 (a) After dissolution, a member who has not wrongfully dissociated may
10 participate in winding up a limited liability company's business, but on
11 application of any member, member's legal representative, or transferee, the
12 Commonwealth Superior Court, for good cause shown, may order judicial
13 supervision of the winding up.

14 (b) A legal representative of the last surviving member may wind up a
15 limited liability company's business.

16 (c) A person winding up a limited liability company's business may
17 preserve the company's business or property as a going concern for a reasonable
18 time, prosecute and defend actions and proceedings, whether civil, criminal, or
19 administrative, settle and close the company's business, dispose of and transfer the
20 company's property, discharge the company's liabilities, distribute the assets of
21 the company pursuant to Section 806, settle disputes by mediation or arbitration,
22 and perform other necessary acts.

23 ***Section 804. Member's or Manager's Power and Liability as Agent After***
24 ***Dissolution.***

25 (a) A limited liability company is bound by a member's or manager's act
26 after dissolution that:

27 (1) is appropriate for winding up the company's business; or

1 (2) would have bound the company under Section 301 before dissolution, if the
2 other party to the transaction did not have notice of the dissolution.

3 (b) A member or manager who, with knowledge of the dissolution, subjects a
4 limited liability company to liability by an act that is not appropriate for winding up the
5 company's business is liable to the company for any damage caused to the company
6 arising from the liability.

7 ***Section 805. Articles of Termination.***

8 (a) At any time after dissolution and winding up, a limited liability
9 company may terminate its existence by filing with the Registrar of Corporations
10 articles of termination stating:

- 11 (1) the name of the company;
- 12 (2) the date of the dissolution; and
- 13 (3) that the company's business has been wound up and the legal
14 existence of the company has been terminated.

15 (b) The existence of a limited liability company is terminated upon the
16 filing of the articles of termination, or upon a later effective date, if specified in
17 the articles of termination.

18 ***Section 806. Distribution of Assets in Winding Up Limited Liability Company's***
19 ***Business.***

20 (a) In winding up a limited liability company's business, the assets of the
21 company must be applied to discharge its obligations to creditors, including
22 members who are creditors. Any surplus must be applied to pay in money the net
23 amount distributable to members in accordance with their right to distributions
24 under subsection (b).

25 (b) Each member is entitled to a distribution upon the winding up of the
26 limited liability company's business consisting of a return of all contributions that
27 have not previously been returned and a distribution of any remainder in equal
28 shares.

1 ***Section 807. Known Claims Against Dissolved Limited Liability Company.***

2 (a) A dissolved limited liability company may dispose of the known
3 claims against it by following the procedure described in this section.

4 (b) A dissolved limited liability company shall notify its known claimants
5 in writing of the dissolution. The notice must:

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

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

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

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

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

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

16 (2) in the case of a claim that is timely received but rejected by the
17 dissolved company, the claimant does not commence a proceeding to
18 enforce the claim within 90 days after the receipt of the notice of the
19 rejection.

20 (d) For purposes of this section, "claim" does not include a contingent
21 liability or a claim based on an event occurring after the effective date of
22 dissolution.

23 ***Section 808. Other Claims Against Dissolved Limited Liability Company.***

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

27 (b) The notice must:

1 (1) be published at least once in a newspaper of general circulation
2 in the Commonwealth or, if none in this State, in which its designated
3 office is or was last located;

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

6 (3) state that a claim against the limited liability company is barred
7 unless a proceeding to enforce the claim is commenced within five years
8 after publication of the notice.

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

13 (1) a claimant who did not receive written notice under Section
14 807;

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

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

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

20 (1) against the dissolved limited liability company, to the extent of
21 its undistributed assets; or

22 (2) if the assets have been distributed in liquidation, against a
23 member of the dissolved company to the extent of the member's
24 proportionate share of the claim or the company's assets distributed to the
25 member in liquidation, whichever is less, but a member's total liability for
26 all claims under this section may not exceed the total amount of assets
27 distributed to the member.

1 **Section 809. Grounds for Administrative Dissolution.** The Registrar of
2 Corporations may commence a proceeding to dissolve a limited liability company
3 administratively if the company does not:

4 (1) pay any fees, taxes, or penalties imposed by this Act or other
5 law within 60 days after they are due; or

6 (2) deliver its annual report to the Registrar of Corporations within
7 60 days after it is due.

8 **Section 810. Procedure for and Effect of Administrative Dissolution.**

9 (a) If the Registrar of Corporations determines that a ground exists for
10 administratively dissolving a limited liability company, the Registrar of
11 Corporations shall enter a record of the determination and serve the company with
12 a copy of the record.

13 (b) If the company does not correct each ground for dissolution or
14 demonstrate to the reasonable satisfaction of the Registrar of Corporations that
15 each ground determined by the Registrar of Corporations does not exist within 60
16 days after service of the notice, the Registrar of Corporations shall
17 administratively dissolve the company by signing a certification of the dissolution
18 that recites the ground for dissolution and its effective date. The Registrar of
19 Corporations shall file the original of the certificate and serve the company with a
20 copy of the certificate.

21 (c) A company administratively dissolved continues its existence but may
22 carry on only business necessary to wind up and liquidate its business and affairs
23 under Section 802 and to notify claimants under Sections 807 and 808.

24 (d) The administrative dissolution of a company does not terminate the
25 authority of its agent for service of process.

26 **Section 811. Reinstatement Following Administrative Dissolution.**

1 (a) A limited liability company administratively dissolved may apply to
2 the Registrar of Corporations for reinstatement within two years after the effective
3 date of dissolution. The application must:

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

6 (2) state that the ground for dissolution either did not exist or have
7 been eliminated;

8 (3) state that the company's name satisfies the requirements of
9 Section 105; and

10 (4) contain a certificate from the Division of Revenue and
11 Taxation, Department of Finance reciting that all taxes owed by the
12 company have been paid.

13 (b) If the Registrar of Corporations determines that the application
14 contains the information required by subsection (a) and that the information is
15 correct, the Registrar of Corporations shall cancel the certificate of dissolution
16 and prepare a certificate of reinstatement that recites this determination and the
17 effective date of reinstatement, file the original of the certificate, and serve the
18 company with a copy of the certificate.

19 (c) When reinstatement is effective, it relates back to and takes effect as of
20 the effective date of the administrative dissolution and the company may resume
21 its business as if the administrative dissolution had never occurred.

22 ***Section 812. Appeal from Denial of Reinstatement.***

23 (a) If the Registrar of Corporations denies a limited liability company's
24 application for reinstatement following administrative dissolution, the Registrar of
25 Corporations shall serve the company with a record that explains the reason or
26 reasons for denial.

27 (b) The company may appeal the denial of reinstatement to the
28 Commonwealth Superior Court within 30 days after service of the notice of denial

1 is perfected. The company appeals by petitioning the court to set aside the
2 dissolution and attaching to the petition copies of the Registrar of Corporations'
3 certificate of dissolution, the company's application for reinstatement, and the
4 Registrar of Corporations' notice of denial.

5 (c) The court may summarily order the Registrar of Corporations to
6 reinstate the dissolved company or may take other action the court considers
7 appropriate.

8 (d) The court's final decision may be appealed as in other civil
9 proceedings.

10 **ARTICLE 9. CONVERSIONS AND MERGERS**

11 Section 901. Definitions.

12 Section 902. Conversion of Partnership or Limited Partnership To Limited
13 Liability Company.

14 Section 903. Effect of Conversion; Entity Unchanged.

15 Section 904. Merger of Entities.

16 Section 905. Articles of Merger.

17 Section 906. Effect of Merger.

18 Section 907. Article Not Exclusive.

19 **Section 901. Definitions.** In this Article:

20 (1) "Corporation" means a corporation under Division 4, Title 4 CMC §
21 4291 (e) of the Commonwealth Code, a predecessor law, or comparable law of
22 another jurisdiction.

23 (2) "General partner" means a partner in a partnership and a general
24 partner in a limited partnership.

25 (3) "Limited partner" means a limited partner in a limited partnership.

26 (4) "Limited partnership" means a limited partnership created under
27 Commonwealth law, a predecessor law, or comparable law of another
28 jurisdiction.

1 (5) "Partner" includes a general partner and a limited partner.

2 (6) "Partnership" means a general partnership under Commonwealth law,
3 a predecessor law, or comparable law of another jurisdiction.

4 (7) "Partnership agreement" means an agreement among the partners
5 concerning the partnership or limited partnership.

6 (8) "Shareholder" means a shareholder in a corporation.

7 ***Section 902. Conversion of Partnership or Limited Partnership to Limited***
8 ***Liability Company.***

9 (a) A partnership or limited partnership may be converted to a limited
10 liability company pursuant to this section.

11 (b) The terms and conditions of a conversion of a partnership or limited
12 partnership to a limited liability company must be approved by all of the partners
13 or by a number or percentage of the partners required for conversion in the
14 partnership agreement.

15 (c) An agreement of conversion must set forth the terms and conditions of
16 the conversion of the interests of partners of a partnership or of a limited
17 partnership, as the case may be, into interests in the converted limited liability
18 company or the cash or other consideration to be paid or delivered as a result of
19 the conversion of the interests of the partners, or a combination thereof.

20 (d) After a conversion is approved under subsection (b), the partnership or
21 limited partnership shall file articles of organization in the office of the Registrar
22 of Corporations that satisfy the requirements of Section 203 and contain:

23 (1) a statement that the partnership or limited partnership was
24 converted to a limited liability company from a partnership or limited
25 partnership, as the case may be;

26 (2) its former name;

27 (3) a statement of the number of votes cast by the partners entitled
28 to vote for and against the conversion and, if the vote is less than

1 unanimous, the number or percentage required to approve the conversion
2 under subsection (b); and

3 (4) in the case of a limited partnership, a statement that the
4 certificate of limited partnership is to be canceled as of the date the
5 conversion took effect.

6 (e) In the case of a limited partnership, the filing of articles of organization
7 under subsection (d) cancels its certificate of limited partnership as of the date the
8 conversion took effect.

9 (f) A conversion takes effect when the articles of organization are filed in
10 the office of the Registrar of Corporations or at any later date specified in the
11 articles of organization.

12 (g) A general partner who becomes a member of a limited liability
13 company as a result of a conversion remains liable as a partner for an obligation
14 incurred by the partnership or limited partnership before the conversion takes
15 effect.

16 (h) A general partner's liability for all obligations of the limited liability
17 company incurred after the conversion takes effect is that of a member of the
18 company. A limited partner who becomes a member as a result of a conversion
19 remains liable only to the extent the limited partner was liable for an obligation
20 incurred by the limited partnership before the conversion takes effect.

21 ***Section 903. Effect Of Conversion; Entity Unchanged.***

22 (a) A partnership or limited partnership that has been converted pursuant
23 to this Article is for all purposes the same entity that existed before the
24 conversion.

25 (b) When a conversion takes effect:

26 (1) all property owned by the converting partnership or limited
27 partnership vests in the limited liability company;

- 1 (2) all debts, liabilities, and other obligations of the converting
2 partnership or limited partnership continue as obligations of the limited
3 liability company;
- 4 (3) an action or proceeding pending by or against the converting
5 partnership or limited partnership may be continued as if the conversion
6 had not occurred;
- 7 (4) except as prohibited by other law, all of the rights, privileges,
8 immunities, powers, and purposes of the converting partnership or limited
9 partnership vest in the limited liability company; and
- 10 (5) except as otherwise provided in the agreement of conversion
11 under Section 902(c), all of the partners of the converting partnership
12 continue as members of the limited liability company.

13 ***Section 904. Merger of Entities.***

- 14 (a) Pursuant to a plan of merger approved under subsection (c), a limited
15 liability company may be merged with or into one or more limited liability
16 companies, foreign limited liability companies, corporations, foreign
17 corporations, partnerships, foreign partnerships, limited partnerships, foreign
18 limited partnerships, or other domestic or foreign entities.
- 19 (b) A plan of merger must set forth:
 - 20 (1) the name of each entity that is a party to the merger;
 - 21 (2) the name of the surviving entity into which the other entities
22 will merge;
 - 23 (3) the type of organization of the surviving entity;
 - 24 (4) the terms and conditions of the merger;
 - 25 (5) the manner and basis for converting the interests of each party
26 to the merger into interests or obligations of the surviving entity, or into
27 money or other property in whole or in part; and

1 (6) the street address of the surviving entity's principal place of
2 business.

3 (c) A plan of merger must be approved:

4 (1) in the case of a limited liability company that is a party to the
5 merger, by all of the members or by a number or percentage of members
6 specified in the operating agreement;

7 (2) in the case of a foreign limited liability company that is a party
8 to the merger, by the vote required for approval of a merger by the law of
9 the State or foreign jurisdiction in which the foreign limited liability
10 company is organized;

11 (3) in the case of a partnership or domestic limited partnership that
12 is a party to the merger, by the vote required for approval of a conversion
13 under Section 902(b); and

14 (4) in the case of any other entities that are parties to the merger,
15 by the vote required for approval of a merger by the law of this State or of
16 the State or foreign jurisdiction in which the entity is organized and, in the
17 absence of such a requirement, by all the owners of interests in the entity.

18 (d) After a plan of merger is approved and before the merger takes effect,
19 the plan may be amended or abandoned as provided in the plan.

20 (e) The merger is effective upon the filing of the articles of merger with
21 the Registrar of Corporations, or at such later date as the articles may provide.

22 ***Section 905. Articles of Merger.***

23 (a) After approval of the plan of merger under Section 904(c), unless the
24 merger is abandoned under Section 904(d), articles of merger must be signed on
25 behalf of each limited liability company and other entity that is a party to the
26 merger and delivered to the Registrar of Corporations for filing. The articles must
27 set forth:

- 1 (1) the name and jurisdiction of formation or organization of each
- 2 of the limited liability companies and other entities that are parties to the
- 3 merger;
- 4 (2) for each limited liability company that is to merge, the date its
- 5 articles of organization were filed with the Registrar of Corporations;
- 6 (3) that a plan of merger has been approved and signed by each
- 7 limited liability company and other entity that is to merge;
- 8 (4) the name and address of the surviving limited liability company
- 9 or other surviving entity;
- 10 (5) the effective date of the merger;
- 11 (6) if a limited liability company is the surviving entity, such
- 12 changes in its articles of organization as are necessary by reason of the
- 13 merger;
- 14 (7) if a party to a merger is a foreign limited liability company, the
- 15 jurisdiction and date of filing of its initial articles of organization and the
- 16 date when its application for authority was filed by the Registrar of
- 17 Corporations or, if an application has not been filed, a statement to that
- 18 effect; and
- 19 (8) if the surviving entity is not a limited liability company, an
- 20 agreement that the surviving entity may be served with process in this
- 21 State and is subject to liability in any action or proceeding for the
- 22 enforcement of any liability or obligation of any limited liability company
- 23 previously subject to suit in this State which is to merge, and for the
- 24 enforcement, as provided in this Act, of the right of members of any
- 25 limited liability company to receive payment for their interest against the
- 26 surviving entity.

1 (b) If a foreign limited liability company is the surviving entity of a
2 merger, it may not do business in this State until an application for that authority
3 is filed with the Registrar of Corporations.

4 (c) The surviving limited liability company or other entity shall furnish a
5 copy of the plan of merger, on request and without cost, to any member of any
6 limited liability company or any person holding an interest in any other entity that
7 is to merge.

8 (d) Articles of merger operate as an amendment to the limited liability
9 company's articles of organization.

10 ***Section 906. Effect of Merger.***

11 (a) When a merger takes effect:

12 (1) the separate existence of each limited liability company and
13 other entity that is a party to the merger, other than the surviving entity,
14 terminates;

15 (2) all property owned by each of the limited liability companies
16 and other entities that are party to the merger vests in the surviving entity;

17 (3) all debts, liabilities, and other obligations of each limited
18 liability company and other entity that is party to the merger become the
19 obligations of the surviving entity;

20 (4) an action or proceeding pending by or against a limited liability
21 company or other party to a merger may be continued as if the merger had
22 not occurred or the surviving entity may be substituted as a party to the
23 action or proceeding; and

24 (5) except as prohibited by other law, all the rights, privileges,
25 immunities, powers, and purposes of every limited liability company and
26 other entity that is a party to a merger vest in the surviving entity.

27 (b) The Registrar of Corporations is an agent for service of process in an
28 action or proceeding against the surviving foreign entity to enforce an obligation

1 of any party to a merger if the surviving foreign entity fails to appoint or maintain
2 an agent designated for service of process in this State or the agent for service of
3 process cannot with reasonable diligence be found at the designated office. Upon
4 receipt of process, the Registrar of Corporations shall send a copy of the process
5 by registered or certified mail, return receipt requested, to the surviving entity at
6 the address set forth in the articles of merger. Service is effected under this
7 subsection at the earliest of:

- 8 (1) the date the company receives the process, notice, or demand;
- 9 (2) the date shown on the return receipt, if signed on behalf of the
10 company; or
- 11 (3) five days after its deposit in the mail, if mailed postpaid and
12 correctly addressed.

13 (c) A member of the surviving limited liability company is liable for all
14 obligations of a party to the merger for which the member was personally liable
15 before the merger.

16 (d) Unless otherwise agreed, a merger of a limited liability company that
17 is not the surviving entity in the merger does not require the limited liability
18 company to wind up its business under this Act or pay its liabilities and distribute
19 its assets pursuant to this Act.

20 (e) Articles of merger serve as articles of dissolution for a limited liability
21 company that is not the surviving entity in the merger.

22 **Section 907. Article not Exclusive.** This Article does not preclude an entity from
23 being converted or merged under other law.

24 **ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES**

25 Section 1001. Law Governing Foreign Limited Liability Companies.

26 Section 1002. Application for Certificate of Authority.

27 Section 1003. Activities Not Constituting Transacting Business.

28 Section 1004. Issuance of Certificate of Authority.

1 Section 1005. Name of Foreign Limited Liability Company.

2 Section 1006. Revocation of Certificate of Authority.

3 Section 1007. Cancellation of Authority.

4 Section 1008. Effect of Failure to Obtain Certificate of Authority.

5 Section 1009. Action by Attorney General.

6 ***Section 1001. Law Governing Foreign Limited Liability Companies.***

7 (a) The laws of the State or other jurisdiction under which a foreign
8 limited liability company is organized govern its organization and internal affairs
9 and the liability of its managers, members, and their transferees.

10 (b) A foreign limited liability company may not be denied a certificate of
11 authority by reason of any difference between the laws of another jurisdiction
12 under which the foreign company is organized and the laws of this State.

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

16 ***Section 1002. Application for Certificate of Authority.***

17 (a) A foreign limited liability company may apply for a certificate of
18 authority to transact business in this State by delivering an application to the
19 Registrar of Corporations for filing. The application must set forth:

20 (1) the name of the foreign company or, if its name is unavailable
21 for use in this State, a name that satisfies the requirements of Section
22 1005;

23 (2) the name of the State or country under whose law it is
24 organized;

25 (3) the street address of its principal office;

26 (4) the address of its initial designated office in this State;

27 (5) the name and street address of its initial agent for service of
28 process in this State;

1 (6) whether the duration of the company is for a specified term
2 and, if so, the period specified;

3 (7) whether the company is manager-managed, and, if so, the name
4 and address of each initial manager; and

5 (8) whether the members of the company are to be liable for its
6 debts and obligations under a provision similar to Section 303(c).

7 (b) A foreign limited liability company shall deliver with the completed
8 application a certificate of existence or a record of similar import authenticated by
9 the secretary of state or other official having custody of company records in the
10 State or country under whose law it is organized.

11 ***Section 1003. Activities not Constituting Transacting Business.***

12 (a) Activities of a foreign limited liability company that do not constitute
13 transacting business in this State within the meaning of this Article include:

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

15 (2) holding meetings of its members or managers or carrying on
16 any other activity concerning its internal affairs;

17 (3) maintaining bank accounts;

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

21 (5) selling through independent contractors;

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

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

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

4 (9) conducting an isolated transaction that is completed within 30
5 days and is not one in the course of similar transactions of a like manner;
6 and

7 (10) transacting business in interstate commerce.

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

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

14 **Section 1004. Issuance of Certificate of Authority.** Unless the Registrar of
15 Corporations determines that an application for a certificate of authority fails to comply
16 as to form with the filing requirements of this Act, the Registrar of Corporations, upon
17 payment of all filing fees, shall file the application and send a receipt for it and the fees to
18 the limited liability company or its representative.

19 **Section 1005. Name of Foreign Limited Liability Company.**

20 (a) If the name of a foreign limited liability company does not satisfy the
21 requirements of Section 105, the company, to obtain or maintain a certificate of
22 authority to transact business in this State, must use a fictitious name to transact
23 business in this State if its real name is unavailable and it delivers to the Registrar
24 of Corporations for filing a copy of the resolution of its managers, in the case of a
25 manager-managed company, or of its members, in the case of a member-managed
26 company, adopting the fictitious name.

27 (b) Except as authorized by subsections (c) and (d), the name, including a
28 fictitious name to be used to transact business in this State, of a foreign limited

1 liability company must be distinguishable upon the records of the Registrar of
2 Corporations from:

3 (1) the name of any corporation, limited partnership, or company
4 incorporated, organized, or authorized to transact business in this State;

5 (2) a name reserved or registered under Section 106 or 107; and

6 (3) the fictitious name of another foreign limited liability company
7 authorized to transact business in this State.

8 (c) A foreign limited liability company may apply to the Registrar of
9 Corporations for authority to use in this State a name that is not distinguishable
10 upon the records of the Registrar of Corporations from a name described in
11 subsection (b). The Registrar of Corporations shall authorize use of the name
12 applied for if:

13 (1) the present user, registrant, or owner of a reserved name
14 consents to the use in a record and submits an undertaking in form
15 satisfactory to the Registrar of Corporations to change its name to a name
16 that is distinguishable upon the records of the Registrar of Corporations
17 from the name of the foreign applying limited liability company; or

18 (2) the applicant delivers to the Registrar of Corporations a
19 certified copy of a final judgment of a court establishing the applicant's
20 right to use the name applied for in this State.

21 (d) A foreign limited liability company may use in this State the name,
22 including the fictitious name, of another domestic or foreign entity that is used in
23 this State if the other entity is incorporated, organized, or authorized to transact
24 business in this State and the foreign limited liability company:

25 (1) has merged with the other entity;

26 (2) has been formed by reorganization of the other entity; or

27 (3) has acquired all or substantially all of the assets, including the
28 name, of the other entity.

1 (e) If a foreign limited liability company authorized to transact business in
 2 this State changes its name to one that does not satisfy the requirements of Section
 3 105, it may not transact business in this State under the name as changed until it
 4 adopts a name satisfying the requirements of Section 105 and obtains an amended
 5 certificate of authority.

6 ***Section 1006. Revocation of Certificate of Authority.***

7 (a) A certificate of authority of a foreign limited liability company to
 8 transact business in this State may be revoked by the Registrar of Corporations in
 9 the manner provided in subsection (b) if:

10 (1) the company fails to:

11 (i) pay any fees, taxes, and penalties owed to this State;

12 (ii) deliver its annual report required under Section 211 to
 13 the Registrar of Corporations within 60 days after it is due;

14 (iii) appoint and maintain an agent for service of process as
 15 required by this Article; or

16 (iv) file a statement of a change in the name or business
 17 address of the agent as required by this Article; or

18 (2) a misrepresentation has been made of any material matter in
 19 any application, report, affidavit, or other record submitted by the
 20 company pursuant to this Article.

21 (b) The Registrar of Corporations may not revoke a certificate of authority
 22 of a foreign limited liability company unless the Registrar of Corporations sends
 23 the company notice of the revocation, at least 60 days before its effective date, by
 24 a record addressed to its agent for service of process in this State, or if the
 25 company fails to appoint and maintain a proper agent in this State, addressed to
 26 the office required to be maintained by Section 108. The notice must specify the
 27 cause for the revocation of the certificate of authority. The authority of the
 28 company to transact business in this State ceases on the effective date of the

1 revocation unless the foreign limited liability company cures the failure before
2 that date.

3 **Section 1007. Cancellation of Authority.** A foreign limited liability company
4 may cancel its authority to transact business in this State by filing in the office of the
5 Registrar of Corporations a certificate of cancellation. Cancellation does not terminate the
6 authority of the Registrar of Corporations to accept service of process on the company for
7 claims for relief arising out of the transactions of business in this State.

8 **Section 1008. Effect of Failure to Obtain Certificate of Authority.**

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

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

16 (c) Limitations on personal liability of managers, members, and their
17 transferees are not waived solely by transacting business in this State without a
18 certificate of authority.

19 (d) If a foreign limited liability company transacts business in this State
20 without a certificate of authority, it appoints the Registrar of Corporations as it's
21 agent for service of process for claims for relief arising out of the transaction of
22 business in this State.

23 **Section 1009. Action by Attorney General.** The Attorney General may maintain
24 an action to restrain a foreign limited liability company from transacting business in this
25 State in violation of this Article.

26 **ARTICLE 11. DERIVATIVE ACTIONS**

27 Section 1101. Right of Action.

28 Section 1102. Proper Plaintiff.

1 Section 1103. Pleading.

2 Section 1104. Expenses.

3 **Section 1101. Right of Action.** A member of a limited liability company may
4 maintain an action in the right of the company if the members or managers having
5 authority to do so have refused to commence the action or an effort to cause those
6 members or managers to commence the action is not likely to succeed.

7 **Section 1102. Proper Plaintiff.** In a derivative action for a limited liability
8 company, the plaintiff must be a member of the company when the action is commenced;
9 and:

10 (1) must have been a member at the time of the transaction of which the
11 plaintiff complains; or

12 (2) the plaintiff's status as a member must have devolved upon the plaintiff
13 by operation of law or pursuant to the terms of the operating agreement from a
14 person who was a member at the time of the transaction.

15 **Section 1103. Pleading.** In a derivative action for a limited liability company,
16 the complaint must set forth with particularity the effort of the plaintiff to secure
17 initiation of the action by a member or manager or the reasons for not making the effort.

18 **Section 1104. Expenses.** If a derivative action for a limited liability company is
19 successful, in whole or in part, or if anything is received by the plaintiff as a result of a
20 judgment, compromise, or settlement of an action or claim, the court may award the
21 plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the
22 plaintiff to remit to the limited liability company the remainder of the proceeds received.

23 **ARTICLE 12. MISCELLANEOUS PROVISIONS**

24 Section 1201. Uniformity of Application and Construction.

25 Section 1202. Short Title.

26 Section 1203. Severability Clause.

27 Section 1204. Effective Date.

28 Section 1205. Transitional Provisions.

1 Section 1206. Savings Clause.

2 **Section 1201. Uniformity of Application and Construction.** This Act shall be
3 applied and construed to effectuate its general purpose to make uniform the law with
4 respect to the subject of this Act among States enacting it.

5 **Section 1202. Short Title.** This Act may be cited as the Uniform Limited
6 Liability Company Act (1996).

7 **Section 1203. Severability Clause.** If any provision of this Act or the application
8 of any such provision to any person or circumstance should be held invalid by a court of
9 competent jurisdiction, the remainder of this Act or the application of its provisions to
10 persons or circumstances other than those to which it is held invalid shall not be affected
11 thereby.

12 **Section 1204. Effective Date.** This Act shall take effect upon its approval by the
13 Governor or upon its becoming law without such approval.

14 **Section 1205. Transitional Provisions.**

15 (a) Before January 1, 2003, this Act governs only a limited liability
16 company organized:

17 (1) after the effective date of this Act, unless the company is
18 continuing the business of a dissolved limited liability company under
19 Commonwealth law; and

20 (2) before the effective date of this Act, which elects, as provided
21 by subsection (c), to be governed by this Act.

22 (b) On and after January 1, 2003, this Act governs all limited liability
23 companies.

24 (c) Before January 1, 2003, a limited liability company voluntarily may
25 elect, in the manner provided in its operating agreement or by law for amending
26 the operating agreement, to be governed by this Act.

27 **Section 1206. Savings Clause.** This Act and any repealer contained herein shall
28 not be construed as affecting any existing right acquired under contract or acquired under

1 statutes repealed or under any rule, regulation or order adopted under the statutes.
2 Repealers contained in this Act shall not affect any proceeding instituted under or
3 pursuant to prior law. The enactment of this Act shall not have the effect of terminating,
4 or in any way modifying, any liability, civil or criminal, which shall already be in
5 existence at the date this Act becomes effective.”

Date: _____

Introduced by: _____
(SEN.) PAUL A. MANGLONA