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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992

ENROLLED

Committee Substitute for Committee Substitute for

SENATE BILL NO. 10

(By Senator Wooten)

PASSED March 6, 1992

In Effect from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 10

(BY SENATOR WOOTON)

[Passed March 6, 1992; in effect from passage.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to limited liability companies; authorizing and specifying method of formation of limited liability companies; specifying fines for failure to record certificate of organization; regulating internal management of limited liability companies; specifying and limiting member and manager liabilities; providing methods for dissolution and merger of limited liability companies and conversion of partnerships to limited liability companies; providing for registration of foreign limited liability companies; and providing liability of foreign limited liability companies to state for fees, taxes and penalties for failure to obtain certificate of authority.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-a, to read as follows:

ARTICLE 1A. LIMITED LIABILITY COMPANIES.

§31-1A-1. Short title.

1 This article shall be known and may be cited as the
2 “West Virginia Limited Liability Company Act”.

§31-1A-2. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (1) “Article” means this article of the West Virginia
4 code;

5 (2) “Articles of organization” means the articles of
6 organization filed with the secretary of state for the
7 purpose of forming a limited liability company as
8 specified in sections eight and nine of this article and
9 all amendments thereto;

10 (3) “Bankruptcy” means a case under the federal
11 Bankruptcy Code of 1978, Title 11 of the United States
12 Code, as amended;

13 (4) “Contribution” means any cash, property or
14 services rendered, or a promissory note or other
15 binding obligations to contribute cash or property or to
16 perform services that a member contributes to a
17 limited liability company in his capacity as a member;

18 (5) “Court” includes every court and judge having
19 jurisdiction in any case;

20 (6) “Distribution” means a direct or indirect transfer
21 of money or other property, or incurrance of indebt-
22 edness by a limited liability company, to or for the
23 benefit of its members in respect of their interests in
24 such company;

25 (7) “Foreign limited liability company” means a
26 limited liability company organized under laws other
27 than the laws of this state;

28 (8) “Limited liability company” or “domestic limited
29 liability company” means an entity that is an unincor-
30 porated association having two or more members that
31 is organized and existing under this article;

32 (9) “Manager” means a person or persons designated
33 by the members of a limited liability company to
34 manage the company pursuant to this article or a
35 limited liability company’s articles of organization or
36 operating agreement;

37 (10) “Member” means a person with an ownership
38 interest in a limited liability company with the rights
39 and obligations specified under this article;

40 (11) “Membership interest” means a member’s
41 share of the capital and profits and losses of a limited
42 liability company, the right to receive distributions of
43 such company’s assets and any rights of management
44 under this article;

45 (12) “Operating agreement” means any agreement
46 of the members as to the affairs and management of
47 a limited liability company and the conduct of its
48 business;

49 (13) “Person” includes individuals, general partner-
50 ships, limited partnerships, limited liability companies,
51 corporations, trusts, business trusts, real estate invest-
52 ment trusts, estates and other associations;

53 (14) “Principal office” means the office, in or out of
54 this state, where the principal executive offices of a
55 limited liability company are located; and

56 (15) “Real property” or “real estate” includes land,
57 any interest, leasehold or estate in land and other
58 improvements on it.

§31-1A-3. Purpose.

1 Limited liability companies may be organized under
2 this article for any lawful purpose.

§31-1A-4. Powers.

1 (a) Each limited liability company organized and
2 existing under this article shall have the power to:

- 3 (1) Sue and be sued, complain and defend, in its
4 name;
- 5 (2) Purchase, take, receive, lease, take by gift, devise
6 or bequest, or otherwise acquire, own, hold, improve,
7 use and otherwise deal in and with real or personal
8 property or any legal or equitable interest therein,
9 wherever situated;
- 10 (3) Sell, convey, mortgage, pledge, create a security
11 interest in, lease, exchange, transfer or otherwise
12 dispose of all or any part of its property and assets;
- 13 (4) Lend money to or otherwise assist its members;
- 14 (5) Purchase, take, receive, subscribe for or other-
15 wise acquire, own, hold, vote, use, employ, sell,
16 mortgage, lend, pledge or otherwise dispose of, and
17 otherwise use and deal in and with, shares or other
18 interests in, or obligations of, other limited liability
19 companies, domestic or foreign corporations, associa-
20 tions, general partnerships, limited partnerships, joint
21 ventures or persons, or direct or indirect obligations of
22 the United States or of any government, state, terri-
23 tory, governmental district or municipality or any
24 instrumentality thereof;
- 25 (6) Make contracts and guarantees, incur liabilities,
26 borrow money at such rates of interest as the limited
27 liability company may determine, issue its notes,
28 bonds and other obligations and secure any of its
29 obligations by mortgage, deed of trust or pledge of all
30 or any part of its property, franchises and income;
- 31 (7) Lend money for its proper purposes, invest and
32 reinvest its funds and take and hold real and personal
33 property as security for the payment of funds so
34 loaned or invested;
- 35 (8) Conduct its business and affairs, carry on its
36 operations and have and exercise the powers granted
37 by this article in any state, territory, district or
38 possession of the United States or in any foreign
39 country;
- 40 (9) Elect or appoint managers, employees and agents

41 of the limited liability company and define their duties
42 and fix their compensation;

43 (10) Pay compensation, or pay additional compensa-
44 tion, to any or all managers, members, employees and
45 agents on account of services previously rendered, or
46 to be rendered, to the limited liability company,
47 whether or not an agreement to pay such compensa-
48 tion was made before such services were rendered;

49 (11) Make and alter operating agreements for the
50 administration and regulation of the business and
51 affairs of the limited liability company;

52 (12) Indemnify a member, manager, employee or
53 agent, or former member, manager, employee or
54 agent, of the limited liability company to the same
55 extent as a corporation organized under the laws of
56 this state may indemnify any of the directors, officers,
57 employees or agents of the corporation against
58 expenses actually and reasonably incurred by him or
59 it in connection with the defense of any action, suit or
60 proceeding, whether civil or criminal, in which he or
61 it is made a party and to make any other indemnifi-
62 cation that is authorized by the articles of organization
63 or by the operating agreement or resolution adopted
64 by the members after notice;

65 (13) Cease its activities and surrender its certificate
66 of organization;

67 (14) Have and exercise all powers necessary or
68 convenient to effect any or all of the purposes for
69 which the limited liability company is organized;

70 (15) Become a member of a corporation, general
71 partnership, limited partnership, limited liability
72 company, joint venture or similar association; and

73 (16) Transact any lawful business that a corporation,
74 general partnership, limited partnership or other
75 business entity may conduct under the laws of this
76 state.

77 (b) In addition to the provisions of subsection (a) of
78 this section, a limited liability company shall have and

79 exercise all powers granted to corporations under the
80 laws of this state.

§31-1A-5. Name.

1 (a) The words "limited liability company" shall be
2 included in the name of every limited liability com-
3 pany formed under the provisions of this article.

4 (b) Such name shall not contain any word or phrase
5 which indicates or implies that it is organized for any
6 purpose other than those permitted by this article and
7 as may be limited by its articles of organization.

8 (c) Such name shall not contain the words "Corpo-
9 ration", "Incorporated", "Limited Partnership" or the
10 abbreviations "Corp." or "Inc."

11 (d) Such name shall not be the same as, or decep-
12 tively similar to, any of the following:

13 (1) The name of any domestic corporation, limited
14 partnership or limited liability company;

15 (2) The name of any foreign corporation, limited
16 partnership, or limited liability company authorized to
17 transact business in this state that has in effect a
18 registration of its name as provided under the laws of
19 this state;

20 (3) Any name for which an exclusive right has been
21 reserved in the office of the secretary of state;

22 (4) Any trade or assumed name registered with the
23 secretary of state or for which application for registra-
24 tion is pending; or

25 (5) Any name registered in the office of the secre-
26 tary of state.

27 (e) The provisions of subsection (d) of this section
28 shall not apply if the organizer files with the secretary
29 of state either:

30 (1) The written consent of such other limited liabil-
31 ity company, corporation or limited partnership or
32 holder of a reserved or registered name to use the
33 same or a deceptively similar name if one or more

34 words are added, altered or deleted to make the name
35 distinguishable from the reserved or registered name;
36 or

37 (2) A certified copy of a final decree of a court of
38 competent jurisdiction establishing the prior right of
39 the applicant to the use of such name in this state.

40 (f) A limited liability company that acquires, upon a
41 sale, lease or other disposition to or exchange with a
42 domestic limited liability company, all or substantially
43 all the assets of another domestic or foreign limited
44 liability company, including its name, may have a
45 deceptively similar name if one or more words are
46 added, altered or deleted to make such name distin-
47 guishable from such other name as that used in this
48 state by any of such limited liability companies if such
49 other limited liability company was organized under
50 the laws of, or is authorized to transact business in,
51 this state.

§31-1A-6. Reservation of name.

1 (a) The exclusive right to the use of a name may be
2 reserved by:

3 (1) Any person intending to organize a limited
4 liability company under this article and to adopt that
5 name;

6 (2) Any domestic or foreign limited liability com-
7 pany registered in this state that, in either case,
8 intends to adopt that name;

9 (3) Any domestic or foreign limited liability com-
10 pany registered in this state intending to change its
11 name; or

12 (4) Any foreign limited liability company or any
13 person intending to organize a foreign limited liability
14 company and intending to register in this state and
15 adopt that name.

16 (b) To reserve a specified name, a person shall
17 submit an application to the secretary of state in the
18 form and manner the secretary of state shall desig-
19 nate. If the secretary of state finds that the name is

20 available for use by a domestic or foreign limited
21 liability company, he shall reserve the name for the
22 exclusive use of the applicant for a period of one
23 hundred twenty days. Such reservation may be
24 renewed for additional periods not to exceed one
25 hundred twenty days from the date of such renewal.
26 The right to the exclusive use of a reserved name may
27 be transferred to any other person by delivering to the
28 office of the secretary of state a notice of the transfer
29 executed by the applicant for whom the name was
30 reserved and specifying the name and address of the
31 transferee.

§31-1A-7. Formation.

1 Any two or more persons may form a limited
2 liability company by causing to be signed and filed
3 with the secretary of state articles of organization for
4 such limited liability company. Such persons need not
5 be members of the limited liability company after
6 formation has occurred.

§31-1A-8. Articles of organization.

- 1 (a) The articles of organization of a limited liability
2 company shall set forth:
- 3 (1) The name of the limited liability company;
- 4 (2) The period of its duration, which shall not be
5 perpetual;
- 6 (3) The purpose for which the limited liability
7 company is organized; and
- 8 (4) The address of its principal place of business in
9 the state and the name and address of its initial
10 registered agent in the state, which may be the same
11 as its initial registered office but need not be located
12 in this state.
- 13 (b) The articles of organization may set forth any
14 other matter that is permitted under this article to be
15 set forth in its operating agreement.
- 16 (c) It is not necessary to set out in the articles of
17 organization any of the powers enumerated in this

18 article.

19 (d) Whenever a provision of the articles of organiza-
20 tion is inconsistent with the operating agreement for
21 the limited liability company, the provisions of the
22 articles of organization shall be controlling.

23 (e) The articles of organization shall contain a
24 statement of the name and address of the person who,
25 or the firm that, prepared such articles of organization.

26 (f) The articles of organization shall be acknowl-
27 edged by one or more of the persons forming the
28 limited liability company before a notary public and
29 transmitted with the proper fees to, and shall be filed
30 with, the secretary of state.

§31-1A-9. Filing of articles of organization.

1 (a) Duplicate originals, which as used in this article
2 shall mean two copies, however reproduced, both of
3 which are executed in the original, of the articles of
4 organization shall be delivered to the secretary of
5 state. If the secretary of state finds that the articles of
6 organization conform to law, he shall, when all fees
7 have been paid as prescribed by law:

8 (1) Endorse on each of the duplicate originals the
9 word "Filed" and the month, day and year of the
10 filing thereof;

11 (2) File one of the duplicate originals in his office;
12 and

13 (3) Issue a certificate of organization to which he
14 shall affix the other duplicate original.

15 (b) The certificate of organization, together with a
16 duplicate original of the articles of organization affixed
17 thereto by the secretary of state, shall be returned to
18 the limited liability company or to its representative.

19 (c) If the limited liability company has its principal
20 office in this state, it shall cause such certificate, or a
21 duly certified copy thereof, to be recorded in the office
22 of the clerk of the county commission of the county in
23 which such principal office is located; if its principal

24 office is not within this state but it conducts affairs or
25 does or transacts business therein, then in the county
26 or one of the counties in which it conducts its affairs
27 or does or transacts its principal business. If its
28 principal office is without the state and it does not
29 conduct affairs or do or transact business within the
30 state, such certificate need not be recorded in the
31 county clerk's office. A failure to comply with the
32 foregoing recordation provision within six months
33 from the date of such certificate shall subject the
34 limited liability company to a fine of not more than
35 one thousand dollars.

§31-1A-10. Effect of issuance of certificate of organization.

1 (a) Upon the issuance of the certificate of organiza-
2 tion, or upon any future date stated in the certificate
3 of organization, the limited liability company shall be
4 considered organized and in existence and such certifi-
5 cate of organization shall be conclusive evidence that
6 all conditions precedent required to be performed by
7 the members have been complied with and that the
8 limited liability company has been legally organized
9 under this article, except as against this state in a
10 proceeding to cancel or revoke the certificate of
11 organization or for involuntary dissolution of the
12 limited liability company.

13 (b) A limited liability company shall not transact
14 business or incur indebtedness, except that which is
15 incidental to its organization or to obtaining subscrip-
16 tions for or payment of contributions, until the
17 secretary of state has issued a certificate of
18 organization.

§31-1A-11. Amendments to articles of organization.

1 (a) The articles of organization shall be amended
2 within thirty days from the occurrence of any of the
3 following:

4 (1) There is a change in the name of the limited
5 liability company;

6 (2) There is a false or erroneous statement in the
7 articles of organization;

8 (3) There is a change in the duration of the limited
9 liability company as stated in the articles of organiza-
10 tion: *Provided*, That such duration shall not be
11 perpetual;

12 (4) A time is fixed for the dissolution of the limited
13 liability company if no time is specified in the articles
14 of organization; or

15 (5) The members desire to make a change in any
16 other statement in the articles of organization in order
17 for it to accurately represent the agreement between
18 them.

19 (b) The articles of organization as amended shall
20 contain only such provisions as might be lawfully
21 contained in original articles of organization at the
22 time of making such amendment.

23 (c) The articles of amendment shall be adopted upon
24 approval by a majority vote of the members entitled
25 to vote thereon, unless the articles of organization or
26 the operating agreement of the limited liability com-
27 pany require a greater or lesser vote.

28 (d) The articles of amendment shall be executed in
29 duplicate and verified by a member or manager so
30 authorized and shall set forth:

31 (1) The name of the limited liability company;

32 (2) The amendment as adopted;

33 (3) The date of the adoption of the amendment by
34 the members;

35 (4) A statement that the amendment was adopted by
36 a vote of the members in accordance with this article;
37 and

38 (5) The name and address of the person or firm that
39 prepared such amendment.

**§31-1A-12. Filing of articles of amendment; recordation;
admission in evidence.**

1 (a) Upon adoption of the articles of amendment,
2 duplicate originals of such articles of amendment shall

3 be delivered to the secretary of state. If the secretary
4 of state finds that the articles of amendment conform
5 to law, he shall, when all fees have been paid as
6 prescribed by law:

7 (1) Endorse on each of the duplicate originals the
8 word "Filed" and the month, day and year of the
9 filing thereof;

10 (2) File one of the duplicate originals in his office;
11 and

12 (3) Issue a certificate of amendment to which he
13 shall affix the other duplicate originals.

14 (b) The certificate of amendment, together with a
15 duplicate original of the articles of amendment affixed
16 thereto by the secretary of state, shall be returned to
17 the persons forming the limited liability company, the
18 principal office of the limited liability company or to
19 its representative.

20 (c) The certificate of amendment issued by the
21 secretary of state pursuant to this section, or a
22 certified copy thereof, shall be recorded in the office of
23 the appropriate county clerk in the same manner as
24 original certificates of organization are required to be
25 recorded in accordance with subsection (c), section
26 nine of this article and received in evidence to the
27 same extent as an original certificate of organization
28 or a certified copy of such original.

§31-1A-13. Filing requirements.

1 (a) A document which satisfies the requirements of
2 this section and of any other section that adds to or
3 varies these requirements shall be entitled to be filed
4 with the secretary of state.

5 (b) The document to be filed shall be one that this
6 article requires or permits to be filed with the secre-
7 tary of state.

8 (c) The document to be filed shall contain the
9 information required by this article and may contain
10 other information as well.

11 (d) The document to be filed shall be typewritten or
12 printed and shall be executed in the name of the
13 limited liability company:

14 (1) By any member or manager of the limited
15 liability company;

16 (2) If the limited liability company has not been
17 formed, by one or more of the persons forming the
18 limited liability company; or

19 (3) If the limited liability company is in the hands of
20 a receiver, trustee or other court-appointed fiduciary,
21 by that fiduciary.

22 (e) The person executing the document shall sign it
23 and state beneath or opposite his signature his name
24 and the capacity in which he signs.

25 (f) If, pursuant to any provision of this article, the
26 secretary of state has prescribed a mandatory form for
27 the document, the document shall be in or on the
28 prescribed form.

29 (g) The document to be filed shall be delivered to
30 the secretary of state for filing and shall be accompa-
31 nied by the required filing fee and any registration fee
32 required.

§31-1A-14. Registered office and registered agent to be maintained.

1 Each domestic limited liability company and each
2 foreign limited liability company which has been
3 issued a certificate of authority pursuant to this article
4 shall have and continuously maintain in this state:

5 (1) A registered office which may, but need not, be
6 the same as its place of business; and

7 (2) A registered agent, which agent may be either an
8 individual resident in this state whose business office
9 is identical with such registered office, or a domestic
10 corporation or a foreign corporation authorized to
11 transact business in this state, having a business office
12 identical with such registered office.

§31-1A-15. Change of registered office or registered agent.

1 (a) Within thirty days of any change in registered
2 office or agent, or both, a limited liability company
3 shall file in the office of the secretary of state a
4 statement setting forth:

5 (1) The name of the limited liability company;

6 (2) The address of its then registered office;

7 (3) If the address of its registered office is to be
8 changed, the address to which the registered office is
9 to be changed;

10 (4) The name of its then registered agent; and

11 (5) If its registered agent is to be changed, the name
12 of its successor registered agent.

13 (b) If the secretary of state finds that the statement
14 conforms to the provisions of this article, he shall file
15 the statement in his office, and upon filing the
16 statement, the change of address of the registered
17 office or the appointment of a new registered agent, or
18 both as the case may be, will be in effect.

19 (c) Any registered agent of a limited liability com-
20 pany may resign as agent upon filing a written notice
21 thereof, executed in duplicate, with the limited liabil-
22 ity company and the secretary of state. The appoint-
23 ment of the agent terminates upon the expiration of
24 thirty days after receipt of notice by the secretary of
25 state.

**§31-1A-16. Secretary of state constituted attorney-in-fact for
all limited liability companies; manner of
acceptance or service of notices and process
upon secretary of state; what constitutes
conducting affairs or doing or transacting
business in this state for purposes of this
section; venue.**

1 (a) The secretary of state is hereby constituted the
2 attorney-in-fact for and on behalf of every limited
3 liability company created by virtue of the laws of this
4 state and every foreign limited liability company

5 authorized to conduct affairs or do or transact business
6 herein pursuant to the provisions of this article, with
7 authority to accept service of notice and process on
8 behalf of every such limited liability company and
9 upon whom service of notice and process may be made
10 in this state for and upon every such limited liability
11 company. No act of such limited liability company
12 appointing the secretary of state attorney-in-fact shall
13 be necessary. Immediately after being served with or
14 accepting any such process or notice, of which process
15 or notice two copies for each defendant shall be
16 furnished the secretary of state with the original
17 notice or process, together with a fee of five dollars,
18 the secretary of state shall file in his office a copy of
19 such process or notice, with a note thereon endorsed
20 of the time of service or acceptance, as the case may
21 be, and transmit one copy of such process or notice by
22 registered or certified mail, return receipt requested,
23 to the person to whom notice and process shall be sent,
24 whose name and address were last furnished to the
25 state officer at the time authorized by statute to accept
26 service of notice and process and upon whom notice
27 and process may be served; and if no such person has
28 been named, to the principal office of the limited
29 liability company at the address last furnished to the
30 state officer at the time authorized by statute to accept
31 service or process and upon whom process may be
32 served, as required by law. No process or notice shall
33 be served on the secretary of state or accepted by him
34 less than ten days before the return day thereof. Such
35 limited liability company shall pay the annual fee
36 prescribed by article twelve, chapter eleven of this
37 code for the services of the secretary of state as its
38 attorney-in-fact.

39 Any foreign limited liability company which shall
40 conduct affairs or do or transact business in this state
41 without having been authorized so to do pursuant to
42 the provisions of this article shall be conclusively
43 presumed to have appointed the secretary of state as
44 its attorney-in-fact with authority to accept service of
45 notice and process on behalf of such limited liability
46 company and upon whom service of notice and process

47 may be made in this state for and upon every such
48 limited liability company in any action or proceeding
49 described in the next following paragraph of this
50 section. No act of such limited liability company
51 appointing the secretary of state as such attorney-in-
52 fact shall be necessary. Immediately after being served
53 with or accepting any such process or notice, of which
54 process or notice two copies for each defendant shall
55 be furnished the secretary of state with the original
56 notice or process, together with a fee of five dollars,
57 the secretary of state shall file in his office a copy of
58 such process or notice, with a note thereon endorsed
59 of the time of service or acceptance, as the case may
60 be, and transmit one copy of such process or notice by
61 registered or certified mail, return receipt requested,
62 to such limited liability company at the address of its
63 principal office, which address shall be stated in such
64 process or notice. Such service or acceptance of such
65 process or notice shall be sufficient if such return
66 receipt shall be signed by an agent or employee of
67 such limited liability company, or the registered or
68 certified mail so sent by the secretary of state is
69 refused by the addressee and the registered or certi-
70 fied mail is returned to the secretary of state or to his
71 office showing thereon the stamp of the United States
72 postal service that delivery thereof has been refused,
73 and such return receipt of registered or certified mail
74 is appended to the original process or notice and filed
75 therewith in the clerk's office of the court from which
76 such process or notice was issued. No process or notice
77 shall be served on the secretary of state or accepted by
78 him less than ten days before the return date thereof.
79 The court may order such continuances as may be
80 reasonable to afford each defendant opportunity to
81 defend the action or proceedings.

82 For the purpose of this section, a foreign limited
83 liability company not authorized to conduct affairs or
84 do or transact business in this state pursuant to the
85 provisions of this article shall nevertheless be deemed
86 to be conducting affairs or doing or transacting
87 business herein: (1) If such limited liability company
88 makes a contract to be performed, in whole or in part,

89 by any party thereto, in this state; (2) if such limited
90 liability company commits a tort in whole or in part in
91 this state; or (3) if such limited liability company
92 manufactures, sells, offers for sale or supplies any
93 product in a defective condition and such product
94 causes injury to any person or property within this
95 state notwithstanding the fact that such limited
96 liability company had no agents, servants of employees
97 or contracts within this state at the time of said injury.
98 The making of such contract, the committing of such
99 tort or the manufacture or sale, offer of sale or supply
100 of such defective product as hereinabove described
101 shall be deemed to be the agreement of such limited
102 liability company that any notice or process served
103 upon, or accepted by, the secretary of state pursuant
104 to the next preceding paragraph of this section in any
105 action or proceeding against such limited liability
106 company arising from, or growing out of, such con-
107 tract, tort or manufacture or sale, offer of sale or
108 supply of such defective product shall be of the same
109 legal force and validity as process duly served on such
110 limited liability company in this state.

111 (b) In all cases arising under this article wherein the
112 limited liability companies seeking to exercise the
113 rights conferred by this article, or against which any
114 proceeding is instituted thereunder, do not have or
115 maintain any office, own any property or conduct
116 affairs or do or transact business in this state, the
117 circuit court of the county in which the seat of
118 government is located shall have original jurisdiction,
119 except in cases in which jurisdiction is expressly
120 conferred upon some other court by this article.

§31-1A-17. Fees and charges to be collected by secretary of state.

1 Except as otherwise expressly provided in this
2 article, all fees required to be charged and collected by
3 the secretary of state by the provisions of this article
4 shall be charged and collected in accordance with the
5 provisions of section two, article one, chapter fifty-
6 nine of this code as applicable to corporations.

§31-1A-18. Management.

1 (a) Except to the extent that the articles of organi-
2 zation or an operating agreement provides for man-
3 agement of a limited liability company by a manager
4 or managers, management of a limited liability com-
5 pany shall be vested in its members.

6 (b) Unless otherwise provided in the articles of
7 organization or an operating agreement, the members
8 of a limited liability company shall vote in proportion
9 to their contributions to the limited liability company,
10 as adjusted from time to time to reflect any additional
11 contributions or withdrawals, and a majority vote of
12 the members of a limited liability company shall
13 consist of the vote or other approval of members
14 having a majority share of the voting power of all
15 members.

16 (c) Unless otherwise provided in this article or in the
17 articles of organization or an operating agreement, any
18 action required or permitted to be taken by the
19 members of a limited liability company may be taken
20 upon a majority vote of the members.

§31-1A-19. Operating agreement.

1 (a) The members of a limited liability company may
2 enter into any operating agreement to regulate or
3 establish the affairs of the limited liability company,
4 the conduct of its business and the relations of its
5 members. An operating agreement may contain any
6 provisions regarding the affairs of a limited liability
7 company and the conduct of its business to the extent
8 that such provisions are not inconsistent with the laws
9 of this state or the articles of organization.

10 (b) (1) An operating agreement must initially be
11 agreed to by all of the members. Unless the articles of
12 organization specifically require otherwise, an operat-
13 ing agreement need not be in writing.

14 (2) If an operating agreement does not provide for
15 the method by which it may be amended, then all of
16 the members must agree to any amendment of an
17 operating agreement.

18 (c) (1) A court of equity may enforce an operating
19 agreement by injunction or by such other relief that
20 the court in its discretion determines to be fair and
21 appropriate in the circumstances.

22 (2) As an alternative to injunctive or other equitable
23 relief, when the provisions of section thirty-six of this
24 article are applicable, the court may order dissolution
25 of the limited liability company.

**§31-1A-20. Management of a limited liability company by a
manager or managers.**

1 (a) The articles of organization or an operating
2 agreement of a limited liability company may delegate
3 full or partial responsibility for managing a limited
4 liability company to or among one or more managers.

5 (b) Managers need not be residents of this state or
6 members of the limited liability company unless the
7 articles of organization or an operating agreement so
8 require. The articles of organization or an operating
9 agreement may prescribe other qualifications for
10 managers.

11 (c) The number of managers shall be fixed by or in
12 the manner provided in the articles of organization or
13 an operating agreement. The number of managers
14 may be increased or decreased by amendment to, or in
15 the manner provided in, the articles of organization or
16 an operating agreement.

17 (d) Managers shall be elected by the members
18 pursuant to the articles of organization or an operating
19 agreement, or, if none, pursuant to section eighteen of
20 this article.

21 (e) Unless otherwise provided in the articles of
22 organization or an operating agreement, any vacancy
23 occurring in the position of manager shall be filled by
24 a majority vote in interests of the members.

25 (f) All managers or any lesser number may be
26 removed in the manner provided in the articles of
27 organization or an operating agreement. Unless the
28 articles of organization or an operating agreement

29 provide otherwise for the removal of managers, then
30 all managers or any lesser number may be removed
31 with or without cause by a majority vote in interests
32 of the members.

33 (g) Unless otherwise provided in the articles of
34 organization or an operating agreement, any action
35 required or permitted to be taken by the managers of
36 a limited liability company may be taken upon a
37 majority vote of the managers.

38 (h) (1) A manager shall discharge his duties as a
39 manager in accordance with his good faith business
40 judgment of the best interests of the limited liability
41 company.

42 (2) Unless he has knowledge or information concern-
43 ing the matter in question that makes reliance unwar-
44 ranted, a manager is entitled to rely on information,
45 opinions, reports or statements, including financial
46 statements and other financial data, if prepared or
47 presented by:

48 (A) One or more managers or employees of the
49 limited liability company whom the manager believes,
50 in good faith, to be reliable and competent in the
51 matters presented;

52 (B) Legal counsel, public accountants or other
53 persons as to matters the manager believes in good
54 faith are within the person's professional or expert
55 competence; or

56 (C) A committee of the managers of which he is not
57 a member if the manager believes in good faith that
58 the committee merits confidence.

59 (3) A person alleging a violation of this subsection
60 has the burden of proving the violation.

§31-1A-21. Contracting debts.

1 Except as otherwise provided in this article, no debt
2 shall be contracted or liability incurred by or on behalf
3 of a limited liability company, except by one or more
4 of its managers if management of the limited liability
5 company has been vested by the members in a man-

6 ager or managers or, if management of the limited
7 liability company is retained by the members, then by
8 any member.

**§31-1A-22. Business transactions of members or managers
with the limited liability company.**

1 Except as provided in the articles of organization or
2 an operating agreement, a member or manager may
3 lend money to and transact other business with the
4 limited liability company and, subject to other applica-
5 ble law, has the same rights and obligations with
6 respect thereto as a person who is not a member or
7 manager.

§31-1A-23. Contributions.

1 (a) The contributions of a member to a limited
2 liability company may be in cash, property, services
3 rendered or a promissory note or other binding
4 obligation which has been accepted by the limited
5 liability company to contribute cash or property or to
6 perform services.

7 (b) Except as provided in the articles of organization
8 or an operating agreement, a member is obligated to
9 the limited liability company to perform any enforce-
10 able promise to contribute cash or property or to
11 perform services even if he is unable to perform
12 because of death, disability or any other reason. If a
13 member does not make the required contribution of
14 property or services, he is obligated at the option of
15 the limited liability company to contribute cash equal
16 to that portion of the value, as stated in the limited
17 liability company records, of such contribution that
18 has not been made.

19 (c) No promise by a member to contribute to a
20 limited liability company is enforceable unless set out
21 in a writing signed by the member.

§31-1A-24. Sharing of profits and losses.

1 The profits and losses of a limited liability company
2 shall be allocated among the members, and among
3 classes of members, in the manner provided in writing

4 in the articles of organization or an operating agree-
5 ment. If the articles of organization or an operating
6 agreement do not otherwise provide, profits and losses
7 shall be allocated on the basis of the value, as stated
8 in the limited liability company records of the contri-
9 butions made by each member as adjusted from time
10 to time to reflect any additional contributions or
11 withdrawals.

§31-1A-25. Sharing of distributions.

1 Distributions of cash or other assets of a limited
2 liability company shall be allocated among the
3 members, and among classes of members, in the
4 manner provided in writing in the articles of organi-
5 zation or an operating agreement. If the articles of
6 organization or an operating agreement do not so
7 provide in writing, distributions shall be made on the
8 basis of the value, as stated in the limited liability
9 company records, of the contributions made by each
10 member as adjusted from time to time to reflect any
11 additional contributions or withdrawals.

§31-1A-26. Interim distributions.

1 Except as provided in this article, a member is
2 entitled to receive distributions from a limited liability
3 company before his or its resignation from the limited
4 liability company and before the dissolution and
5 winding up thereof to the extent and at the times or
6 upon the happening of the events specified in the
7 articles of organization or an operating agreement.

§31-1A-27. Withdrawal or resignation of member.

1 Unless otherwise provided in the articles of organi-
2 zation or in any operating agreement, a member may
3 withdraw or resign from a limited liability company at
4 the time or upon the happening of events specified in
5 writing in the articles of organization or an operating
6 agreement. If the articles of organization or an oper-
7 ating agreement do not specify the time or the events
8 upon the happening of which a member may with-
9 draw or resign, a member may withdraw or resign
10 upon not less than six months prior written notice to

11 each member at his or its address on the books of the
12 limited liability company.

§31-1A-28. Distributions in kind.

1 Except as provided in writing in the articles of
2 organization or an operating agreement, a member,
3 regardless of the nature of such member's contribu-
4 tion, has no right to demand and receive any distribu-
5 tion from a limited liability company in any form
6 other than cash. Except as provided in writing in the
7 articles of organization or an operating agreement, a
8 member may not be compelled to accept a distribution
9 of any asset in kind from a limited liability company
10 to the extent that the percentage of the asset distrib-
11 uted to such member exceeds a percentage of that
12 asset which such member's membership interest
13 constitutes of all membership interests in the limited
14 liability company.

§31-1A-29. Restrictions on making distribution.

1 (a) No distribution may be made by a limited
2 liability company, if, after giving effect to the
3 distribution:

4 (1) The limited liability company would not be able
5 to pay its debts as they became due to the usual course
6 of business; or

7 (2) The reasonable value of the limited liability
8 company's total assets would be less than the sum of
9 its total liabilities plus, unless the articles of organiza-
10 tion or an operating agreement permit otherwise, the
11 amount that would be needed if the limited liability
12 company were to be dissolved at the time of the
13 distribution to satisfy the preferential rights upon
14 dissolution of members whose preferential rights are
15 superior to the rights of members receiving the
16 distribution.

17 (b) The limited liability company may base a deter-
18 mination that a distribution is not prohibited under
19 this section either on:

20 (1) Financial statements prepared on the basis of

21 accounting practices and principles that are reasonable
22 in the circumstances; or

23 (2) A fair valuation or other method that is reason-
24 able in the circumstances.

25 (c) The effect of a distribution under subsection (a)
26 of this section is measured as of: (i) The date the
27 distribution is authorized if the payment occurs within
28 one hundred twenty days after the date of authoriza-
29 tion; or (ii) the date the payment is made if it occurs
30 more than one hundred twenty days after the date of
31 authorization.

32 (d) A limited liability company's indebtedness to a
33 member incurred by reason of the declaration of a
34 distribution made in accordance with this section is at
35 parity with the limited liability company's indebted-
36 ness to its general unsecured creditors, except to the
37 extent subordinated by agreement.

§31-1A-30. Liability upon wrongful distribution.

1 If a member has received a distribution in violation
2 of the articles of organization or an operating agree-
3 ment or in violation of section twenty-nine of this
4 article, then such member is liable to the limited
5 liability company for a period of four years thereafter
6 for the amount of the distribution wrongfully made.

§31-1A-31. Right to distribution.

1 At the time a member becomes entitled to receive a
2 distribution, such member has the status of, and is
3 entitled to all remedies available to, a creditor of the
4 limited liability company with respect to the
5 distribution.

§31-1A-32. Liability of member to company.

1 (a) A member is liable to the limited liability
2 company for any unpaid contribution to capital which
3 such member agreed in the articles of organization or
4 an operating agreement to make at the time and on
5 the conditions stated in the articles of organization or
6 an operating agreement.

7 (b) A member holds as trustee for the limited
8 liability company:

9 (1) Specific property which is stated in the articles of
10 organization as having been contributed by such
11 member, but which was not contributed or which has
12 been wrongfully or erroneously returned; and

13 (2) Money or other property wrongfully paid or
14 conveyed to such member on account of his or its
15 contribution.

16 (c) The liabilities of a member as set out in this
17 section can be waived or compromised only by the
18 consent of all members, but a waiver or compromise
19 shall not affect the right of a creditor of the limited
20 liability company who extended credit or whose claim
21 arose after the filing and before a cancellation or
22 amendment of the articles of organization to enforce
23 the liabilities.

24 (d) When a contributor has rightfully received the
25 return in whole or in part of his or its capital contri-
26 bution, such contributor is nevertheless liable to the
27 limited liability company for any sum, not in excess of
28 the returned capital, necessary to discharge its liability
29 to all creditors of the limited liability company who
30 expended credit or whose claims arose before the
31 return.

§31-1A-33. Liability of members and managers.

1 The members of a limited liability company shall
2 have the same rights and liabilities as shareholders of
3 corporations organized or registered under article one
4 of this chapter, and such managers shall have the
5 same rights and liabilities as directors of corporations
6 so organized or registered.

§31-1A-34. Interest in company; transferability of interest.

1 (a) The interest of a member in a limited liability
2 company constitutes personal property.

3 (b) Unless otherwise provided in the articles of
4 organization or an operating agreement, a member-
5 ship interest in a limited liability company is assign-

6 able in whole or in part. An assignment of an interest
7 in a limited liability company does not of itself dissolve
8 the limited liability company. An assignment does not
9 entitle the assignee to participate in the management
10 and affairs of the limited liability company or to
11 become or to exercise any rights of a member. Such
12 an assignment entitles the assignee to receive, to the
13 extent assigned, only any share of profits and losses
14 and distributions to which the assignor would be
15 entitled. Except as provided in the articles of organi-
16 zation or an operating agreement, a member ceases to
17 be a member upon assignment of his or its entire
18 membership interest.

19 (c) (1) An assignee of an interest in a limited liability
20 company may become a member only if the other
21 members unanimously consent.

22 (2) An assignee who has become a member has, to
23 the extent assigned, the rights and powers, and is
24 subject to the restrictions and liabilities, of a member
25 under the articles of organization or any operating
26 agreement and this article. An assignee who becomes
27 a member also is liable for any obligations of his or its
28 assignor to make and return contributions as provided
29 in this article. However, an assignee who becomes a
30 member is not obligated for liabilities of the assignor
31 unknown to him at the time he or it became a
32 member.

33 (3) If an assignee of an interest in a limited liability
34 company becomes a member, the assignor is not
35 released from any liability to the limited liability
36 company under sections twenty-three and thirty of
37 this article.

§31-1A-35. Dissolution.

1 (a) A limited liability company organized under this
2 article shall be dissolved upon the occurrence of any of
3 the following events:

4 (1) When the period fixed for the duration of the
5 limited liability company shall expire;

6 (2) By the unanimous written agreement of all

7 members;

8 (3) Upon the death, retirement, resignation, expul-
9 sion, bankruptcy or dissolution of a member or occur-
10 rence of any other event which terminates the con-
11 tinued membership of a member in the limited
12 liability company, unless the business of the limited
13 liability company is continued by the consent of all the
14 remaining members under a right to do so stated in
15 the articles of organization of the limited liability
16 company; or

17 (4) The entry of a decree of judicial dissolution
18 pursuant to section thirty-six of this article.

§31-1A-36. Judicial dissolution.

1 On application by or for a member, the circuit court
2 of the county in which the registered office of the
3 limited liability company is located may decree disso-
4 lution of a limited liability company if it is not
5 reasonably practicable to carry on the business in
6 conformity with the articles of organization and any
7 operating agreement.

§31-1A-37. Winding up.

1 Unless otherwise provided in the articles of organi-
2 zation or an operating agreement, the members who
3 have not wrongfully dissolved a limited liability
4 company may wind up the limited liability company's
5 affairs: *Provided*, That the circuit court of the county
6 in which the registered office of the limited liability
7 company is located, on cause shown, may wind up the
8 limited liability company's affairs on application of
9 any member, his legal representative or assignee.

§31-1A-38. Distribution of assets upon dissolution.

1 Upon the winding up of a limited liability company,
2 the assets of the limited liability company shall be
3 distributed as follows:

4 (1) To secured creditors to the extent of their
5 security, including members who are secured creditors
6 for reasons other than unpaid distributions;

7 (2) To general unsecured creditors, including
8 members who are creditors for reasons other than
9 unpaid distributions, to the extent permitted by law,
10 in satisfaction of liabilities of the limited liability
11 company;

12 (3) To members who are creditors as a result of an
13 unpaid distribution: *Provided*, That if such distribution
14 was made within one year of the dissolution then the
15 member will be at parity with other general unse-
16 cured creditors; and

17 (4) Unless otherwise provided in the articles of
18 organization or an operating agreement, to members
19 first for the return of their contributions and second
20 with respect to their interests in the limited liability
21 company, in the proportions in which the members
22 share in distributions.

§31-1A-39. Certificate of cancellation.

1 (a) Upon the completion of winding up of the limited
2 liability company, a certificate of cancellation shall be
3 filed with the secretary of state. The winding up of a
4 limited liability company shall be completed when all
5 debts, liabilities, and obligations of the limited liability
6 company have been paid and discharged or reasonably
7 adequate provision therefor has been made and all of
8 the remaining property and assets of the limited
9 liability company have been distributed to the
10 members. A certificate of cancellation shall set forth:

11 (1) The name of the limited liability company;

12 (2) The date of filing of the articles of organization
13 and each amendment thereto;

14 (3) The reason for filing the certificate of cancellation;

15 (4) The effective date (which shall be a date certain)
16 of cancellation, provided that any effective date other
17 than the date of filing the certificate of cancellation
18 must be a date subsequent to the filing; and

19 (5) Any other information the members determine
20 to include therein.

21 (b) Unless otherwise provided in this article or in
22 the certificate, a certificate of cancellation (or judicial
23 dissolution) is effective when accepted for filing by the
24 secretary of state.

**§31-1A-40. Filing of certificate of cancellation; recordation;
issuance of certificate of dissolution.**

1 (a) Duplicate originals of such certificate of cancella-
2 tion shall be delivered to the secretary of state. If the
3 secretary of state finds that such certificate of cancel-
4 lation conforms to law, he shall, when all fees and
5 license taxes have been paid as prescribed by law:

6 (1) Endorse on each of such duplicate originals the
7 word "Files" and the month, day and year of the filing
8 thereof;

9 (2) File one of the duplicate originals in his office;
10 and

11 (3) Issue a certificate of dissolution to which he shall
12 affix the other duplicate original.

13 (b) The certificate of dissolution, together with the
14 duplicate original of the certificate of cancellation
15 affixed thereto by the secretary of state, shall be
16 returned to the representative of the dissolved limited
17 liability company. Upon the issuance of such certifi-
18 cate of dissolution the existence of the company shall
19 cease, except for the purpose of suits, other proceed-
20 ings and appropriate action as provided in this article.
21 The manager or managers in office at the time of
22 dissolution, or the survivors of them or, if none, the
23 members, shall thereafter be trustees for the members
24 and creditors of the dissolved limited liability company
25 and as such shall have authority to distribute any
26 company property discovered after dissolution, convey
27 real estate and take such other action as may be
28 necessary on behalf of and in the name of such
29 dissolved limited liability company.

30 (c) If the certificate of organization for the dissolved
31 limited liability company shall have been recorded in
32 the office of the clerk of the county commission of any
33 county in this state, the representative of the dissolved

34 limited liability company shall record the certificate of
35 dissolution in the office of the clerk of the county
36 commission in which the certificate of organization is
37 recorded, and upon such recordation the existence of
38 the corporation shall cease, except for the purpose of
39 actions, other proceedings and appropriate action as
40 provided in this article.

41 (d) The certificate of organization shall be cancelled
42 by the secretary of state upon issuance of the certifi-
43 cate of dissolution.

§31-1A-41. Procedure for merger.

1 Any two or more domestic limited liability compa-
2 nies may merge into one limited liability company
3 pursuant to a plan of merger approved in the manner
4 provided in this article. The plan of merger shall set
5 forth:

6 (a) The names of the limited liability companies
7 proposing to merge and the name of the limited
8 liability company into which they propose to merge;

9 (b) The terms and conditions of the proposed merger;

10 (c) The manner and basis of converting the member-
11 ship interests of each limited liability company or of
12 any membership interests, obligations or other secur-
13 ities of the surviving limited liability company or of
14 any other limited liability company or, in whole or in
15 part into cash or other property;

16 (d) A statement of any changes in the articles of
17 organization of the surviving limited liability company
18 to be effected by such merger; and

19 (e) Such other provisions with respect to the pro-
20 posed merger as are deemed necessary or desirable.

§31-1A-42. Merger; approval by members.

1 Except to the extent otherwise provided in the
2 articles of organization or an operating agreement, the
3 plan of merger shall be approved upon receiving the
4 affirmative vote of the holders of a majority of the
5 membership interests entitled to vote thereon of each

6 such limited liability company, unless any class of
7 membership interests of any such limited liability
8 company is entitled to vote thereon as a class, in which
9 event, as to such limited liability company, the plan of
10 merger shall be approved upon receiving the affirma-
11 tive vote of the holders of a majority of the member-
12 ship interests of each class of membership interests
13 entitled to vote thereon as a class and the total
14 membership interests entitled to vote thereon. Any
15 class of membership interests of any such limited
16 liability company shall be entitled to vote as a class if
17 the plan of merger contains any provisions which, if
18 contained in a proposed amendment to articles of
19 organization, would entitle such a class of membership
20 interests to vote as a class. After such approval by a
21 vote of the members of each limited liability company,
22 and at any time prior to the filing of the articles of
23 merger, the merger may be abandoned pursuant to
24 provisions therefor, if any, set forth in the plan of
25 merger.

**§31-1A-43. Articles of merger; filing; issuance of certificate;
recording; admission in evidence.**

1 (a) Upon approval by the members in accordance
2 with the provisions of section forty-two of this article,
3 articles of merger shall be executed in duplicate by
4 each limited liability company by a member or man-
5 ager, and verified by such person signing such articles.

6 (b) Articles of merger shall, in addition to any other
7 matters deemed appropriate, set forth:

8 (1) The plan of merger;

9 (2) As to each limited liability company, the number
10 of membership interests outstanding and, if the
11 membership interests of any class are entitled to vote
12 as a class, the designation and number of outstanding
13 membership interests of each such class; and

14 (3) As to each limited liability company, the number
15 of membership interests voted for and against such
16 plan respectively and, if the membership interests of
17 any class are entitled to vote as a class, the number of

18 membership interests of each class voted for and
19 against such plan, respectively.

20 (c) Duplicate originals of the articles of merger shall
21 be delivered to the secretary of state. If the secretary
22 of state finds that such articles conform to law, he
23 shall, when all fees have been paid as prescribed by
24 law: (i) Endorse on each of such duplicate originals the
25 word "Filed" and the month, day and year of the
26 filing thereof; (ii) file one of such duplicate originals in
27 his office; and (iii) issue a certificate of merger to
28 which he shall affix the other duplicate original.

29 The certificate of merger, together with the dupli-
30 cate original of the articles of merger affixed thereto
31 by the secretary of state, shall be returned to the
32 surviving limited liability company, as the case may
33 be, or its representative.

34 (d) The certificate of merger or certified copy
35 thereof shall be recorded in the office of the appropri-
36 ate county clerk in the same manner as original
37 certificates of organization are required to be recorded.

**§31-1A-44. Effect of merger; conveyance of title to real
estate in state to surviving limited liability
company.**

1 (a) Upon the issuance of the certificate of merger by
2 the secretary of state, the merger shall be effected.
3 When such a merger has been effected:

4 (1) The limited liability companies that are parties to
5 the plan of merger shall be a single limited liability
6 company, which shall be that limited liability company
7 designated in the plan of merger as the surviving
8 limited liability company;

9 (2) The separate existence of all limited liability
10 companies that are parties to the plan of merger,
11 except the surviving limited liability company, shall
12 cease;

13 (3) Such surviving limited liability company shall
14 have all the rights, privileges, immunities and powers
15 and shall be subject to all the duties and liabilities of

16 a limited liability company under this article;

17 (4) Such surviving limited liability company shall
18 thereupon and thereafter possess all the rights, privi-
19 leges, immunities and franchises of a public as well as
20 a private nature of each of the merging limited
21 liability companies; and all property, real, personal
22 and mixed, and all debts due on whatever account,
23 including subscriptions for membership interests, if
24 any, and all other choses in action, and all and every
25 other interest of or belonging to or due to each of the
26 limited liability companies so merged, shall be taken
27 and deemed to be transferred to and vested in such
28 single limited liability company without further act or
29 deed; and the title to any real estate, or any interest
30 therein, vested in any of such limited liability com-
31 pany by operation of law shall not revert or be in any
32 way impaired by reason of such merger;

33 (5) The surviving limited liability company shall
34 henceforth be responsible and liable for all the liabil-
35 ities and obligations of each of the limited liability
36 companies so merged; and any claim existing or action
37 or proceeding pending by or against any such limited
38 liability companies may be prosecuted as if such
39 merger had not taken place, or such surviving limited
40 liability company may be substituted in its place.
41 Neither the rights of creditors nor any liens upon the
42 property of any such limited liability company shall be
43 impaired by such merger; and

44 (6) The articles of organization of the surviving
45 limited liability company shall be deemed to be
46 amended to the extent, if any, that changes in its
47 articles of organization are stated in the plan of
48 merger.

49 (b) In any merger of limited liability companies, any
50 constituent limited liability company thereof owning
51 or holding real estate in this state shall further
52 evidence title thereto in the surviving limited liability
53 company by executing and acknowledging for record a
54 confirmatory deed or deeds to the respective parcels of
55 real estate, which deed or deeds shall be recorded in

56 the office of the clerk of the county commission of the
57 respective counties in which such real estate is situate;
58 and such deed or deeds shall recite as the consider-
59 ation therefor the said merger and shall be deemed
60 confirmatory of the title of such real estate in the
61 surviving limited liability company.

**§31-1A-45. Merger of domestic and foreign limited liability
companies; effect; abandonment; confirma-
tion of title to real estate required.**

1 (a) One or more domestic limited liability companies
2 and one or more foreign limited liability companies
3 may merge into one limited liability company if such
4 merger is permitted by the laws of the state under
5 which each such foreign limited liability company is
6 organized. Any such merger shall be completed in the
7 following manner:

8 (1) Each domestic limited liability company shall
9 comply with the provisions of this article with respect
10 to the merger of domestic limited liability companies
11 and each foreign limited liability company shall
12 comply with the applicable provisions of the laws of
13 the state under which it is organized; and

14 (2) If the surviving limited liability company is to be
15 governed by the laws of any state other than this state,
16 it shall comply with the provisions of this article with
17 respect to foreign limited liability companies if it is to
18 conduct its affairs or do or transact business in this
19 state, and in every case it shall file with the secretary
20 of state of this state: (i) An agreement that it may be
21 served with process in this state in any proceeding for
22 the enforcement of any obligation of any domestic
23 limited liability company which is a party to such
24 merger and in any proceeding for the enforcement of
25 the rights of a dissenting member of any such domes-
26 tic limited liability company against the surviving
27 limited liability company; (ii) an irrevocable appoint-
28 ment of the secretary of state of this state as its agent
29 to accept service of process in any such proceeding;
30 and (iii) an agreement that it will promptly pay to the
31 dissenting members of any such domestic limited

32 liability company the amount, if any, to which they
33 shall be entitled under the provisions of this article
34 with respect to the rights of dissenting members.

35 (b) The effect of such merger shall be the same as
36 in the case of the merger of domestic limited liability
37 companies if the surviving limited liability company is
38 to be governed by the laws of this state. If the
39 surviving limited liability company is to be governed
40 by the laws of any state other than this state, the
41 effect of such merger on any domestic limited liability
42 company shall be the same as in the case of the
43 merger of domestic limited liability companies, except
44 insofar as the laws of such other state provide
45 otherwise.

46 (c) At any time prior to the filing of the articles of
47 merger, the merger may be abandoned pursuant to
48 the provisions therefor, if any, set forth in the plan of
49 merger.

50 (d) Irrespective of whether such surviving limited
51 liability company is to be governed by the laws of this
52 state or by the laws of any other state, any constituent
53 limited liability company thereof owning or holding
54 real estate in West Virginia shall further evidence title
55 thereto in the surviving limited liability company by
56 executing and acknowledging for record a confirma-
57 tory deed or deeds to the respective parcels of real
58 estate, which deed or deeds shall be recorded in the
59 office of the clerk of the county commission of the
60 respective counties in which such real estate is situate;
61 and such deed or deeds shall recite as the consider-
62 ation therefor the said merger and shall be deemed
63 confirmatory of the title of such real estate in the
64 surviving limited liability company.

§31-1A-46. Right of members to dissent.

1 Any member of a limited liability company shall
2 have the right to dissent from any of the following
3 actions:

4 (1) Any plan of merger to which the limited liability
5 company is a party; or

6 (2) Any sale or exchange of all or substantially all of
7 the property and assets of the limited liability com-
8 pany not made in the usual and regular course of its
9 business, including a sale in dissolution. The rights of
10 members of limited liability companies shall be similar
11 to, and shall be governed by the procedures set forth
12 in sections one hundred twenty-two and one hundred
13 twenty-three, article one of this chapter, except to the
14 extent otherwise inconsistent with this article.

**§31-1A-47. Conversion of partnerships to limited liability
companies; effect of conversion.**

1 (a) Any domestic or foreign general partnership or
2 limited partnership may convert to a limited liability
3 company by filing articles of organization as provided
4 in this article, which include, in addition to any other
5 information required by this article, the name of the
6 former general partnership or limited partnership.

7 (b) The conversion of a general partnership or
8 limited partnership to a limited liability company shall
9 cause all assets of such partnership to transfer to the
10 limited liability company by operation of law without
11 further act or deed and without reversion or impair-
12 ment: *Provided*, That if such partnership owned or
13 held title to real estate in West Virginia, it shall
14 further evidence title thereto in the limited liability
15 company by executing, acknowledging and recording a
16 confirmatory deed or deeds pursuant to the provisions
17 of subsection (b), section forty-four of this article.

18 (c) Nothing in this section shall be construed to
19 require, cause or be deemed to constitute a dissolution
20 of the general partnership or limited partnership prior
21 to or upon its conversion to a limited liability company
22 pursuant to this section.

**§31-1A-48. Law governing foreign limited liability
companies.**

1 Subject to the constitution of this state: (1) The laws
2 of the jurisdiction under which a foreign limited
3 liability company is organized govern its organization
4 and internal affairs and the liability of its members;

5 and (2) a foreign limited liability company may not be
6 denied a certificate of authority to transact business in
7 this state by reason of any difference between those
8 laws and the laws of this state.

**§31-1A-49. Admission of foreign limited liability company;
acts permitted to be done without certificate
of authority.**

1 (a) No foreign limited liability company shall have
2 the right to conduct affairs or do or transact business
3 in this state until it shall have procured a certificate of
4 authority so to do from the secretary of state. No
5 foreign limited liability company shall be entitled to
6 procure a certificate of authority under this article to
7 conduct affairs or do or transact any business in this
8 state which would not be permitted to be conducted,
9 done or transacted by a limited liability company
10 organized under this article.

11 (b) Without excluding other activities which may not
12 constitute conducting affairs or doing or transacting
13 business in this state, a foreign limited liability
14 company shall not be considered to be conducting
15 affairs or doing or transacting business in this state,
16 for the purposes of this article, by reason of carrying
17 on in this state any one or more of the following
18 activities:

19 (1) Maintaining or defending any legal action or
20 proceeding or any administrative or arbitration pro-
21 ceeding, or affecting the settlement thereof or the
22 settlement of claims or disputes;

23 (2) Holding meetings of its members or managers or
24 carrying on other activities concerning its internal
25 affairs;

26 (3) Maintaining bank accounts;

27 (4) Creating evidences of debt, mortgages or liens on
28 real or personal property;

29 (5) Securing or collecting debts or enforcing any
30 rights in property securing the same;

31 (6) Conducting its affairs or doing or transacting

32 business in interstate commerce;

33 (7) Granting funds or other gifts;

34 (8) Distributing information to its members;

35 (9) Conducting an isolated transaction completed
36 within a period of thirty days and not in the course of
37 a number of repeated transactions of like nature;

38 (10) Maintaining offices or agencies for the transfer,
39 exchange or registration of its securities, or appointing
40 and maintaining trustees or depositories with relation
41 to its securities;

42 (11) Affecting sales through independent contractors;

43 (12) Soliciting or procuring orders, whether by mail
44 or through employees or agents or otherwise, where
45 such orders required acceptance without this state
46 before becoming binding contracts;

47 (13) The acquisition by purchase of loans secured by
48 mortgages or deeds of trust, drawn and executed in
49 compliance with section two, article one, chapter
50 thirty-eight of this code on real or personal property
51 situated in West Virginia pursuant to commitment
52 agreements or arrangements made prior to or follow-
53 ing the origination or creation of said loans;

54 (14) The ownership, modification, renewal, exten-
55 sion, transfer or foreclosure of such loans or the
56 acceptance of substitute or additional obligors thereon;

57 (15) The maintaining or defending of any actions or
58 suits relative to such loans, mortgages or deeds of
59 trust;

60 (16) The maintenance of bank accounts in West
61 Virginia banks in connection with the collection or
62 servicing of such loans;

63 (17) The making, collection and servicing of such
64 loans through a resident person, firm, limited liability
65 company or corporation, or a foreign person, firm,
66 limited liability company or corporation qualified to do
67 business in West Virginia engaged in the business of
68 servicing loans for investors;

69 (18) The taking of deeds to the mortgaged property
70 either in lieu of foreclosure or for the purpose of
71 transferring title either to the federal housing admin-
72 istration or to the veterans administration as the
73 insurer or guarantor;

74 (19) The acquisition of title to property under
75 foreclosure sale or from the owner in lieu of
76 foreclosure;

77 (20) The management, rental, maintenance and sale,
78 or the operating, maintaining, renting or otherwise
79 dealing with, selling or disposing of property acquired
80 under foreclosure sale or by agreement in lieu thereof;

81 (21) Physical inspection and appraisal of property in
82 West Virginia as security for deeds of trust or mort-
83 gages and negotiations for the purchase of such loans;
84 or

85 (22) Any other transaction directly related to the
86 activities above described: *Provided*, That if property
87 acquired in or by reason of any of the activities
88 defined in the provisions of subdivisions (18), (19) and
89 (20) of this subsection shall be held longer than a
90 period of five years, the provisions of this section shall
91 thereafter be inapplicable.

§31-1A-50. Powers of foreign limited liability company.

1 A foreign limited liability company which shall have
2 received a certificate of authority under this article
3 shall enjoy the same, but no greater, rights and
4 privileges as a domestic limited liability company
5 organized for the purposes set forth in the application
6 pursuant to which such certificate of authority is
7 issued, until a certificate of revocation or of with-
8 drawal shall have been issued as provided in this
9 article; and except as in this article otherwise pro-
10 vided, shall be subject to the same duties, restrictions,
11 penalties and liabilities now or hereafter imposed
12 upon a domestic limited liability company of like
13 character.

**§31-1A-51. Name of foreign limited liability company; when
certificate of authority shall not be issued;**

change of name by foreign limited liability company.

1 (a) No certificate of authority shall be issued to a
2 foreign limited liability company unless the name of
3 such limited liability company:

4 (1) Satisfied the requirements of section five of this
5 article as applicable to domestic limited liability
6 companies;

7 (2) Does not contain any word or phrase which
8 indicates or implies that it is organized for any
9 purpose other than one or more of the purposes in its
10 articles of organization; or

11 (3) Is not the same as, or deceptively similar to, the
12 name of any limited liability company existing under
13 the laws of this state or any foreign limited liability
14 company authorized to conduct affairs or do or trans-
15 act business in this state or a name reserved or
16 registered as permitted by the laws of this state.

17 (b) The provisions of subdivision (3), subsection (a)
18 of this section shall not apply if the foreign limited
19 liability company applying for a certificate of authority
20 files with the secretary of state any one of the
21 following:

22 (1) A resolution of its members or managers adopt-
23 ing a fictitious name for use in conducting affairs or
24 doing or transacting business in this state, which
25 fictitious name is not deceptively similar to the name
26 of any domestic limited liability company or of any
27 foreign limited liability company authorized to con-
28 duct affairs or do or transact business in this state or
29 to any name reserved or registered as provided in this
30 article; or

31 (2) The written consent of such other limited liabil-
32 ity company or holder of a reserved or registered
33 name to use the same or deceptively similar name and
34 one or more words are added to make such name
35 distinguishable from such other name; or

36 (3) A certified copy of a final order of a court of

37 competent jurisdiction establishing the prior right of
38 such foreign limited liability company to the use of
39 such name in this state.

40 (c) Whenever a foreign limited liability company
41 that is authorized to conduct affairs or do or transact
42 business in this state shall change its name to one
43 under which a certificate of authority would not be
44 granted to it on application therefor, the certificate of
45 authority of such limited liability company shall be
46 suspended and it shall not thereafter conduct any
47 affairs or do or transact any business in this state until
48 it has changed its name to a name that is available to
49 it under the laws of this state or has otherwise
50 complied with the provisions of this article.

**§31-1A-52. Application for certificate of authority by foreign
limited liability company; contents.**

1 (a) A foreign limited liability company, in order to
2 procure a certificate of authority to conduct affairs or
3 do or transact business in this state, shall make
4 application therefor to the secretary of state, which
5 applications shall set forth:

6 (1) The name of the limited liability company and
7 the state or country under the laws of which it is
8 organized;

9 (2) If the name of the limited liability company does
10 not contain the words "limited liability company",
11 then a name for the limited liability company which
12 it adopts and complies with the requirements of this
13 article;

14 (3) The date of formation and the period of duration
15 of the limited liability company;

16 (4) The address of the principal office of the limited
17 liability company;

18 (5) The name and address of the person to whom
19 shall be sent notice or process served upon, or service
20 of which is accepted by, the secretary of state, if one
21 has been designated;

22 (6) The purpose or purposes of the limited liability

23 company which it proposes to pursue in conducting its
24 affairs or doing or transacting business in this state;
25 and

26 (7) Such additional information as may be necessary
27 or appropriate in order to enable the secretary of state
28 to determine whether such limited liability company
29 is entitled to a certificate of authority to conduct its
30 affairs or do or transact business in this state and to
31 determine and assess the fees payable as prescribed by
32 law.

33 (b) Such application shall be made on forms pre-
34 scribed and furnished by the secretary of state and
35 shall be executed in duplicate by the limited liability
36 company by a member or manager, and verified by
37 one of the persons signing such application.

**§31-1A-53. Application for certificate of authority; filing;
issuance of certificate; recordation; penalty
for failure to record.**

1 (a) Duplicate originals of the application of a foreign
2 limited liability company for a certificate of authority
3 shall be delivered to the secretary of state, together
4 with a copy of its articles of organization and all
5 amendments thereto, or a proper restatement thereof,
6 duly certified by the proper officer of the state or
7 country under the laws of which it is formed, and a
8 statement or certificate from such officer that the
9 limited liability company is in good standing with the
10 state or country under the laws of which it is formed.
11 If the secretary of state finds that such application
12 conforms to law, he shall, when all fees have been
13 paid as prescribed by law: (i) Endorse on each of such
14 originals the word "Filed" and the month, day and
15 year of the filing thereof; (ii) file one of such duplicate
16 originals of the application and the copy of the articles
17 of organization and amendments thereto; and (iii)
18 issue a certificate of authority to conduct affairs or to
19 do or transact business in this state, to which he shall
20 affix the other duplicate original application.

21 (b) The certificate of authority, together with the
22 duplicate original of the application affixed thereto by

23 the secretary of state, shall be returned to the limited
24 liability company or its representative.

25 (c) The certificate of authority, together with a copy
26 of the articles of organization and all amendments
27 thereto, or a proper restatement thereof, shall be
28 recorded in the office of the clerk of the county
29 commission of the county in which the principal office
30 of the limited liability company in this state is located.
31 If such limited liability company does not maintain a
32 principal office in this state, such recordation may be
33 completed in any county in which it is conducting its
34 affairs or doing or transacting business. A failure to
35 comply with the provisions of this subsection within
36 six months from the date of issuance of a certificate of
37 authority shall subject such limited liability company
38 to a fine of not more than one thousand dollars.

§31-1A-54. Effect of certificate of authority.

1 Upon the issuance of a certificate of authority by the
2 secretary of state, the limited liability company shall
3 be authorized to conduct its affairs or do or transact
4 business in this state for those purposes set forth in its
5 application, subject, however, to the right of this state
6 to suspend or to revoke such authority as provided in
7 this article.

**§31-1A-55. Appointment of person to whom notice or
process may be sent by the secretary of state;
change of principal office or name and
address of person to receive notice or process.**

1 (a) A foreign limited liability company may at any
2 time appoint a person other than the limited liability
3 company to whom notice or process served upon the
4 secretary of state or service of which is accepted by
5 the secretary of state may be sent, as required by
6 section sixteen of this article, by filing with the
7 secretary of state a statement setting forth:

8 (1) The name of the limited liability company and
9 the state or country of its organization;

10 (2) The present address of its principal office;

11 (3) Express appointment of and the name and
12 address of the person to whom notice or process shall
13 be sent by the secretary of state under section sixteen
14 of this article;

15 (4) Express authority to the secretary of state to send
16 to such person at the address given, all notices and
17 process served upon the secretary of state or service of
18 which is accepted by the secretary of state; and

19 (5) That such appointment was duly authorized by
20 the members or managers.

21 Such statement shall be signed by a member or
22 manager, verified by the signer and delivered to the
23 secretary of state, and upon receipt thereof shall be
24 filed by the secretary of state in his office.

25 (b) A limited liability company may at any time
26 change the address of its principal office or the name
27 and address or the address of the person to whom shall
28 be sent notice or process served upon, or service of
29 which is accepted by, the secretary of state. Such
30 change shall become effective as the name and address
31 or address last furnished to the secretary of state for
32 the purposes of section sixteen of this article only
33 when such limited liability company has filed in the
34 office of the secretary of state a statement setting
35 forth:

36 (1) The name of the limited liability company;

37 (2) The state or country under whose laws it was
38 organized;

39 (3) If the address of the principal office is changed,
40 then the address of the former or present principal
41 office and the address to which it is changed or to be
42 changed;

43 (4) If the name and address only of the person to
44 whom notice or process is to be sent is to be changed,
45 then the name and address of such person to be used
46 from and after the filing of the statement required by
47 this section; and

48 (5) That such change was duly authorized by the

49 members.

50 Such statement shall be signed by a member or
51 manager and verified by him.

**§31-1A-56. Amendment to articles of organization of foreign
limited liability company; filing; recordation;
penalty for failure to record.**

1 (a) Whenever the articles of organization of a foreign
2 limited liability company authorized to conduct affairs
3 or do or transact business in this state are amended,
4 such foreign limited liability company shall, within
5 thirty days after such amendment becomes effective,
6 file in the office of the secretary of state a copy of such
7 amendment duly authenticated by the proper officer
8 of the state or country under the laws of which it is
9 organized; but the filing thereof shall not of itself
10 enlarge or alter the purpose or purposes which such
11 limited liability company is authorized to pursue in
12 conducting its affairs or in doing or transacting
13 business in this state, nor authorize such limited
14 liability company to conduct affairs or do or transact
15 business in this state under any other name than the
16 name set forth in its certificate of authority.

17 (b) The secretary of state shall issue to such limited
18 liability company a certificate showing the filing of
19 such amendment and collect a fee of five dollars for
20 such certificate. The certificate so issued by the
21 secretary of state, together with a true copy of the
22 amendment, shall be recorded in the office of the clerk
23 of the county commission of the county in which its
24 original certificate of authority was recorded, pursuant
25 to the provisions of subsection (c), section fifty-three of
26 this article. A failure to comply with the provisions of
27 this subsection within six months from the date of
28 such amendment shall subject such limited liability
29 company to a fine of not more than one thousand
30 dollars.

**§31-1A-57. Merger of foreign limited liability company
authorized to conduct affairs or do or trans-
act business in this state; filing of articles of
merger; recordation; penalty for failure to
record.**

1 (a) Whenever a foreign limited liability company
2 authorized to conduct affairs or do or transact business
3 in this state shall be a party to a merger permitted by
4 the laws of the state or country under the laws of
5 which it is organized, and such limited liability
6 company shall be the surviving limited liability
7 company, it shall, within thirty days after such merger
8 becomes effective, file with the secretary of state a
9 copy of the articles of merger duly authenticated by the
10 proper officer of the state or country under the laws
11 of which such merger was effected; and it shall not be
12 necessary for such limited liability company to pro-
13 cure either a new or amended certificate of authority
14 to conduct affairs or do or transact business in this
15 state unless the name of such limited liability com-
16 pany be changed thereby or unless the limited liability
17 company desires to pursue in this state other or
18 additional purposes than those which it is then autho-
19 rized to pursue in this state.

20 (b) The secretary of state shall issue to such surviv-
21 ing limited liability company a certificate showing the
22 filing of a copy of the articles of merger and collect a
23 fee of five dollars for such certificate. The certificate
24 so issued by the secretary of state, together with a true
25 copy of the articles of merger, shall be recorded in the
26 office of the clerk of the county commission of the
27 county in which its original certificate of authority
28 was recorded, pursuant to the provisions of subsection
29 (c), section fifty-three of this article. A failure to
30 comply with the provisions of this subsection within
31 six months from the date of such merger shall subject
32 such limited liability company to a fine of not more
33 than one thousand dollars.

**§31-1A-58. Amended certificate of authority; requirements;
recordation; penalty for failure to record.**

1 A foreign limited liability company authorized to
2 conduct its affairs or do or transact business in this
3 state shall procure an amended certificate of authority
4 in the event it changes its limited liability company
5 name, or desires to pursue in this state purposes other
6 than or in addition to those purposes set forth in its

7 prior application for a certificate of authority, by
8 making application therefor to the secretary of state.

9 The requirements in respect to the form and con-
10 tents of such application, the manner of its execution,
11 the filing of duplicate originals thereof with the
12 secretary of state, the issuance of an amended certifi-
13 cate of authority and the effect thereof, and the
14 recordation requirements for such amended certificate
15 of authority shall be the same as in the case of an
16 original application for a certificate of authority. A
17 failure to comply with the provisions of this section
18 within six months from the date of such change of
19 limited liability company name or purposes shall
20 subject such limited liability company to a fine of not
21 more than one thousand dollars.

**§31-1A-59. Procedure for withdrawal of foreign limited
liability company; publication required;
application for certificate of withdrawal;
contents; filing; issuance of certificate;
recordation.**

1 (a) A foreign limited liability company authorized to
2 conduct its affairs or do or transact business in this
3 state may withdraw from this state upon procuring
4 from the secretary of state a certificate of withdrawal.
5 In order to procure such certificate of withdrawal,
6 such foreign limited liability company shall publish a
7 notice of its intention to withdraw from the state, such
8 notice to be published as a Class II legal advertisement
9 in compliance with the provisions of article three,
10 chapter fifty-nine of this code, and the publication
11 area for such publication shall be the county in which
12 its principal office in this state is situated, or if there
13 be no such office in this state, then any county in this
14 state where it conducts its affairs or does or transacts
15 business.

16 (b) After publication of the notice required by the
17 provisions of subsection (a) of this section, such foreign
18 limited liability company shall make application to the
19 secretary of state for a certificate of withdrawal, which
20 application shall set forth:

21 (1) The name of the limited liability company and
22 the state or country under the laws of which it is
23 organized;

24 (2) That the limited liability company has ceased
25 conducting its affairs or has ceased doing or transact-
26 ing business in this state;

27 (3) That the limited liability company surrenders its
28 authority to conduct its affairs to do or transact
29 business in this state;

30 (4) A post office address to which the secretary of
31 state may mail a copy of any process against the
32 corporation that may be served on him; and

33 (5) Such additional information as may be necessary
34 or appropriate in order to enable the secretary of state
35 and tax commissioner to determine and assess any
36 unpaid fees and taxes payable by such foreign limited
37 liability company as may be prescribed by law.

38 (c) The application for a certificate of withdrawal
39 shall be made on forms prescribed and furnished by
40 the secretary of state and shall be executed by the
41 limited liability company by a member or manager,
42 and verified by one of such persons signing the
43 application, or, if the limited liability company is in
44 the hands of a receiver or trustee, shall be executed on
45 behalf of the limited liability company by such
46 receiver or trustee and verified by him. Such applica-
47 tion shall be accompanied by a copy of the notice
48 required to be published under the provisions of
49 subsection (a) of this section and the publisher's
50 certificate of such publication.

51 (d) Duplicate originals of such application for a
52 certificate of withdrawal shall be delivered to the
53 secretary of state. If the secretary of state finds that
54 such application conforms to law, he shall, when all
55 fees have been paid, as prescribed by law: (i) Endorse
56 on each of such duplicate originals the word "Filed"
57 and the month, day and year of the filing thereof; (ii)
58 file one of such duplicate originals in his office; and
59 (iii) issue a certificate of withdrawal to which he shall

60 affix the other duplicate original.

61 (e) The certificate of withdrawal, together with the
62 duplicate original of the application for withdrawal
63 affixed thereto by the secretary of state, shall be
64 returned to the limited liability company or its
65 representative. The limited liability company or its
66 representative shall record the certificate of with-
67 drawal in the office of the clerk of the county commis-
68 sion in which the limited liability company's certifi-
69 cate of authority is recorded and the clerk shall note
70 on the margin of the record book in which such
71 certificate of authority is engrossed the fact of the
72 withdrawal of the limited liability company.

§31-1A-60. Conditions for revocation of certificate of authority.

1 (a) The certificate of authority of a foreign limited
2 liability company to conduct its affairs or do or
3 transact business in this state may be revoked by the
4 secretary of state upon the conditions prescribed in
5 this section when:

6 (1) The limited liability company has failed to file in
7 the office of the secretary of state any amendment to
8 its articles of organization as required by the provi-
9 sions of section fifty-six of this article; or

10 (2) The limited liability company has failed to file in
11 the office of the secretary of state any articles of
12 merger as required by the provisions of section fifty-
13 seven of this article; or

14 (3) A misrepresentation has been made of any
15 material matter in any application, report, affidavit or
16 other document submitted by such limited liability
17 company pursuant to the provisions of this article.

18 (b) No certificate of authority of a foreign limited
19 liability company shall be revoked by the secretary of
20 state unless:

21 (1) He shall have given the limited liability company
22 not less than sixty days notice thereof by registered or
23 certified mail, return receipt requested, addressed to

24 its principal office; and

25 (2) The limited liability company shall fail, prior to
26 revocation, to file any amendment to its articles of
27 organization or shall fail to file any articles of merger
28 or shall fail to correct any such misrepresentation.

§31-1A-61. Application to limited liability company heretofore authorized to conduct its affairs or do or transact business in this state.

1 Subject to the limitations set forth in their respec-
2 tive certificates of authority, foreign limited liability
3 companies that are duly authorized to conduct their
4 affairs or do or transact business in this state at the
5 time this article takes effect for a purpose or purposes
6 for which a limited liability company might secure
7 such authority under this article, shall be entitled to
8 all the rights and privileges applicable to foreign
9 limited liability companies procuring certificates of
10 authority to conduct their affairs or do or transact
11 business in this state under this article, and shall not
12 be required to make reapplication for authority to
13 conduct their affairs or do or transact business in this
14 state by reason of the adoption of this article. From
15 the time this article takes effect each such limited
16 liability company shall be subject to all the limitations,
17 restrictions, liabilities and duties prescribed herein for
18 foreign limited liability companies procuring certifi-
19 cates of authority to conduct their affairs or do or
20 transact business in this state.

§31-1A-62. Conducting affairs or doing or transacting business without certificate of authority.

1 No foreign limited liability company which is con-
2 ducting its affairs or doing or transacting business in
3 this state without a certificate of authority shall be
4 permitted to maintain any action or proceeding in any
5 court of this state until such limited liability company
6 shall have obtained a certificate of authority. Nor shall
7 any action or proceeding be maintained in any court
8 of this state by any successor or assignee of such
9 limited liability company on any right, claim or
10 demand arising out of the conducting of affairs or the

11 doing or transacting of business by such limited
12 liability company in this state until a certificate of
13 authority shall have been obtained by such limited
14 liability company or by a limited liability company
15 which has acquired all or substantially all of its assets.

16 The failure of a foreign limited liability company to
17 obtain a certificate of authority to conduct its affairs or
18 do or transact business in this state shall not impair
19 the validity of any contract or act of such limited
20 liability company, and shall not prevent such limited
21 liability company from defending any action or pro-
22 ceeding in any court of this state.

23 A foreign limited liability company that conducts its
24 affairs or does or transacts business in this state
25 without a certificate of authority shall be liable to this
26 state, for the years or parts thereof during which it
27 conducted affairs or did or transacted business in this
28 state without a certificate of authority, in an amount
29 equal to all fees and taxes that would have been
30 imposed by this article, or by any other provisions of
31 this code, upon such limited liability company had it
32 duly applied for and received a certificate of authority
33 to conduct its affairs or do or transact business in this
34 state as required by this article and thereafter filed all
35 reports, statements or returns required by this article
36 or by any other provisions of this code, plus all
37 penalties imposed for failure to pay any such fees and
38 taxes.

§31-1A-63. Requirement for registered agent and certain reports.

1 A foreign limited liability company authorized to
2 transact business in this state shall:

3 (1) Appoint and continuously maintain a registered
4 agent in the same manner as provided in this article
5 for domestic limited liability companies;

6 (2) File a report upon any change in the name or
7 business address of its registered agent in the same
8 manner as provided in this article for domestic limited
9 liability companies; and

10 (3) File limited liability company reports as provided
11 in this article for domestic limited liability companies.

§31-1A-64. Parties to actions.

1 A member or manager of a limited liability company
2 is not a proper party to proceedings by or against a
3 limited liability company, except where the object is to
4 enforce a member's or manager's right against, or
5 liability to, the limited liability company.

§31-1A-65. Title to limited liability company property.

1 Any estate or interest in property may be acquired
2 in the name of the limited liability company and title
3 to any estate or interest so acquired shall vest in the
4 limited liability company.

§31-1A-66. Waiver of notice.

1 When, under the provisions of this article or under
2 the provisions of the articles of organization or oper-
3 ating agreement of a limited liability company, notice
4 is required to be given to a member or to a manager
5 of a limited liability company having a manager or
6 managers, a waiver in writing signed by the person or
7 persons entitled to the notice, whether made before or
8 after the time for notice to be given, is equivalent to
9 the giving of notice.

**§31-1A-67. Applicability of provisions to foreign and inter-
state commerce.**

1 The provisions of this article shall apply to com-
2 merce with foreign nations and among the several
3 states only as permitted by law.

**§31-1A-68. Definition of "person" to indicate limited liability
company.**

1 For purposes of this code, whenever the term
2 "person" is defined to include both corporations and
3 general or limited partnerships, it shall include limited
4 liability companies.

§31-1A-69. Conflicting laws; existing rights and liabilities.

1 This article takes precedence in the event of a

2 conflict with the provisions of article one of this
3 chapter or other laws. This article does not affect a
4 right accrued or established or any liability or penalty
5 incurred, prior to its effective date.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Somer Luck
.....
Chairman Senate Committee

Ernest E. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell E. Adams
.....
Clerk of the Senate

Donald L. Hoop
.....
Clerk of the House of Delegates

Kurt Buntline
.....
President of the Senate

Bill Call
.....
Speaker House of Delegates

The within ~~is approved~~ *is approved* this the *27th* day of *March*, 1992.

Yarton Cash
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/92

Time 3:25 pm

Presented to the

1
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