

SB 338

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

ENROLLED

*Committee Substitute For*  
SENATE BILL NO. 338

(By Senator ROSS, ET AL)

PASSED MARCH 8, 1996  
In Effect NINETY DAYS FROM Passage

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COMMITTEE SUBSTITUTE  
FOR  
**Senate Bill No. 338**

(SENATORS ROSS, ANDERSON, MILLER,  
BUCKALEW AND YODER, *original sponsors*)

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[Passed March 8, 1996; in effect ninety days from passage.]

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AN ACT to repeal article one-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said code by adding thereto a new chapter, designated chapter thirty-one-b; and to amend and reenact section ten, article six, chapter forty-seven of said code, all relating to adopting the uniform limited liability company act of 1996; general provisions; definitions; knowledge and notice of a fact; effect of operating agreement; nonwaivable provisions;

applicability of supplemental principles of law and equity; requirements for name; reservation of name; registration of name; designation of office and agent for service of process; change thereof; resignation of agent for service of process; agent for service of process; nature of business and powers; organization; limited liability company as legal entity; articles of organization; amendment or restatement thereof; signing of records; requirement for filing in office of secretary of state; correction of filed record; certificate of existence or authorization; liability for false statement in filed record; filing compelled by court; annual report to be filed with secretary of state; relations of members and managers to persons dealing with limited liability company; agency of members and managers; limited liability company liable for member's or manager's actionable conduct; liability of members and managers; relations of members to each other and to limited liability company; form of contribution; member's liability for contributions; member's and manager's rights to payments and reimbursement; management of limited liability company; sharing of and right to distributions; limitations on distributions; liability for unlawful distributions; member's right to information; general standards of member's and manager's conduct; actions by members; continuation of limited liability company after expiration of specified term; transferees and creditors of member; member's distributional interest; transfer of distributional interest; rights of transferee; rights of creditor; member's dissociation; events causing member's dissociation; member's power to dissociate; wrongful dissociation; effect of member's dissociation; member's dissociation when business not wound up; company purchase of distributional interest; court action to determine fair value of distributional interest; dissociated member's power to bind limited liability company; statement of dissociation; winding up company's business; events causing dissolution and winding up of company's business; limited liability company continues after dissolution; right to wind up limited liability company's business; member's

or manager's power and liability as agent after dissolution; articles of termination; distribution of assets in winding up business; known claims against dissolved limited liability company; other claims against dissolved limited liability company; grounds for administrative dissolution by secretary of state; procedures for and effect thereof; reinstatement following administrative dissolution; appeal from denial of reinstatement; conversions and mergers; definitions; conversion of partnership or limited partnership to limited liability company; effect of conversion; entity unchanged; merger of entities; confirmation of title to real estate; articles of merger; effect of merger; article not exclusive over conversion or merger; foreign limited liability companies; law governing same; application for certificate of authority; activities not constituting transaction of business; issuance of certificate of authority; name of foreign limited liability company; revocation of certificate of authority; cancellation of authority; effect of failure to obtain certificate of authority; action by attorney general; derivative actions; right of action; proper plaintiff; requirements of pleading; award of expenses; miscellaneous provisions; uniformity of application and construction; short title; severability; effective date; transitional provisions; savings clause; professional limited liability companies; definitions; membership and authorization; name requirements; duty of professional licensing boards; professional relationship not affected; liability of company, its members, managers, agents and employees; professional liability insurance and requirements; applicability of other provisions of law; and prohibiting limited liability companies from asserting the defense of usury.

*Be it enacted by the Legislature of West Virginia:*

That article one-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that said code be further amended by adding thereto a new chapter, designated chapter thirty-one-b; and that section ten, article six, chapter forty-seven of said code be amended and reenacted, all to read as follows:



## **CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.**

### **ARTICLE 1. GENERAL PROVISIONS.**

#### **§31B-1-101. Definitions.**

1 In this chapter:

2 (1) "Articles of organization" means initial, amended,  
3 and restated articles of organization and articles of  
4 merger. In the case of a foreign limited liability com-  
5 pany, the term includes all records serving a similar  
6 function required to be filed in the office of the secretary  
7 of state or other official having custody of company  
8 records in the state or country under whose law it is  
9 organized.

10 (2) "At-will company" means a limited liability com-  
11 pany other than a term company.

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

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

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

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

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

27 (8) "Foreign limited liability company" means an  
28 unincorporated entity organized under laws other than  
29 the laws of this state which afford limited liability to its  
30 owners comparable to the liability under section 3-303  
31 and is not required to obtain a certificate of authority to

32 transact business under any law of this state other than  
33 this chapter.

34 (9) "Limited liability company" means a limited  
35 liability company organized under this chapter.

36 (10) "Manager" means a person, whether or not a  
37 member of a manager-managed company, who is vested  
38 with authority under section 3-301.

39 (11) "Manager-managed company" means a limited  
40 liability company which is so designated in its articles of  
41 organization.

42 (12) "Member-managed company" means a limited  
43 liability company other than a manager-managed  
44 company.

45 (13) "Operating agreement" means the agreement  
46 under section 1-103 concerning the relations among the  
47 members, managers and limited liability company. The  
48 term includes amendments to the agreement.

49 (14) "Person" means an individual, corporation,  
50 business trust, estate, trust, partnership, limited liability  
51 company, association, joint venture, government, govern-  
52 mental subdivision, agency, or instrumentality or any  
53 other legal or commercial entity.

54 (15) "Principal office" means the office, whether or not  
55 in this state, where the principal executive office of a  
56 domestic or foreign limited liability company is located.

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

60 (17) "Sign" means to identify a record by means of a  
61 signature, mark or other symbol, with intent to authenti-  
62 cate it.

63 (18) "State" means a state of the United States, the  
64 District of Columbia, the Commonwealth of Puerto Rico  
65 or any territory or insular possession subject to the  
66 jurisdiction of the United States.

67 (19) "Term company" means a limited liability com-  
68 pany in which its members have agreed to remain  
69 members until the expiration of a term specified in the  
70 articles of organization.

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

**§31B-1-102. Knowledge and notice.**

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

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

4 (1) Knows the fact;

5 (2) Has received a notification of the fact; or

6 (3) Has reason to know the fact exists from all of the  
7 facts known to the person at the time in question.

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

12 (d) A person receives a notification when the notifica-  
13 tion:

14 (1) Comes to the person's attention; or

15 (2) Is duly delivered at the person's place of business or  
16 at any other place held out by the person as a place for  
17 receiving communications.

18 (e) An entity knows, has notice or receives a notifica-  
19 tion of a fact for purposes of a particular transaction  
20 when the individual conducting the transaction for the  
21 entity knows, has notice, or receives a notification of the  
22 fact, or in any event when the fact would have been  
23 brought to the individual's attention had the entity  
24 exercised reasonable diligence. An entity exercises  
25 reasonable diligence if it maintains reasonable routines  
26 for communicating significant information to the indi-

27 vidual conducting the transaction for the entity and  
28 there is reasonable compliance with the routines.  
29 Reasonable diligence does not require an individual  
30 acting for the entity to communicate information unless  
31 the communication is part of the individual's regular  
32 duties or the individual has reason to know of the  
33 transaction and that the transaction would be materially  
34 affected by the information.

**§31B-1-103. Effect of operating agreement; nonwaivable provisions.**

1 (a) Except as otherwise provided in subsection (b) of  
2 this section, all members of a limited liability company  
3 may enter into an operating agreement, which need not  
4 be in writing, to regulate the affairs of the company and  
5 the conduct of its business, and to govern relations  
6 among the members, managers and company. To the  
7 extent the operating agreement does not otherwise  
8 provide, this chapter governs relations among the  
9 members, managers and company.

10 (b) The operating agreement may not:

11 (1) Unreasonably restrict a right to information or  
12 access to records under section 4-408;

13 (2) Eliminate the duty of loyalty under section 4-409(b)  
14 or 6-603(b)(3), but the agreement may:

15 (i) Identify specific types or categories of activities that  
16 do not violate the duty of loyalty, if not manifestly  
17 unreasonable; and

18 (ii) Specify the number or percentage of members or  
19 disinterested managers that may authorize or ratify,  
20 after full disclosure of all material facts, a specific act or  
21 transaction that otherwise would violate the duty of  
22 loyalty;

23 (3) Unreasonably reduce the duty of care under section  
24 4-409(c) or 6-603(b)(3);

25 (4) Eliminate the obligation of good faith and fair

26 dealing under section 4-409(d), but the operating agree-  
27 ment may determine the standards by which the perfor-  
28 mance of the obligation is to be measured, if the stan-  
29 dards are not manifestly unreasonable;

30 (5) Vary the right to expel a member in an event  
31 specified in section 6-601(6);

32 (6) Vary the requirement to wind up the limited  
33 liability company's business in a case specified in section  
34 8-801(b)(4) or (b)(5); or

35 (7) Restrict rights of a person, other than a manager,  
36 member and transferee of a member's distributional  
37 interest, under this chapter.

**§31B-1-104. Supplemental principles of law.**

1 (a) Unless displaced by particular provisions of this  
2 chapter, the principles of law and equity supplement this  
3 chapter.

4 (b) If an obligation to pay interest arises under this  
5 chapter and the rate is not specified, the rate is that  
6 specified in section thirty-one, article six, chapter fifty-  
7 six of this code.

**§31B-1-105. Name.**

1 (a) The name of a limited liability company must  
2 contain "limited liability company" or "limited com-  
3 pany" or the abbreviation "L.L.C.", "LLC", "L.C." or  
4 "LC". "Limited" may be abbreviated as "Ltd." and  
5 "company" may be abbreviated as "Co.".

6 (b) Except as authorized by subsections (c) and (d) of  
7 this section, the name of a limited liability company  
8 must be distinguishable upon the records of the secretary  
9 of state from:

10 (1) The name of any corporation, limited partnership or  
11 company incorporated, organized or authorized to  
12 transact business in this state;

13 (2) A name reserved or registered under section

14 1-106 or 1-107;

15 (3) A fictitious name approved under section 10-1005  
16 for a foreign company authorized to transact business in  
17 this state because its real name is unavailable.

18 (c) A limited liability company may apply to the  
19 secretary of state for authorization to use a name that is  
20 not distinguishable upon the records of the secretary of  
21 state from one or more of the names described in subsection  
22 (b) of this section. The secretary of state shall  
23 authorize use of the name applied for if:

24 (1) The present user, registrant or owner of a reserved  
25 name consents to the use in a record and submits an  
26 undertaking in form satisfactory to the secretary of state  
27 to change the name to a name that is distinguishable  
28 upon the records of the secretary of state from the name  
29 applied for; or

30 (2) The applicant delivers to the secretary of state a  
31 certified copy of the final judgment of a court of competent  
32 jurisdiction establishing the applicant's right to use  
33 the name applied for in this state.

34 (d) A limited liability company may use the name,  
35 including a fictitious name, of another domestic or  
36 foreign company which is used in this state if the other  
37 company is organized or authorized to transact business  
38 in this state and the company proposing to use the name  
39 has:

40 (1) Merged with the other company;

41 (2) Been formed by reorganization with the other  
42 company; or

43 (3) Acquired substantially all of the assets, including  
44 the name, of the other company.

**§31B-1-106. Reserved name.**

1 (a) A person may reserve the exclusive use of the name  
2 of a limited liability company, including a fictitious  
3 name for a foreign company whose name is not available,

4 by delivering an application to the secretary of state for  
5 filing. The application must set forth the name and  
6 address of the applicant and the name proposed to be  
7 reserved. If the secretary of state finds that the name  
8 applied for is available, it must be reserved for the  
9 applicant's exclusive use for a nonrenewable one hun-  
10 dred twenty-day period.

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

**§31B-1-107. Registered name.**

1 (a) A foreign limited liability company may register its  
2 name subject to the requirements of section 10-1005, if  
3 the name is distinguishable upon the records of the  
4 secretary of state from names that are not available  
5 under section 1-105(b).

6 (b) A foreign limited liability company registers its  
7 name, or its name with any addition required by section  
8 10-1005, by delivering to the secretary of state for filing  
9 an application:

10 (1) Setting forth its name, or its name with any addi-  
11 tion required by section 10-1005, the state or country  
12 and date of its organization and a brief description of the  
13 nature of the business in which it is engaged; and

14 (2) Accompanied by a certificate of existence, or a  
15 record of similar import, from the state or country of  
16 organization.

17 (c) A foreign limited liability company whose registra-  
18 tion is effective may renew it for successive years by  
19 delivering for filing in the office of the secretary of state  
20 a renewal application complying with subsection (b) of  
21 this section between the first day of October and the  
22 thirty-first day of December of the preceding year. The  
23 renewal application renews the registration for the

24 following calendar year.

25 (d) A foreign limited liability company whose registra-  
 26 tion is effective may qualify as a foreign company under  
 27 its name or consent in writing to the use of its name by  
 28 a limited liability company later organized under this  
 29 chapter or by another foreign company later authorized  
 30 to transact business in this state. The registered name  
 31 terminates when the limited liability company is orga-  
 32 nized or the foreign company qualifies or consents to the  
 33 qualification of another foreign company under the  
 34 registered name.

**§31B-1-108. Designated office and agent for service of process.**

1 (a) A limited liability company and a foreign limited  
 2 liability company authorized to do business in this state  
 3 shall designate and continuously maintain in this state:

4 (1) An office, which need not be a place of its business  
 5 in this state; and

6 (2) An agent and street address of the agent for service  
 7 of process on the company.

8 (b) An agent must be an individual resident of this  
 9 state, a domestic corporation, another limited liability  
 10 company or a foreign corporation or foreign company  
 11 authorized to do business in this state.

12 (c) Every foreign limited liability company and every  
 13 domestic limited liability company whose principal place  
 14 of business is located outside the state shall pay an  
 15 annual fee of ten dollars for the services of the secretary  
 16 of state as attorney-in-fact for such limited liability  
 17 company, which fee shall be due and payable at the same  
 18 time that the annual report required under section two  
 19 hundred eleven, article two of this chapter is due, and  
 20 such fees shall be used to offset the costs of the secretary  
 21 of state for his or her services as attorney-in-fact.

**§31B-1-109. Change of designated office or agent for service of process.**



1 A limited liability company may change its designated  
2 office or agent for service of process by delivering to the  
3 secretary of state for filing a statement of change which  
4 sets forth:

5 (1) The name of the company;

6 (2) The street address of its current designated office;

7 (3) If the current designated office is to be changed, the  
8 street address of the new designated office;

9 (4) The name and address of its current agent for  
10 service of process; and

11 (5) If the current agent for service of process or street  
12 address of that agent is to be changed, the new address  
13 or the name and street address of the new agent for  
14 service of process.

**§31B-1-110. Resignation of agent for service of process.**

1 (a) An agent for service of process of a limited liability  
2 company may resign by delivering to the secretary of  
3 state for filing a record of the statement of resignation.

4 (b) After filing a statement of resignation, the secretary  
5 of state shall mail a copy to the designated office and  
6 another copy to the limited liability company at its  
7 principal office.

8 (c) An agency is terminated on the thirty-first day after  
9 the statement is filed in the office of the secretary of  
10 state.

**§31B-1-111. Service of process.**

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

6 (b) If a limited liability company or foreign limited  
7 liability company fails to appoint or maintain an agent  
8 for service of process in this state or the agent for service

9 of process cannot with reasonable diligence be found at  
10 the agent's address, the secretary of state is an agent of  
11 the company upon whom process, notice or demand may  
12 be served.

13 (c) Service of any process, notice or demand on the  
14 secretary of state may be made by delivering to and  
15 leaving with the secretary of state, the assistant secre-  
16 tary of state or clerk having charge of the limited liabil-  
17 ity company department of the secretary of state, the  
18 original process, notice or demand and two copies  
19 thereof for each defendant, along with a fee of ten  
20 dollars. No process, notice or demand may be served on  
21 or accepted by the secretary of state less than ten days  
22 before the return day thereof. If the process, notice or  
23 demand is served on the secretary of state, the secretary  
24 of state shall forward one of the copies by registered or  
25 certified mail, return receipt requested, to the company  
26 at its designated office and shall file in his or her office  
27 a copy of such process, notice or demand, with a note  
28 thereon endorsed of the time of service, or acceptance, as  
29 the case may be. Such service or acceptance of such  
30 process, notice or demand is sufficient if such return  
31 receipt is signed by an agent or employee of such com-  
32 pany, or the registered or certified mail so sent by the  
33 secretary of state is refused by the addressee and the  
34 registered or certified mail is returned to the secretary of  
35 state, showing thereon the stamp of the United States  
36 postal service that delivery thereof has been refused, and  
37 such return receipt or registered or certified mail is  
38 appended to the original process, notice or demand and  
39 filed therewith in the clerk's office of the court from  
40 which such process, notice or demand was issued.

41 (d) The secretary of state shall keep a record of all  
42 processes, notices and demands served pursuant to this  
43 section and record the time of and the action taken  
44 regarding the service.

45 (e) This section does not affect the right to serve  
46 process, notice or demand in any manner otherwise

47 provided by law.

**§31B-1-112. Nature of business and powers.**

1 (a) A limited liability company may be organized under  
2 this chapter for any lawful purpose, subject to any law of  
3 this state governing or regulating business.

4 (b) Unless its articles of organization provide other-  
5 wise, a limited liability company has the same powers as  
6 an individual to do all things necessary or convenient to  
7 carry on its business or affairs, including power to:

8 (1) Sue and be sued, and defend in its name;

9 (2) Purchase, receive, lease or otherwise acquire, and  
10 own, hold, improve, use and otherwise deal with real or  
11 personal property, or any legal or equitable interest in  
12 property, wherever located;

13 (3) Sell, convey, mortgage, grant a security interest in,  
14 lease, exchange and otherwise encumber or dispose of all  
15 or any part of its property;

16 (4) Purchase, receive, subscribe for or otherwise  
17 acquire, own, hold, vote, use, sell, mortgage, lend, grant  
18 a security interest in or otherwise dispose of and deal in  
19 and with, shares or other interests in or obligations of  
20 any other entity;

21 (5) Make contracts and guarantees, incur liabilities,  
22 borrow money, issue its notes, bonds and other obliga-  
23 tions, which may be convertible into or include the  
24 option to purchase other securities of the limited liability  
25 company, and secure any of its obligations by a mortgage  
26 on or a security interest in any of its property, franchises  
27 or income;

28 (6) Lend money, invest and reinvest its funds and  
29 receive and hold real and personal property as security  
30 for repayment;

31 (7) Be a promoter, partner, member, associate or  
32 manager of any partnership, joint venture, trust or other  
33 entity;

34 (8) Conduct its business, locate offices and exercise the  
35 powers granted by this chapter within or without this  
36 state;

37 (9) Elect managers and appoint officers, employees and  
38 agents of the limited liability company, define their  
39 duties, fix their compensation and lend them money and  
40 credit;

41 (10) Pay pensions and establish pension plans, pension  
42 trusts, profit sharing plans, bonus plans, option plans  
43 and benefit or incentive plans for any or all of its current  
44 or former members, managers, officers, employees and  
45 agents;

46 (11) Make donations for the public welfare or for  
47 charitable, scientific or educational purposes; and

48 (12) Make payments or donations, or do any other act,  
49 not inconsistent with law, that furthers the business of  
50 the limited liability company.

**ARTICLE 2. ORGANIZATION.**

**§31B-2-201. Limited liability company as legal entity.**

1 A limited liability company is a legal entity distinct  
2 from its members.

**§31B-2-202. Organization.**

1 (a) One or more persons may organize a limited liabil-  
2 ity company, consisting of one or more members, by  
3 delivering articles of organization to the office of the  
4 secretary of state for filing, together with a fee in the  
5 amount of one hundred dollars.

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

9 (c) The filing of the articles of organization by the  
10 secretary of state is conclusive proof that the organizers  
11 satisfied all conditions precedent to the creation of a  
12 limited liability company.

**§31B-2-203. Articles of organization.**

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

3 (1) The name of the company;

4 (2) The address of the initial designated office;

5 (3) The name and street address of the initial agent for  
6 service of process;

7 (4) The name and address of each organizer;

8 (5) Whether the company is to be a term company and,  
9 if so, the term specified;

10 (6) Whether the company is to be manager-managed,  
11 and, if so, the name and address of each initial manager;  
12 and

13 (7) Whether one or more of the members of the com-  
14 pany are to be liable for its debts and obligations under  
15 section 3-303(c).

16 (b) Articles of organization of a limited liability  
17 company may set forth:

18 (1) Provisions permitted to be set forth in an operating  
19 agreement; or

20 (2) Other matters not inconsistent with law.

21 (c) Articles of organization of a limited liability com-  
22 pany may not vary the nonwaivable provisions of section  
23 1-103(b). As to all other matters, if any provision of an  
24 operating agreement is inconsistent with the articles of  
25 organization:

26 (1) The operating agreement controls as to managers,  
27 members and members' transferees; and

28 (2) The articles of organization control as to persons  
29 other than managers, members and their transferees who  
30 reasonably rely on the articles to their detriment.

**§31B-2-204. Amendment or restatement of articles of organi-  
zation.**

1 (a) Articles of organization of a limited liability  
2 company may be amended at any time by delivering  
3 articles of amendment to the secretary of state for filing.  
4 The articles of amendment must set forth the:

- 5 (1) Name of the limited liability company;
- 6 (2) Date of filing of the articles of organization; and
- 7 (3) Amendment to the articles.

8 (b) A limited liability company may restate its articles  
9 of organization at any time. Restated articles of organi-  
10 zation must be signed and filed in the same manner as  
11 articles of amendment. Restated articles of organization  
12 must be designated as such in the heading and state in  
13 the heading or in an introductory paragraph the limited  
14 liability company's present name and, if it has been  
15 changed, all of its former names and the date of the filing  
16 of its initial articles of organization.

**§31B-2-205. Signing of records.**

1 (a) Except as otherwise provided in this chapter, a  
2 record to be filed by or on behalf of a limited liability  
3 company in the office of the secretary of state must be  
4 signed in the name of the company by a:

- 5 (1) Manager of a manager-managed company;
- 6 (2) Member of a member-managed company;
- 7 (3) Person organizing the company, if the company has  
8 not been formed; or

9 (4) Fiduciary, if the company is in the hands of a  
10 receiver, trustee or other court-appointed fiduciary.

11 (b) A record signed under subsection (a) of this section  
12 must state adjacent to the signature the name and  
13 capacity of the signer.

14 (c) Any person may sign a record to be filed under  
15 subsection (a) of this section by an attorney-in-fact.

16 Powers of attorney relating to the signing of records to  
17 be filed under subsection (a) of this section by an  
18 attorney-in-fact need not be filed in the office of the  
19 secretary of state as evidence of authority by the person  
20 filing but must be retained by the company.

**§31B-2-206. Filing in office of secretary of state.**

1 (a) Articles of organization or any other record autho-  
2 rized to be filed under this chapter must be in a medium  
3 permitted by the secretary of state and must be delivered  
4 to the office of the secretary of state. Unless the secre-  
5 tary of state determines that a record fails to comply as  
6 to form with the filing requirements of this chapter, and  
7 if all filing fees have been paid, the secretary of state  
8 shall file the record and send a receipt for the record and  
9 the fees to the limited liability company or its represen-  
10 tative.

11 (b) Upon request and payment of a fee, the secretary of  
12 state shall send to the requester a certified copy of the  
13 requested record.

14 (c) Except as otherwise provided in subsection (d) of  
15 this section and section 2-207(c), a record accepted for  
16 filing by the secretary of state is effective:

17 (1) At the time of filing on the date it is filed, as  
18 evidenced by the secretary of state's date and time  
19 endorsement on the original record; or

20 (2) At the time specified in the record as its effective  
21 time on the date it is filed.

22 (d) A record may specify a delayed effective time and  
23 date, and if it does so the record becomes effective at the  
24 time and date specified. If a delayed effective date but  
25 no time is specified, the record is effective at the close of  
26 business on that date. If a delayed effective date is later  
27 than the ninetieth day after the record is filed, the record  
28 is effective on the ninetieth day.

**§31B-2-207. Correcting filed record.**

1 (a) A limited liability company or foreign limited  
2 liability company may correct a record filed by the  
3 secretary of state if the record contains a false or errone-  
4 ous statement or was defectively signed.

5 (b) A record is corrected:

6 (1) By preparing articles of correction that:

7 (i) Describe the record, including its filing date, or  
8 attach a copy of it to the articles of correction;

9 (ii) Specify the incorrect statement and the reason it is  
10 incorrect or the manner in which the signing was defec-  
11 tive; and

12 (iii) Correct the incorrect statement or defective  
13 signing; and

14 (2) By delivering the corrected record to the secretary  
15 of state for filing.

16 (c) Articles of correction are effective retroactively on  
17 the effective date of the record they correct except as to  
18 persons relying on the uncorrected record and adversely  
19 affected by the correction. As to those persons, articles  
20 of correction are effective when filed.

**§31B-2-208. Certificate of existence or authorization.**

1 (a) A person may request the secretary of state to  
2 furnish a certificate of existence for a limited liability  
3 company or a certificate of authorization for a foreign  
4 limited liability company.

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

7 (1) The company's name;

8 (2) That it is duly organized under the laws of this  
9 state, the date of organization, whether its duration is  
10 at-will or for a specified term, and, if the latter, the  
11 period specified;

12 (3) If payment is reflected in the records of the secre-



13 tary of state and if nonpayment affects the existence of  
14 the company, that all fees, taxes and penalties owed to  
15 this state have been paid;

16 (4) Whether its most recent annual report required by  
17 section 2-211 has been filed with the secretary of state;

18 (5) That articles of termination have not been filed; and

19 (6) Other facts of record in the office of the secretary of  
20 state which may be requested by the applicant.

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

23 (1) The company's name used in this state;

24 (2) That it is authorized to transact business in this  
25 state;

26 (3) If payment is reflected in the records of the secre-  
27 tary of state and nonpayment affects the authorization  
28 of the company, that all fees, taxes and penalties owed to  
29 this state have been paid;

30 (4) Whether its most recent annual report required by  
31 section 2-211 has been filed with the secretary of state;

32 (5) That a certificate of cancellation has not been filed;  
33 and

34 (6) Other facts of record in the office of the secretary of  
35 state which may be requested by the applicant.

36 (d) Subject to any qualification stated in the certifi-  
37 cate, a certificate of existence or authorization issued by  
38 the secretary of state may be relied upon as conclusive  
39 evidence that the domestic or foreign limited liability  
40 company is in existence or is authorized to transact  
41 business in this state.

**§31B-2-209. Liability for false statement in filed record.**

1 If a record authorized or required to be filed under this  
2 chapter contains a false statement, one who suffers loss  
3 by reliance on the statement may recover damages for

4 the loss from a person who signed the record or caused  
5 another to sign it on the person's behalf and knew the  
6 statement to be false at the time the record was signed.

**§31B-2-210. Filing by judicial act.**

1 If a person required by section 2-205 to sign any record  
2 fails or refuses to do so, any other person who is ad-  
3 versely affected by the failure or refusal may petition the  
4 circuit court to direct the signing of the record. If the  
5 court finds that it is proper for the record to be signed  
6 and that a person so designated has failed or refused to  
7 sign the record, it shall order the secretary of state to  
8 sign and file an appropriate record.

**§31B-2-211. Annual report for secretary of state.**

1 (a) A limited liability company, and a foreign limited  
2 liability company authorized to transact business in this  
3 state, shall deliver to the secretary of state for filing an  
4 annual report that sets forth:

5 (1) The name of the company and the state or country  
6 under whose law it is organized;

7 (2) The address of its designated office and the name  
8 and address of its agent for service of process in this  
9 state;

10 (3) The address of its principal office; and

11 (4) The names and business addresses of any managers.

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

15 (c) The first annual report must be delivered to the  
16 secretary of state between the first day of January and  
17 the first day of April of the year following the calendar  
18 year in which a limited liability company was organized  
19 or a foreign company was authorized to transact busi-  
20 ness. Subsequent annual reports must be delivered to  
21 the secretary of state between the first day of January  
22 and the first day of April of the ensuing calendar years.

23 (d) If an annual report does not contain the informa-  
24 tion required in subsection (a) of this section, the secre-  
25 tary of state shall promptly notify the reporting limited  
26 liability company or foreign limited liability company  
27 and return the report to it for correction. If the report is  
28 corrected to contain the information required in subsec-  
29 tion (a) of this section and delivered to the secretary of  
30 state within thirty days after the effective date of the  
31 notice, it is timely filed.

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

**§31B-3-301. Agency of members and managers.**

1 (a) Subject to subsections (b) and (c) of this section:

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

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

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

19 (1) A member is not an agent of the company for the  
20 purpose of its business solely by reason of being a  
21 member. Each manager is an agent of the company for  
22 the purpose of its business and an act of a manager,  
23 including the signing of an instrument in the company's  
24 name, for apparently carrying on in the ordinary course  
25 the company's business or business of the kind carried

26 on by the company binds the company, unless the  
27 manager had no authority to act for the company in the  
28 particular matter and the person with whom the man-  
29 ager was dealing knew or had notice that the manager  
30 lacked authority.

31 (2) An act of a manager which is not apparently for  
32 carrying on in the ordinary course the company's busi-  
33 ness or business of the kind carried on by the company  
34 binds the company only if the act was authorized under  
35 section 4-404.

36 (c) Unless the articles of organization limit their  
37 authority, any member of a member-managed company  
38 or manager of a manager-managed company may sign  
39 and deliver any instrument transferring or affecting the  
40 company's interest in real property. The instrument is  
41 conclusive in favor of a person who gives value without  
42 knowledge of the lack of the authority of the person  
43 signing and delivering the instrument.

**§31B-3-302. Limited liability company liable for member's or  
manager's actionable conduct.**

1 A limited liability company is liable for loss or injury  
2 caused to a person, or for a penalty incurred, as a result  
3 of a wrongful act or omission, or other actionable  
4 conduct, of a member or manager acting in the ordinary  
5 course of business of the company or with authority of  
6 the company.

**§31B-3-303. Liability of members and managers.**

1 (a) Except as otherwise provided in subsection (c) of  
2 this section, the debts, obligations and liabilities of a  
3 limited liability company, whether arising in contract,  
4 tort or otherwise, are solely the debts, obligations and  
5 liabilities of the company. A member or manager is not  
6 personally liable for a debt, obligation or liability of the  
7 company solely by reason of being or acting as a member  
8 or manager.

9 (b) The failure of a limited liability company to observe

10 the usual company formalities or requirements relating  
11 to the exercise of its company powers or management of  
12 its business is not a ground for imposing personal  
13 liability on the members or managers for liabilities of the  
14 company.

15 (c) All or specified members of a limited liability  
16 company are liable in their capacity as members for all  
17 or specified debts, obligations or liabilities of the com-  
18 pany if:

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

21 (2) A member so liable has consented in writing to the  
22 adoption of the provision or to be bound by the provi-  
23 sion.

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

**§31B-4-401. Form of contribution.**

1 A contribution of a member of a limited liability  
2 company may consist of tangible or intangible property  
3 or other benefit to the company, including money,  
4 promissory notes, services performed or other agree-  
5 ments to contribute cash or property, or contracts for  
6 services to be performed.

**§31B-4-402. Member's liability for contributions.**

1 (a) A member's obligation to contribute money, prop-  
2 erty or other benefit to, or to perform services for, a  
3 limited liability company is not excused by the member's  
4 death, disability or other inability to perform personally.  
5 If a member does not make the required contribution of  
6 property or services, the member is obligated at the  
7 option of the company to contribute money equal to the  
8 value of that portion of the stated contribution which  
9 has not been made.

10 (b) A creditor of a limited liability company who  
11 extends credit or otherwise acts in reliance on an obliga-  
12 tion described in subsection (a) of this section, and

13 without notice of any compromise under section 4-  
14 404(c)(5), may enforce the original obligation.

**§31B-4-403. Member's and manager's rights to payments and reimbursement.**

1 (a) A limited liability company shall reimburse a  
2 member or manager for payments made and indemnify  
3 a member or manager for liabilities incurred by the  
4 member or manager in the ordinary course of the busi-  
5 ness of the company or for the preservation of its busi-  
6 ness or property.

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

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

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

**§31B-4-404. Management of limited liability company.**

1 (a) In a member-managed company:

2 (1) Each member has equal rights in the management  
3 and conduct of the company's business; and

4 (2) Except as otherwise provided in subsection (c) of  
5 this section or in section 8-801(b)(3)(i), any matter  
6 relating to the business of the company may be decided  
7 by a majority of the members.

8 (b) In a manager-managed company:

9 (1) Each manager has equal rights in the management  
10 and conduct of the company's business;

11 (2) Except as otherwise provided in subsection (c) of

12 this section or in section 8-801(b)(3)(i), any matter  
13 relating to the business of the company may be exclu-  
14 sively decided by the manager or, if there is more than  
15 one manager, by a majority of the managers; and

16 (3) A manager:

17 (i) Must be designated, appointed, elected, removed or  
18 replaced by a vote, approval or consent of a majority of  
19 the members; and

20 (ii) Holds office until a successor has been elected and  
21 qualified, unless the manager sooner resigns or is re-  
22 moved.

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

26 (1) The amendment of the operating agreement under  
27 section 1-103;

28 (2) The authorization or ratification of acts or transac-  
29 tions under section 1-103(b)(2)(ii) which would otherwise  
30 violate the duty of loyalty;

31 (3) An amendment to the articles of organization under  
32 section 2-204;

33 (4) The compromise of an obligation to make a contri-  
34 bution under section 4-402(b);

35 (5) The compromise, as among members, of an obliga-  
36 tion of a member to make a contribution or return money  
37 or other property paid or distributed in violation of this  
38 chapter;

39 (6) The making of interim distributions under section  
40 4-405(a), including the redemption of an interest;

41 (7) The admission of a new member;

42 (8) The use of the company's property to redeem an  
43 interest subject to a charging order;

44 (9) The consent to dissolve the company under section

45 8-801(b)(2);

46 (10) A waiver of the right to have the company's  
47 business wound up and the company terminated under  
48 section 8-802(b);

49 (11) The consent of members to merge with another  
50 entity under section 9-904(c)(1); and

51 (12) The sale, lease, exchange or other disposal of all,  
52 or substantially all, of the company's property with or  
53 without goodwill.

54 (d) Action requiring the consent of members or manag-  
55 ers under this chapter may be taken or without a meet-  
56 ing.

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

**§31B-4-405. Sharing of and right to distributions.**

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

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

6 (c) If a member becomes entitled to receive a distribu-  
7 tion, the member has the status of, and is entitled to all  
8 remedies available to, a creditor of the limited liability  
9 company with respect to the distribution.

**§31B-4-406. Limitations on distributions.**

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

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

5 (2) The company's total assets would be less than the  
6 sum of its total liabilities plus the amount that would be



7 needed, if the company were to be dissolved, wound up  
8 and terminated at the time of the distribution, to satisfy  
9 the preferential rights upon dissolution, winding up and  
10 termination of members whose preferential rights are  
11 superior to those receiving the distribution.

12 (b) A limited liability company may base a determina-  
13 tion that a distribution is not prohibited under subsec-  
14 tion (a) of this section on financial statements prepared  
15 on the basis of accounting practices and principles that  
16 are reasonable in the circumstances or on a fair valua-  
17 tion or other method that is reasonable in the circum-  
18 stances.

19 (c) Except as otherwise provided in subsection (e) of  
20 this section, the effect of a distribution under subsection  
21 (a) of this section is measured:

22 (1) In the case of distribution by purchase, redemption  
23 or other acquisition of a distributional interest in a  
24 limited liability company, as of the date money or other  
25 property is transferred or debt incurred by the company;  
26 and

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

28 (i) Distribution is authorized if the payment occurs  
29 within one hundred twenty days after the date of autho-  
30 rization; or

31 (ii) Payment is made if it occurs more than one hun-  
32 dred twenty days after the date of authorization.

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

37 (e) Indebtedness of a limited liability company, includ-  
38 ing indebtedness issued in connection with or as part of  
39 a distribution, is not considered a liability for purposes  
40 of determinations under subsection (a) of this section if  
41 its terms provide that payment of principal and interest  
42 are made only if and to the extent that payment of a

43 distribution to members could then be made under this  
 44 section. If the indebtedness is issued as a distribution,  
 45 each payment of principal or interest on the indebted-  
 46 ness is treated as a distribution, the effect of which is  
 47 measured on the date the payment is made.

**§31B-4-407. Liability for unlawful distributions.**

1 (a) A member of a member-managed company or a  
 2 member or manager of a manager-managed company  
 3 who votes for or assents to a distribution made in  
 4 violation of section 4-406, the articles of organization, or  
 5 the operating agreement is personally liable to the  
 6 company for the amount of the distribution which  
 7 exceeds the amount that could have been distributed  
 8 without violating section 4-406, the articles of organiza-  
 9 tion, or the operating agreement if it is established that  
 10 the member or manager did not perform the member's or  
 11 manager's duties in compliance with section 4-409.

12 (b) A member of a manager-managed limited liability  
 13 company who knew a distribution was made in violation  
 14 of section 4-406, the articles of organization, or the  
 15 operating agreement is personally liable to the company,  
 16 but only to the extent that the distribution received by  
 17 the member exceeded the amount that could properly  
 18 have been paid under section 4-406.

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

21 (1) Other members or managers who voted for or  
 22 assented to the distribution in violation of subsection (a)  
 23 of this section and may compel contribution from them;  
 24 and

25 (2) Members who received a distribution in violation of  
 26 subsection (b) of this section and may compel contribu-  
 27 tion from the member in the amount received in violation  
 28 of subsection (b) of this section.

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

**§31B-4-408. Member's right to information.**

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

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

16 (1) Without demand, information concerning the  
17 company's business or affairs reasonably required for  
18 the proper exercise of the member's rights and perfor-  
19 mance of the member's duties under the operating  
20 agreement or this chapter; and

21 (2) On demand, other information concerning the  
22 company's business or affairs, except to the extent the  
23 demand or the information demanded is unreasonable or  
24 otherwise improper under the circumstances.

25 (c) A member has the right upon written demand given  
26 to the limited liability company to obtain at the com-  
27 pany's expense a copy of any written operating agree-  
28 ment.

**§31B-4-409. General standards of member's and manager's conduct.**

1 (a) The only fiduciary duties a member owes to a  
2 member-managed company and its other members are  
3 the duty of loyalty and the duty of care imposed by  
4 subsections (b) and (c) of this section.

5 (b) A member's duty of loyalty to a member-managed

6 company and its other members is limited to the follow-  
7 ing:

8 (1) To account to the company and to hold as trustee  
9 for it any property, profit or benefit derived by the  
10 member in the conduct or winding up of the company's  
11 business or derived from a use by the member of the  
12 company's property, including the appropriation of a  
13 company's opportunity;

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

18 (3) To refrain from competing with the company in the  
19 conduct of the company's business before the dissolution  
20 of the company.

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

27 (d) A member shall discharge the duties to a member-  
28 managed company and its other members under this  
29 chapter or under the operating agreement and exercise  
30 any rights consistently with the obligation of good faith  
31 and fair dealing.

32 (e) A member of a member-managed company does not  
33 violate a duty or obligation under this chapter or under  
34 the operating agreement merely because the member's  
35 conduct furthers the member's own interest.

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

41 (g) This section applies to a person winding up the

42 limited liability company's business as the personal or  
43 legal representative of the last surviving member as if  
44 the person were a member.

45 (h) In a manager-managed company:

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

49 (2) A manager is held to the same standards of conduct  
50 prescribed for members in subsections (b) through (f) of  
51 this section;

52 (3) A member who pursuant to the operating agreement  
53 exercises some or all of the rights of a manager in the  
54 management and conduct of the company's business is  
55 held to the standards of conduct in subsections (b)  
56 through (f) of this section to the extent that the member  
57 exercises the managerial authority vested in a manager  
58 by this chapter; and

59 (4) A manager is relieved of liability imposed by law  
60 for violation of the standards prescribed by subsections  
61 (b) through (f) of this section to the extent of the mana-  
62 gerial authority delegated to the members by the operat-  
63 ing agreement.

**§31B-4-410. Actions by members.**

1 (a) A member may maintain an action against a limited  
2 liability company or another member for legal or equita-  
3 ble relief, with or without an accounting as to the com-  
4 pany's business, to enforce:

5 (1) The member's rights under the operating agree-  
6 ment;

7 (2) The member's rights under this chapter; and

8 (3) The rights and otherwise protect the interests of the  
9 member, including rights and interests arising independ-  
10 ently of the member's relationship to the company.

11 (b) The accrual, and any time limited for the assertion,

12 of a right of action for a remedy under this section is  
 13 governed by other law. A right to an accounting upon a  
 14 dissolution and winding up does not revive a claim  
 15 barred by law.

**§31B-4-411. Continuation of term company after expiration  
 of specified term.**

1 (a) If a term company is continued after the expiration  
 2 of the specified term, the rights and duties of the mem-  
 3 bers and managers remain the same as they were at the  
 4 expiration of the term except to the extent inconsistent  
 5 with rights and duties of members and managers of an  
 6 at-will company.

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

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

**§31B-5-501. Member's distributional interest.**

1 (a) A member is not a coowner of, and has no transfer-  
 2 able interest in, property of a limited liability company.

3 (b) A distributional interest in a limited liability  
 4 company is personal property and, subject to sections 5-  
 5 502 and 5-503, may be transferred, in whole or in part.

6 (c) An operating agreement may provide that a distri-  
 7 butional interest may be evidenced by a certificate of the  
 8 interest issued by the limited liability company and,  
 9 subject to section 5-503, may also provide for the trans-  
 10 fer of any interest represented by the certificate.

**§31B-5-502. Transfer of distributional interest.**

1 A transfer of a distributional interest does not entitle  
 2 the transferee to become or to exercise any rights of a  
 3 member. A transfer entitles the transferee to receive, to  
 4 the extent transferred, only the distributions to which  
 5 the transferor would be entitled.

**§31B-5-503. Rights of transferee.**

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

6 (b) A transferee who has become a member, to the  
7 extent transferred, has the rights and powers, and is  
8 subject to the restrictions and liabilities, of a member  
9 under the operating agreement of a limited liability  
10 company and this chapter. A transferee who becomes a  
11 member also is liable for the transferor member's  
12 obligations to make contributions under section 4-402  
13 and for obligations under section 4-407 to return unlaw-  
14 ful distributions, but the transferee is not obligated for  
15 the transferor member's liabilities unknown to the  
16 transferee at the time the transferee becomes a member.

17 (c) Whether or not a transferee of a distributional  
18 interest becomes a member under subsection (a) of this  
19 section, the transferor is not released from liability to the  
20 limited liability company under the operating agreement  
21 or this chapter.

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

27 (e) A transferee who does not become a member is  
28 entitled to:

29 (1) Receive, in accordance with the transfer, distribu-  
30 tions to which the transferor would otherwise be enti-  
31 tled;

32 (2) Receive, upon dissolution and winding up of the  
33 limited liability company's business:

34 (i) In accordance with the transfer, the net amount  
35 otherwise distributable to the transferor;

36 (ii) A statement of account only from the date of the

37 latest statement of account agreed to by all the members;

38 (3) Seek under section 8-801(b)(6) a judicial determina-  
39 tion that it is equitable to dissolve and wind up the  
40 company's business.

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

**§31B-5-504. Rights of creditor.**

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

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

16 (c) At any time before foreclosure, a distributional  
17 interest in a limited liability company which is charged  
18 may be redeemed:

19 (1) By the judgment debtor;

20 (2) With property other than the company's property,  
21 by one or more of the other members; or

22 (3) With the company's property, but only if permitted  
23 by the operating agreement.

24 (d) This chapter does not affect a member's right under  
25 exemption laws with respect to the member's distribu-  
26 tional interest in a limited liability company.

27 (e) This section provides the exclusive remedy by



28 which a judgment creditor of a member or a transferee  
29 may satisfy a judgment out of the judgment debtor's  
30 distributional interest in a limited liability company.

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

**§31B-6-601. Events causing member's dissociation.**

1 A member is dissociated from a limited liability  
2 company upon the occurrence of any of the following  
3 events:

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

7 (2) An event agreed to in the operating agreement as  
8 causing the member's dissociation;

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

13 (4) The member's expulsion pursuant to the operating  
14 agreement;

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

17 (i) It is unlawful to carry on the company's business  
18 with the member;

19 (ii) There has been a transfer of substantially all of the  
20 member's distributional interest, other than a transfer  
21 for security purposes, or a court order charging the  
22 member's distributional interest, which has not been  
23 foreclosed;

24 (iii) Within ninety days after the company notifies a  
25 corporate member that it will be expelled because it has  
26 filed a certificate of dissolution or the equivalent, its  
27 charter has been revoked, or its right to conduct business  
28 has been suspended by the jurisdiction of its incorpora-  
29 tion, the member fails to obtain a revocation of the  
30 certificate of dissolution or a reinstatement of its charter

31 or its right to conduct business; or

32 (iv) A partnership or a limited liability company that  
33 is a member has been dissolved and its business is being  
34 wound up;

35 (6) On application by the company or another member,  
36 the member's expulsion by judicial determination  
37 because the member:

38 (i) Engaged in wrongful conduct that adversely and  
39 materially affected the company's business;

40 (ii) Willfully or persistently committed a material  
41 breach of the operating agreement or of a duty owed to  
42 the company or the other members under section 4-409;  
43 or

44 (iii) Engaged in conduct relating to the company's  
45 business which makes it not reasonably practicable to  
46 carry on the business with the member;

47 (7) The member's:

48 (i) Becoming a debtor in bankruptcy;

49 (ii) Executing an assignment for the benefit of credi-  
50 tors;

51 (iii) Seeking, consenting to, or acquiescing in the  
52 appointment of a trustee, receiver or liquidator of the  
53 member or of all or substantially all of the member's  
54 property; or

55 (iv) Failing, within ninety days after the appointment,  
56 to have vacated or stayed the appointment of a trustee,  
57 receiver or liquidator of the member or of all or substan-  
58 tially all of the member's property obtained without the  
59 member's consent or acquiescence, or failing within  
60 ninety days after the expiration of a stay to have the  
61 appointment vacated;

62 (8) In the case of a member who is an individual:

63 (i) The member's death;

64 (ii) The appointment of a guardian or general conserva-  
65 tor for the member; or

66 (iii) A judicial determination that the member has  
67 otherwise become incapable of performing the member's  
68 duties under the operating agreement;

69 (9) In the case of a member that is a trust or is acting as  
70 a member by virtue of being a trustee of a trust, distribu-  
71 tion of the trust's entire rights to receive distributions  
72 from the company, but not merely by reason of the  
73 substitution of a successor trustee;

74 (10) In the case of a member that is an estate or is  
75 acting as a member by virtue of being a personal repre-  
76 sentative of an estate, distribution of the estate's entire  
77 rights to receive distributions from the company, but not  
78 merely the substitution of a successor personal represen-  
79 tative; or

80 (11) Termination of the existence of a member if the  
81 member is not an individual, estate or trust other than a  
82 business trust.

**§31B-6-602. Member's power to dissociate; wrongful dissociation.**

1 (a) Unless otherwise provided in the operating agree-  
2 ment, a member has the power to dissociate from a  
3 limited liability company at any time, rightfully or  
4 wrongfully, by express will pursuant to section 6-601(1).

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

8 (1) It is in breach of an express provision of the agree-  
9 ment; or

10 (2) Before the expiration of the specified term of a term  
11 company:

12 (i) The member withdraws by express will;

13 (ii) The member is expelled by judicial determination

14 under section 6-601(6);

15 (iii) The member is dissociated by becoming a debtor in  
16 bankruptcy; or

17 (iv) In the case of a member who is not an individual,  
18 trust other than a business trust, or estate, the member  
19 is expelled or otherwise dissociated because it willfully  
20 dissolved or terminated its existence.

21 (c) A member who wrongfully dissociates from a  
22 limited liability company is liable to the company and to  
23 the other members for damages caused by the dissocia-  
24 tion. The liability is in addition to any other obligation  
25 of the member to the company or to the other members.

26 (d) If a limited liability company does not dissolve and  
27 wind up its business as a result of a member's wrongful  
28 dissociation under subsection (b) of this section, damages  
29 sustained by the company for the wrongful dissociation  
30 must be offset against distributions otherwise due the  
31 member after the dissociation.

**§31B-6-603. Effect of member's dissociation.**

1 (a) If under section 8-801 a member's dissociation from  
2 a limited liability company results in a dissolution and  
3 winding up of the company's business, article eight of  
4 this chapter applies. If a member's dissociation from the  
5 company does not result in a dissolution and winding up  
6 of the company's business under section 8-801:

7 (1) In an at-will company, the company must cause the  
8 dissociated member's distributional interest to be  
9 purchased under article seven of this chapter; and

10 (2) In a term company:

11 (i) If the company dissolves and winds up its business  
12 on or before the expiration of its specified term, article  
13 eight of this chapter applies to determine the dissociated  
14 member's rights to distributions; and

15 (ii) If the company does not dissolve and wind up its  
16 business on or before the expiration of its specified term,

17 the company must cause the dissociated member's  
18 distributional interest to be purchased under article  
19 seven of this chapter on the date of the expiration of the  
20 term specified at the time of the member's dissociation.

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

23 (1) The member's right to participate in the manage-  
24 ment and conduct of the company's business terminates,  
25 except as otherwise provided in section 8-803, and the  
26 member ceases to be a member and is treated the same as  
27 a transferee of a member;

28 (2) The member's duty of loyalty under section 4-  
29 409(b)(3) terminates; and

30 (3) The member's duty of loyalty under section 4-  
31 409(b)(1) and (2) and duty of care under section 4-409(c)  
32 continue only with regard to matters arising and events  
33 occurring before the member's dissociation, unless the  
34 member participates in winding up the company's  
35 business pursuant to section 8-803.

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

**§31B-7-701. Company purchase of distributional interest.**

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

3 (1) Member of an at-will company for its fair value  
4 determined as of the date of the member's dissociation if  
5 the member's dissociation does not result in a dissolution  
6 and winding up of the company's business under section  
7 8-801; or

8 (2) Member of a term company for its fair value deter-  
9 mined as of the date of the expiration of the specified  
10 term that existed on the date of the member's dissocia-  
11 tion if the expiration of the specified term does not result  
12 in a dissolution and winding up of the company's busi-  
13 ness under section 8-801.

14 (b) A limited liability company must deliver a purchase

15 offer to the dissociated member whose distributional  
16 interest is entitled to be purchased not later than thirty  
17 days after the date determined under subsection (a) of  
18 this section. The purchase offer must be accompanied  
19 by:

20 (1) A statement of the company's assets and liabilities  
21 as of the date determined under subsection (a) of this  
22 section;

23 (2) The latest available balance sheet and income  
24 statement, if any; and

25 (3) An explanation of how the estimated amount of the  
26 payment was calculated.

27 (c) If the price and other terms of a purchase of a  
28 distributional interest are fixed or are to be determined  
29 by the operating agreement, the price and terms so fixed  
30 or determined govern the purchase unless the purchaser  
31 defaults. If a default occurs, the dissociated member is  
32 entitled to commence a proceeding to have the company  
33 dissolved under section 8-801(b)(5)(iv).

34 (d) If an agreement to purchase the distributional  
35 interest is not made within one hundred twenty days  
36 after the date determined under subsection (a) of this  
37 section, the dissociated member, within another one  
38 hundred twenty days, may commence a proceeding  
39 against the limited liability company to enforce the  
40 purchase. The company at its expense shall notify in  
41 writing all of the remaining members, and any other  
42 person the court directs, of the commencement of the  
43 proceeding. The jurisdiction of the court in which the  
44 proceeding is commenced under this subsection is  
45 plenary and exclusive.

46 (e) The court shall determine the fair value of the  
47 distributional interest in accordance with the standards  
48 set forth in section 7-702 together with the terms for the  
49 purchase. Upon making these determinations, the court  
50 shall order the limited liability company to purchase or  
51 cause the purchase of the interest.

52 (f) Damages for wrongful dissociation under section 6-  
53 602(b), and all other amounts owing, whether or not  
54 currently due, from the dissociated member to a limited  
55 liability company, must be offset against the purchase  
56 price.

**§31B-7-702. Court action to determine fair value of distribu-  
tional interest.**

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

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

12 (2) Specify the terms of the purchase, including, if  
13 appropriate, terms for installment payments, subordina-  
14 tion of the purchase obligation to the rights of the  
15 company's other creditors, security for a deferred  
16 purchase price and a covenant not to compete or other  
17 restriction on a dissociated member; and

18 (3) Require the dissociated member to deliver an  
19 assignment of the interest to the purchaser upon receipt  
20 of the purchase price or the first installment of the  
21 purchase price.

22 (b) After the dissociated member delivers the assign-  
23 ment, the dissociated member has no further claim  
24 against the company, its members, officers or managers,  
25 if any, other than a claim to any unpaid balance of the  
26 purchase price and a claim under any agreement with  
27 the company or the remaining members that is not  
28 terminated by the court.

29 (c) If the purchase is not completed in accordance with

30 the specified terms, the company is to be dissolved upon  
 31 application under section 8-801(b)(5)(iv). If a limited  
 32 liability company is so dissolved, the dissociated member  
 33 has the same rights and priorities in the company's  
 34 assets as if the sale had not been ordered.

35 (d) If the court finds that a party to the proceeding  
 36 acted arbitrarily, vexatiously or not in good faith, it may  
 37 award one or more other parties their reasonable ex-  
 38 penses, including attorney's fees and the expenses of  
 39 appraisers or other experts, incurred in the proceeding.  
 40 The finding may be based on the company's failure to  
 41 make an offer to pay or to comply with section 7-701(b).

42 (e) Interest must be paid on the amount awarded from  
 43 the fair market value determined under section 7-701(a)  
 44 to the date of payment.

**§31B-7-703. Dissociated member's power to bind limited liability company.**

1 For two years after a member dissociates without the  
 2 dissociation resulting in a dissolution and winding up of  
 3 a limited liability company's business, the company,  
 4 including a surviving company under article nine of this  
 5 chapter, is bound by an act of the dissociated member  
 6 which would have bound the company under section 3-  
 7 301 before dissociation only if at the time of entering  
 8 into the transaction the other party:

9 (1) Reasonably believed that the dissociated member  
 10 was then a member;

11 (2) Did not have notice of the member's dissociation;  
 12 and

13 (3) Is not deemed to have had notice under section 7-  
 14 704.

**§31B-7-704. Statement of dissociation.**

1 (a) A dissociated member or a limited liability com-  
 2 pany may file in the office of the secretary of state a  
 3 statement of dissociation stating the name of the com-



4 pany and that the member is dissociated from the  
5 company.

6 (b) For the purposes of sections 3-301 and 7-703, a  
7 person not a member is deemed to have notice of the  
8 dissociation ninety days after the statement of dissocia-  
9 tion is filed.

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

**§31B-8-801. Events causing dissolution and winding up of  
company's business.**

1 (a) In this section, "future distributions" means the  
2 total distributions that, as of the date of dissociation, are  
3 reasonably estimated to be made to the remaining  
4 members if the company were continued until the  
5 projected date of its termination, reduced by the amount  
6 of distributions that would have been made to the  
7 remaining members if the business of the company were  
8 dissolved and wound up on the date of dissociation.

9 (b) A limited liability company is dissolved, and its  
10 business must be wound up, upon the occurrence of any  
11 of the following events:

12 (1) An event specified in the operating agreement;

13 (2) Consent of the number or percentage of members  
14 specified in the operating agreement;

15 (3) Dissociation of a member who is also a manager or,  
16 if none, a member of an at-will company, and dissocia-  
17 tion of a member who is also a manager or, if none, a  
18 member of a term company but only if the dissociation  
19 was for a reason provided in section 6-601(7) through  
20 (11) and occurred before the expiration of the specified  
21 term, but the company is not dissolved and required to  
22 be wound up by reason of the dissociation if:

23 (i) Within ninety days after the dissociation, the  
24 business of the company is continued by the agreement  
25 of:

26 (A) The remaining members that would be entitled to

27 receive a majority of any distributions that would be  
28 made to them assuming the business of the company  
29 were dissolved and wound up on the date of the dissocia-  
30 tion; and

31 (B) The remaining members that would be entitled to  
32 receive a majority of any future distributions that would  
33 be made to them assuming the business of the company  
34 were continued after the date of the dissociation; or

35 (ii) The business of the company is continued under a  
36 right to continue stated in the operating agreement;

37 (4) An event that makes it unlawful for all or substan-  
38 tially all of the business of the company to be continued,  
39 but any cure of illegality within ninety days after notice  
40 to the company of the event is effective retroactively to  
41 the date of the event for purposes of this section;

42 (5) On application by a member or a dissociated  
43 member, upon entry of a judicial decree that:

44 (i) The economic purpose of the company is likely to be  
45 unreasonably frustrated;

46 (ii) Another member has engaged in conduct relating to  
47 the company's business that makes it not reasonably  
48 practicable to carry on the company's business with that  
49 member;

50 (iii) It is not otherwise reasonably practicable to carry  
51 on the company's business in conformity with the  
52 articles of organization and the operating agreement;

53 (iv) The company failed to purchase the petitioner's  
54 distributional interest as required by section 7-701; or

55 (v) The managers or members in control of the com-  
56 pany have acted, are acting or will act in a manner that  
57 is illegal, oppressive, fraudulent or unfairly prejudicial  
58 to the petitioner;

59 (6) On application by a transferee of a member's  
60 interest, a judicial determination that it is equitable to  
61 wind up the company's business:

62 (i) After the expiration of the specified term, if the  
63 company was for a specified term at the time the appli-  
64 cant became a transferee by member dissociation,  
65 transfer or entry of a charging order that gave rise to the  
66 transfer; or

67 (ii) At any time, if the company was at will at the time  
68 the applicant became a transferee by member dissocia-  
69 tion, transfer or entry of a charging order that gave rise  
70 to the transfer.

**§31B-8-802. Limited liability company continues after dissolution.**

1 (a) Subject to subsection (b) of this section, a limited  
2 liability company continues after dissolution only for the  
3 purpose of winding up its business.

4 (b) At any time after the dissolution of a limited  
5 liability company and before the winding up of its  
6 business is completed, the members, including a dissoci-  
7 ated member whose dissociation caused the dissolution,  
8 may unanimously waive the right to have the company's  
9 business wound up and the company terminated. In that  
10 case:

11 (1) The limited liability company resumes carrying on  
12 its business as if dissolution had never occurred and any  
13 liability incurred by the company or a member after the  
14 dissolution and before the waiver is determined as if the  
15 dissolution had never occurred; and

16 (2) The rights of a third party accruing under section 8-  
17 804(a) or arising out of conduct in reliance on the  
18 dissolution before the third party knew or received a  
19 notification of the waiver are not adversely affected.

**§31B-8-803. Right to wind up limited liability company's business.**

1 (a) After dissolution, a member who has not wrongfully  
2 dissociated may participate in winding up a limited  
3 liability company's business, but on application of any  
4 member, member's legal representative or transferee, the

5 circuit court, for good cause shown, may order judicial  
6 supervision of the winding up.

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

9 (c) A person winding up a limited liability company's  
10 business may preserve the company's business or prop-  
11 erty as a going concern for a reasonable time, prosecute  
12 and defend actions and proceedings, whether civil,  
13 criminal or administrative, settle and close the com-  
14 pany's business, dispose of and transfer the company's  
15 property, discharge the company's liabilities, distribute  
16 the assets of the company pursuant to section 8-806,  
17 settle disputes by mediation or arbitration and perform  
18 other necessary acts.

**§31B-8-804. Member's or manager's power and liability as  
agent after dissolution.**

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

3 (1) Is appropriate for winding up the company's  
4 business; or

5 (2) Would have bound the company under section 3-301  
6 before dissolution, if the other party to the transaction  
7 did not have notice of the dissolution.

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

**§31B-8-805. Articles of termination.**

1 (a) At any time after dissolution and winding up, a  
2 limited liability company may terminate its existence by  
3 filing with the secretary of state articles of termination  
4 stating:

5 (1) The name of the company;

6 (2) The date of the dissolution; and

7 (3) That the company's business has been wound up  
8 and the legal existence of the company has been termi-  
9 nated.

10 (b) The existence of a limited liability company is  
11 terminated upon the filing of the articles of termination,  
12 or upon a later effective date, if specified in the articles  
13 of termination.

**§31B-8-806. Distribution of assets in winding up limited liability company's business.**

1 (a) In winding up a limited liability company's busi-  
2 ness, the assets of the company must be applied to  
3 discharge its obligations to creditors, including members  
4 who are creditors. Any surplus must be applied to pay  
5 in money the net amount distributable to members in  
6 accordance with their right to distributions under  
7 subsection (b) of this section.

8 (b) Each member is entitled to a distribution upon the  
9 winding up of the limited liability company's business  
10 consisting of a return of all contributions which have not  
11 previously been returned and a distribution of any  
12 remainder in equal shares.

**§31B-8-807. Known claims against dissolved limited liability company.**

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

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

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

9 (2) Provide a mailing address where the claim is to be  
10 sent;

11 (3) State the deadline for receipt of the claim, which  
12 may not be less than one hundred twenty days after the  
13 date the written notice is received by the claimant; and

14 (4) State that the claim will be barred if not received  
15 by the deadline.

16 (c) A claim against a dissolved limited liability com-  
17 pany is barred if the requirements of subsection (b) of  
18 this section are met, and:

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

21 (2) In the case of a claim that is timely received but  
22 rejected by the dissolved company, the claimant does not  
23 commence a proceeding to enforce the claim within  
24 ninety days after the receipt of the notice of the rejec-  
25 tion.

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

**§31B-8-808. Other claims against dissolved limited liability  
company.**

1 (a) A dissolved limited liability company may publish  
2 notice of its dissolution and request persons having  
3 claims against the company to present them in accor-  
4 dance with the notice.

5 (b) The notice must:

6 (1) Be published at least once in a newspaper of general  
7 circulation in the county in which the dissolved limited  
8 liability company's principal office is located or, if none  
9 in this state, in which its designated office is or was last  
10 located;

11 (2) Describe the information required to be contained  
12 in a claim and provide a mailing address where the claim  
13 is to be sent; and

14 (3) State that a claim against the limited liability

15 company is barred unless a proceeding to enforce the  
16 claim is commenced within five years after publication  
17 of the notice.

18 (c) If a dissolved limited liability company publishes a  
19 notice in accordance with subsection (b) of this section,  
20 the claim of each of the following claimants is barred  
21 unless the claimant commences a proceeding to enforce  
22 the claim against the dissolved company within five  
23 years after the publication date of the notice:

24 (1) A claimant who did not receive written notice under  
25 section 8-807;

26 (2) A claimant whose claim was timely sent to the  
27 dissolved company but not acted on; and

28 (3) A claimant whose claim is contingent or based on  
29 an event occurring after the effective date of dissolution.

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

32 (1) Against the dissolved limited liability company, to  
33 the extent of its undistributed assets; or

34 (2) If the assets have been distributed in liquidation,  
35 against a member of the dissolved company to the extent  
36 of the member's proportionate share of the claim or the  
37 company's assets distributed to the member in liquidation,  
38 whichever is less, but a member's total liability for  
39 all claims under this section may not exceed the total  
40 amount of assets distributed to the member.

**§31B-8-809. Grounds for administrative dissolution.**

1 The secretary of state may commence a proceeding to  
2 dissolve a limited liability company administratively if  
3 the company does not:

4 (1) Pay any fees, taxes or penalties imposed by this  
5 chapter or other law within sixty days after they are due;

6 (2) Deliver its annual report to the secretary of state  
7 within sixty days after it is due.

**§31B-8-810. Procedure for and effect of administrative dissolution.**

1 (a) If the secretary of state determines that a ground  
2 exists for administratively dissolving a limited liability  
3 company, the secretary of state shall enter a record of  
4 the determination and serve the company with a copy of  
5 the record.

6 (b) If the company does not correct each ground for  
7 dissolution or demonstrate to the reasonable satisfaction  
8 of the secretary of state that each ground determined by  
9 the secretary of state does not exist within sixty days  
10 after service of the notice, the secretary of state shall  
11 administratively dissolve the company by signing a  
12 certification of the dissolution that recites the ground for  
13 dissolution and its effective date. The secretary of state  
14 shall file the original of the certificate and serve the  
15 company with a copy of the certificate.

16 (c) A company administratively dissolved continues its  
17 existence but may carry on only business necessary to  
18 wind up and liquidate its business and affairs under  
19 section 8-802 and to notify claimants under sections 8-  
20 807 and 8-808.

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

**§31B-8-811. Reinstatement following administrative dissolution.**

1 (a) A limited liability company administratively  
2 dissolved may apply to the secretary of state for rein-  
3 statement within two years after the effective date of  
4 dissolution. The application must:

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

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



9 (3) State that the company's name satisfies the require-  
10 ments of section 1-105; and

11 (4) Contain a certificate from the tax commissioner  
12 reciting that all taxes owed by the company have been  
13 paid.

14 (b) If the secretary of state determines that the applica-  
15 tion contains the information required by subsection (a)  
16 of this section and that the information is correct, the  
17 secretary of state shall cancel the certificate of dissolu-  
18 tion and prepare a certificate of reinstatement that  
19 recites this determination and the effective date of  
20 reinstatement, file the original of the certificate, and  
21 serve the company with a copy of the certificate.

22 (c) When reinstatement is effective, it relates back to  
23 and takes effect as of the effective date of the adminis-  
24 trative dissolution and the company may resume its  
25 business as if the administrative dissolution had never  
26 occurred.

**§31B-8-812. Appeal from denial of reinstatement.**

1 (a) If the secretary of state denies a limited liability  
2 company's application for reinstatement following  
3 administrative dissolution, the secretary of state shall  
4 serve the company with a record that explains the reason  
5 or reasons for denial.

6 (b) The company may appeal the denial of reinstatement  
7 to the circuit court within thirty days after service  
8 of the notice of denial is perfected. The company ap-  
9 peals by petitioning the court to set aside the dissolution  
10 and attaching to the petition copies of the secretary of  
11 state's certificate of dissolution, the company's applica-  
12 tion for reinstatement and the secretary of state's notice  
13 of denial.

14 (c) The court may summarily order the secretary of  
15 state to reinstate the dissolved company or may take  
16 other action the court considers appropriate.

17 (d) The court's final decision may be appealed as in

18 other civil proceedings.

**ARTICLE 9. CONVERSIONS AND MERGERS.**

**§31B-9-901. Definitions.**

1 In this article:

2 (1) "Corporation" means a corporation under chapter  
3 thirty-one of this code, a predecessor law, or comparable  
4 law of another jurisdiction.

5 (2) "General partner" means a partner in a partnership  
6 and a general partner in a limited partnership.

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

9 (4) "Limited partnership" means a limited partnership  
10 created under article nine, chapter forty-seven of this  
11 code, a predecessor law, or comparable law of another  
12 jurisdiction.

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

15 (6) "Partnership" means a general partnership under  
16 chapter forty-seven-b of this code, a predecessor law, or  
17 comparable law of another jurisdiction.

18 (7) "Partnership agreement" means an agreement  
19 among the partners concerning the partnership or  
20 limited partnership.

21 (8) "Shareholder" means a shareholder in a corpora-  
22 tion.

**§31B-9-902. Conversion of partnership or limited partnership  
to limited liability company.**

1 (a) A partnership or limited partnership may be  
2 converted to a limited liability company pursuant to this  
3 section.

4 (b) The terms and conditions of a conversion of a  
5 partnership or limited partnership to a limited liability  
6 company must be approved by all of the partners or by

7 a number or percentage of the partners required for  
8 conversion in the partnership agreement.

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

16 (d) After a conversion is approved under subsection (b)  
17 of this section, the partnership or limited partnership  
18 shall file articles of organization in the office of the  
19 secretary of state which satisfy the requirements of  
20 section 2-203 and contain:

21 (1) A statement that the partnership or limited part-  
22 nership was converted to a limited liability company  
23 from a partnership or limited partnership, as the case  
24 may be;

25 (2) Its former name;

26 (3) A statement of the number of votes cast by the  
27 partners entitled to vote for and against the conversion  
28 and, if the vote is less than unanimous, the number or  
29 percentage required to approve the conversion under  
30 subsection (b) of this section; and

31 (4) In the case of a limited partnership, a statement  
32 that the certificate of limited partnership is to be can-  
33 celed as of the date the conversion took effect.

34 (e) In the case of a limited partnership, the filing of  
35 articles of organization under subsection (d) of this  
36 section cancels its certificate of limited partnership as of  
37 the date the conversion took effect.

38 (f) A conversion takes effect when the articles of  
39 organization are filed in the office of the secretary of  
40 state or at any later date specified in the articles of  
41 organization.

42 (g) A general partner who becomes a member of a  
43 limited liability company as a result of a conversion  
44 remains liable as a partner for an obligation incurred by  
45 the partnership or limited partnership before the conver-  
46 sion takes effect.

47 (h) A general partner's liability for all obligations of  
48 the limited liability company incurred after the conver-  
49 sion takes effect is that of a member of the company. A  
50 limited partner who becomes a member as a result of a  
51 conversion remains liable only to the extent the limited  
52 partner was liable for an obligation incurred by the  
53 limited partnership before the conversion takes effect.

**§31B-9-903. Effect of conversion; entity unchanged.**

1 (a) A partnership or limited partnership that has been  
2 converted pursuant to this article is for all purposes the  
3 same entity that existed before the conversion.

4 (b) When a conversion takes effect:

5 (1) All property owned by the converting partnership  
6 or limited partnership vests in the limited liability  
7 company;

8 (2) All debts, liabilities and other obligations of the  
9 converting partnership or limited partnership continue  
10 as obligations of the limited liability company;

11 (3) An action or proceeding pending by or against the  
12 converting partnership or limited partnership may be  
13 continued as if the conversion had not occurred;

14 (4) Except as prohibited by other law, all of the rights,  
15 privileges, immunities, powers and purposes of the  
16 converting partnership or limited partnership vest in the  
17 limited liability company; and

18 (5) Except as otherwise provided in the agreement of  
19 conversion under section 9-902(c), all of the partners of  
20 the converting partnership continue as members of the  
21 limited liability company.

**§31B-9-904. Merger of entities; confirmation of title to real**

**estate required.**

1 (a) Pursuant to a plan of merger approved under  
2 subsection (c) of this section, a limited liability company  
3 may be merged with or into one or more limited liability  
4 companies, foreign limited liability companies, corpora-  
5 tions, foreign corporations, partnerships, foreign part-  
6 nerships, limited partnerships, foreign limited partner-  
7 ships or other domestic or foreign entities.

8 (b) A plan of merger must set forth:

9 (1) The name of each entity that is a party to the  
10 merger;

11 (2) The name of the surviving entity into which the  
12 other entities will merge;

13 (3) The type of organization of the surviving entity;

14 (4) The terms and conditions of the merger;

15 (5) The manner and basis for converting the interests  
16 of each party to the merger into interests or obligations  
17 of the surviving entity, or into money or other property,  
18 in whole or in part; and

19 (6) The street address of the surviving entity's principal  
20 place of business.

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

22 (1) In the case of a limited liability company that is a  
23 party to the merger, by all of the members or by a  
24 number or percentage of members specified in the  
25 operating agreement;

26 (2) In the case of a foreign limited liability company  
27 that is a party to the merger, by the vote required for  
28 approval of a merger by the law of the state or foreign  
29 jurisdiction in which the foreign limited liability com-  
30 pany is organized;

31 (3) In the case of a partnership or domestic limited  
32 partnership that is a party to the merger, by the vote  
33 required for approval of a conversion under section 9-

34 902(b); and

35 (4) In the case of any other entities that are parties to  
 36 the merger, by the vote required for approval of a merger  
 37 by the law of this state or of the state or foreign jurisdic-  
 38 tion in which the entity is organized and, in the absence  
 39 of such a requirement, by all the owners of interests in  
 40 the entity.

41 (d) After a plan of merger is approved and before the  
 42 merger takes effect, the plan may be amended or aban-  
 43 doned as provided in the plan.

44 (e) The merger is effective upon the filing of the  
 45 articles of merger with the secretary of state, or at such  
 46 later date as the articles may provide.

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

**§31B-9-905. Articles of merger.**

1 (a) After approval of the plan of merger under section  
 2 9-904(c), unless the merger is abandoned under section  
 3 9-904(d), articles of merger must be signed on behalf of  
 4 each limited liability company and other entity that is a  
 5 party to the merger and delivered to the secretary of  
 6 state for filing. The articles must set forth:

7 (1) The name and jurisdiction of formation or organiza-  
 8 tion of each of the limited liability companies and other

9 entities that are parties to the merger;

10 (2) For each limited liability company that is to merge,  
11 the date its articles of organization were filed with the  
12 secretary of state;

13 (3) That a plan of merger has been approved and signed  
14 by each limited liability company and other entity that  
15 is to merge;

16 (4) The name and address of the surviving limited  
17 liability company or other surviving entity;

18 (5) The effective date of the merger;

19 (6) If a limited liability company is the surviving entity,  
20 such changes in its articles of organization as are neces-  
21 sary by reason of the merger;

22 (7) If a party to a merger is a foreign limited liability  
23 company, the jurisdiction and date of filing of its initial  
24 articles of organization and the date when its application  
25 for authority was filed by the secretary of state or, if an  
26 application has not been filed, a statement to that effect;  
27 and

28 (8) If the surviving entity is not a limited liability  
29 company, an agreement that the surviving entity may be  
30 served with process in this state and is subject to liabil-  
31 ity in any action or proceeding for the enforcement of  
32 any liability or obligation of any limited liability com-  
33 pany previously subject to suit in this state which is to  
34 merge, and for the enforcement, as provided in this  
35 chapter, of the right of members of any limited liability  
36 company to receive payment for their interest against the  
37 surviving entity.

38 (b) If a foreign limited liability company is the surviv-  
39 ing entity of a merger, it may not do business in this state  
40 until an application for that authority is filed with the  
41 secretary of state.

42 (c) The surviving limited liability company or other  
43 entity shall furnish a copy of the plan of merger, on

44 request and without cost, to any member of any limited  
45 liability company or any person holding an interest in  
46 any other entity that is to merge.

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

**§31B-9-906. Effect of merger.**

1 (a) When a merger takes effect:

2 (1) The separate existence of each limited liability  
3 company and other entity that is a party to the merger,  
4 other than the surviving entity, terminates;

5 (2) All property owned by each of the limited liability  
6 companies and other entities that are party to the merger  
7 vests in the surviving entity;

8 (3) All debts, liabilities and other obligations of each  
9 limited liability company and other entity that is party  
10 to the merger become the obligations of the surviving  
11 entity;

12 (4) An action or proceeding pending by or against a  
13 limited liability company or other party to a merger may  
14 be continued as if the merger had not occurred or the  
15 surviving entity may be substituted as a party to the  
16 action or proceeding; and

17 (5) Except as prohibited by other law, all the rights,  
18 privileges, immunities, powers and purposes of every  
19 limited liability company and other entity that is a party  
20 to a merger become vested in the surviving entity.

21 (b) The secretary of state is an agent for service of  
22 process in an action or proceeding against the surviving  
23 foreign entity to enforce an obligation of any party to a  
24 merger if the surviving foreign entity fails to appoint or  
25 maintain an agent designated for service of process in  
26 this state or the agent for service of process cannot with  
27 reasonable diligence be found at the designated office.  
28 Upon receipt of process, the secretary of state shall send  
29 a copy of the process by registered or certified mail,



30 return receipt requested, to the surviving entity at the  
31 address set forth in the articles of merger. Service is  
32 effected under this subsection at the earliest of:

33 (1) The date the company receives the process, notice  
34 or demand;

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

37 (3) Five days after its deposit in the mail, if mailed  
38 postpaid and correctly addressed.

39 (c) A member of the surviving limited liability com-  
40 pany is liable for all obligations of a party to the merger  
41 for which the member was personally liable before the  
42 merger.

43 (d) Unless otherwise agreed, a merger of a limited  
44 liability company that is not the surviving entity in the  
45 merger does not require the limited liability company to  
46 wind up its business under this chapter or pay its  
47 liabilities and distribute its assets pursuant to this  
48 chapter.

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

**§31B-9-907. Article not exclusive.**

1 This article does not preclude an entity from being  
2 converted or merged under other law.

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

**§31B-10-1001. Law governing foreign limited liability companies.**

1 (a) The laws of the state or other jurisdiction under  
2 which a foreign limited liability company is organized  
3 govern its organization and internal affairs and the  
4 liability of its managers, members and their transferees.

5 (b) A foreign limited liability company may not be  
6 denied a certificate of authority by reason of any differ-

7 ence between the laws of another jurisdiction under  
8 which the foreign company is organized and the laws of  
9 this state.

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

**§31B-10-1002. Application for certificate of authority.**

1 (a) A foreign limited liability company may apply for  
2 a certificate of authority to transact business in this state  
3 by delivering an application to the secretary of state for  
4 filing, together with a fee in the amount of one hundred  
5 fifty dollars. The application must set forth:

6 (1) The name of the foreign company or, if its name is  
7 unavailable for use in this state, a name that satisfies the  
8 requirements of section 10-1005;

9 (2) The name of the state or country under whose law  
10 it is organized;

11 (3) The street address of its principal office;

12 (4) The address of its initial designated office in this  
13 state;

14 (5) The name and street address of its initial agent for  
15 service of process in this state;

16 (6) Whether the duration of the company is for a  
17 specified term and, if so, the period specified;

18 (7) Whether the company is manager-managed, and, if  
19 so, the name and address of each initial manager; and

20 (8) Whether the members of the company are to be  
21 liable for its debts and obligations under a provision  
22 similar to section 3-303(c).

23 (b) A foreign limited liability company shall deliver  
24 with the completed application a certificate of existence  
25 or a record of similar import authenticated by the  
26 secretary of state or other official having custody of

27 company records in the state or country under whose law  
28 it is organized.

**§31B-10-1003. Activities not constituting transacting business.**

1 (a) Activities of a foreign limited liability company that  
2 do not constitute transacting business in this state  
3 within the meaning of this article include:

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

6 (2) Holding meetings of its members or managers or  
7 carrying on any other activity concerning its internal  
8 affairs;

9 (3) Maintaining bank accounts;

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

14 (5) Selling through independent contractors;

15 (6) Soliciting or obtaining orders, whether by mail or  
16 through employees or agents or otherwise, if the orders  
17 require acceptance outside this state before they become  
18 contracts;

19 (7) Creating or acquiring indebtedness, mortgages or  
20 security interests in real or personal property;

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

25 (9) Conducting an isolated transaction that is com-  
26 pleted within thirty days and is not one in the course of  
27 similar transactions of a like manner; and

28 (10) Transacting business in interstate commerce.

29 (b) For purposes of this article, the ownership in this

30 state of income-producing real property or tangible  
31 personal property, other than property excluded under  
32 subsection (a) of this section, constitutes transacting  
33 business in this state.

34 (c) This section does not apply in determining the  
35 contacts or activities that may subject a foreign limited  
36 liability company to service of process, taxation or  
37 regulation under any other law of this state.

**§31B-10-1004. Issuance of certificate of authority.**

1 Unless the secretary of state determines that an  
2 application for a certificate of authority fails to comply  
3 as to form with the filing requirements of this chapter,  
4 the secretary of state, upon payment of all filing fees,  
5 shall file the application and send a receipt for it and the  
6 fees to the limited liability company or its representa-  
7 tive.

**§31B-10-1005. Name of foreign limited liability company.**

1 (a) If the name of a foreign limited liability company  
2 does not satisfy the requirements of section 1-105, the  
3 company, to obtain or maintain a certificate of authority  
4 to transact business in this state, must use a fictitious  
5 name to transact business in this state if its real name is  
6 unavailable and it delivers to the secretary of state for  
7 filing a copy of the resolution of its managers, in the case  
8 of a manager-managed company, or of its members, in  
9 the case of a member-managed company, adopting the  
10 fictitious name.

11 (b) Except as authorized by subsections (c) and (d) of  
12 this section, the name, including a fictitious name to be  
13 used to transact business in this state, of a foreign  
14 limited liability company must be distinguishable upon  
15 the records of the secretary of state from:

16 (1) The name of any corporation, limited partnership,  
17 or company incorporated, organized or authorized to  
18 transact business in this state;

19 (2) A name reserved or registered under section 1-106

20 or 1-107; and

21 (3) The fictitious name of another foreign limited  
22 liability company authorized to transact business in this  
23 state.

24 (c) A foreign limited liability company may apply to  
25 the secretary of state for authority to use in this state a  
26 name that is not distinguishable upon the records of the  
27 secretary of state from a name described in subsection  
28 (b) of this section. The secretary of state shall authorize  
29 use of the name applied for if:

30 (1) The present user, registrant or owner of a reserved  
31 name consents to the use in a record and submits an  
32 undertaking in form satisfactory to the secretary of state  
33 to change its name to a name that is distinguishable  
34 upon the records of the secretary of state from the name  
35 of the foreign applying limited liability company; or

36 (2) The applicant delivers to the secretary of state a  
37 certified copy of a final judgment of a court establishing  
38 the applicant's right to use the name applied for in this  
39 state.

40 (d) A foreign limited liability company may use in this  
41 state the name, including the fictitious name, of another  
42 domestic or foreign entity that is used in this state if the  
43 other entity is incorporated, organized or authorized to  
44 transact business in this state and the foreign limited  
45 liability company:

46 (1) Has merged with the other entity;

47 (2) Has been formed by reorganization of the other  
48 entity; or

49 (3) Has acquired all or substantially all of the assets,  
50 including the name, of the other entity.

51 (e) If a foreign limited liability company authorized to  
52 transact business in this state changes its name to one  
53 that does not satisfy the requirements of section 1-105,  
54 it may not transact business in this state under the name

55 as changed until it adopts a name satisfying the require-  
56 ments of section 1-105 and obtains an amended certifi-  
57 cate of authority.

**§31B-10-1006. Revocation of certificate of authority.**

1 (a) A certificate of authority of a foreign limited  
2 liability company to transact business in this state may  
3 be revoked by the secretary of state in the manner  
4 provided in subsection (b) of this section if:

5 (1) The company fails to:

6 (i) Pay any fees, taxes and penalties owed to this state;

7 (ii) Deliver its annual report required under section 2-  
8 211 to the secretary of state within sixty days after it is  
9 due;

10 (iii) Appoint and maintain an agent for service of  
11 process as required by this article; or

12 (iv) File a statement of a change in the name or busi-  
13 ness address of the agent as required by this article; or

14 (2) A misrepresentation has been made of any material  
15 matter in any application, report, affidavit or other  
16 record submitted by the company pursuant to this  
17 article.

18 (b) The secretary of state may not revoke a certificate  
19 of authority of a foreign limited liability company unless  
20 the secretary of state sends the company notice of the  
21 revocation, at least sixty days before its effective date,  
22 by a record addressed to its agent for service of process  
23 in this state, or if the company fails to appoint and  
24 maintain a proper agent in this state, addressed to the  
25 office required to be maintained by section 1-108. The  
26 notice must specify the cause for the revocation of the  
27 certificate of authority. The authority of the company to  
28 transact business in this state ceases on the effective  
29 date of the revocation unless the foreign limited liability  
30 company cures the failure before that date.

**§31B-10-1007. Cancellation of authority.**

1 A foreign limited liability company may cancel its  
2 authority to transact business in this state by filing in  
3 the office of the secretary of state a certificate of cancel-  
4 lation. Cancellation does not terminate the authority of  
5 the secretary of state to accept service of process on the  
6 company for claims for relief arising out of the transac-  
7 tions of business in this state.

**§31B-10-1008. Effect of failure to obtain certificate of au-  
thority.**

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

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

11 (c) Limitations on personal liability of managers,  
12 members and their transferees are not waived solely by  
13 transacting business in this state without a certificate of  
14 authority.

15 (d) If a foreign limited liability company transacts  
16 business in this state without a certificate of authority,  
17 it appoints the secretary of state as its agent for service  
18 of process for claims for relief arising out of the transac-  
19 tion of business in this state.

**§31B-10-1009. Action by attorney general.**

1 The attorney general may maintain an action to  
2 restrain a foreign limited liability company from trans-  
3 acting business in this state in violation of this article.

**ARTICLE 11. DERIVATIVE ACTIONS.**

**§31B-11-1101. Right of action.**

1 A member of a limited liability company may maintain

2 an action in the right of the company if the members or  
3 managers having authority to do so have refused to  
4 commence the action or an effort to cause those members  
5 or managers to commence the action is not likely to  
6 succeed.

**§31B-11-1102. Proper plaintiff.**

1 In a derivative action for a limited liability company,  
2 the plaintiff must be a member of the company when the  
3 action is commenced; and:

4 (1) Must have been a member at the time of the trans-  
5 action of which the plaintiff complains; or

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

**§31B-11-1103. Pleading.**

1 In a derivative action for a limited liability company,  
2 the complaint must set forth with particularity the effort  
3 of the plaintiff to secure initiation of the action by a  
4 member or manager or the reasons for not making the  
5 effort.

**§31B-11-1104. Expenses.**

1 If a derivative action for a limited liability company is  
2 successful, in whole or in part, or if anything is received  
3 by the plaintiff as a result of a judgment, compromise or  
4 settlement of an action or claim, the court may award the  
5 plaintiff reasonable expenses, including reasonable  
6 attorney's fees, and shall direct the plaintiff to remit to  
7 the limited liability company the remainder of the  
8 proceeds received.

**ARTICLE 12. MISCELLANEOUS PROVISIONS.**

**§31B-12-1201. Uniformity of application and construction.**

1 This chapter shall be applied and construed to effectu-  
2 ate its general purpose to make uniform the law with  
3 respect to the subject of this chapter among states



4 enacting it.

**§31B-12-1202. Short title.**

1 This chapter shall may be cited as the Uniform Limited  
2 Liability Company Act.

**§31B-12-1203. Severability clause.**

1 If any provision of this article or its application to any  
2 person or circumstance is held invalid, the invalidity  
3 does not affect other provisions or applications of this  
4 article which can be given effect without the invalid  
5 provision or application, and to this end, the provisions  
6 of this article are severable.

**§31B-12-1204. Effective date.**

1 This article takes effect on the first day of July, one  
2 thousand nine hundred ninety-six.

**§31B-12-1205. Transitional provisions.**

1 (a) Before the first day of July, one thousand nine  
2 hundred ninety-six, this chapter governs only a limited  
3 liability company organized:

4 (1) After the effective date of this chapter, unless the  
5 company is continuing the business of a dissolved limited  
6 liability company under the provisions of the former  
7 West Virginia limited liability company act; and

8 (2) Before the effective date of this chapter, which  
9 elects, as provided by subsection (c) of this section, to be  
10 governed by this chapter.

11 (b) On and after the first day of July, one thousand  
12 nine hundred ninety-six, this chapter governs all limited  
13 liability companies.

14 (c) Before the first day of July, one thousand nine  
15 hundred ninety-six, a limited liability company volun-  
16 tarily may elect, in the manner provided in its operating  
17 agreement or by law for amending the operating agree-  
18 ment, to be governed by this chapter.

**§31B-12-1206. Savings clause.**

- 1 This chapter does not affect an action or proceeding
- 2 commenced or right accrued before the effective date of
- 3 this chapter.

**ARTICLE 13. PROFESSIONAL LIMITED LIABILITY COMPANIES.**

**§31B-13-1301. Definitions.**

- 1 As used in this article:
- 2 (1) "Licensing board" means the governing body or
- 3 agency established under chapter thirty of this code
- 4 which is responsible for the licensing and regulation of
- 5 the practice of the profession which the professional
- 6 limited liability company is organized to provide;
- 7 (2) "Professional limited liability company" means a
- 8 limited liability company organized under this chapter
- 9 for the purpose of rendering a professional service; and
- 10 (3) "Professional service" means the services rendered
- 11 by the following professions: Attorneys-at-law under
- 12 article two, physicians and podiatrists under article
- 13 three, dentists under article four, optometrists under
- 14 article eight, accountants under article nine, veterinari-
- 15 ans under article ten, architects under article twelve,
- 16 engineers under article thirteen, osteopathic physicians
- 17 and surgeons under article fourteen and chiropractors
- 18 under article sixteen, all of chapter thirty of this code.

**§31B-13-1302. Who may become a member; professional limited liability companies authorized.**

- 1 (a) Two or more persons duly licensed or otherwise
- 2 legally authorized to render the same professional
- 3 services or to practice together within this state may
- 4 become members of a professional limited liability
- 5 company under the provisions of this chapter for the
- 6 purpose of rendering the same professional services.
- 7 Notwithstanding any provision of this code to the
- 8 contrary, including any limitation or restriction set forth
- 9 in any licensing provision of chapter thirty of this code,
- 10 a professional limited liability company may be formed

11 to provide any of the professional services as defined in  
12 section 13-1301(3) of this article.

13 (b) No professional limited liability company organized  
14 under this article shall have as a member anyone other  
15 than a person who is duly licensed or otherwise legally  
16 authorized to render the professional services for which  
17 the professional limited liability company was organized.

**§31B-13-1303. Name.**

1 The name of a professional limited liability company  
2 shall contain the words "professional limited liability  
3 company" or the abbreviation "P.L.L.C." or "Profes-  
4 sional L.L.C.".

**§31B-13-1304. Duty of licensing board.**

1 The licensing board for each of the professions autho-  
2 rized to form professional limited liability companies  
3 under this article shall propose legislative rules for  
4 promulgation, in accordance with the provisions of  
5 article three, chapter twenty-nine-a of this code, provid-  
6 ing for the implementation of this article and the proce-  
7 dures for the formation and approval of professional  
8 limited liability companies for the particular profession  
9 under the jurisdiction of such licensing board.

**§31B-13-1305. Professional relationships not affected; liabil-  
ity for debts, etc., of limited liability company,  
its members, managers, employees and agents;  
individual liability.**

1 (a) The provisions of this article shall not be construed  
2 to alter or affect the professional relationship between  
3 an individual furnishing professional services and a  
4 person receiving that service either with respect to  
5 liability arising out of that professional service or any  
6 confidential relationship between the individual render-  
7 ing and the individual receiving the professional ser-  
8 vices, and all confidential relationships enjoyed under  
9 the laws of this state, whether now in existence, or  
10 hereafter enacted, shall remain inviolate.

11 (b) A member, manager, agent or employee of a profes-  
12 sional limited liability company shall not, by reason of  
13 being a member, manager, agent or employee of a  
14 professional limited liability company, be personally  
15 liable for any debts or claims against, or the acts or  
16 omissions of the professional limited liability company  
17 or of another member, manager, agent or employee of the  
18 professional limited liability company.

19 (c) The professional limited liability company shall be  
20 liable for the acts or omissions of its members, managers,  
21 agents and employees to the same extent to which any  
22 other limited liability company would be liable for the  
23 acts or omissions of its members, managers, agents and  
24 employees while they are engaged in carrying on the  
25 professional limited liability company business.

26 (d) Notwithstanding any provision of this article to the  
27 contrary, any individual who renders a professional  
28 service as a member, manager, agent or employee of a  
29 professional limited liability company is liable for a  
30 negligent or wrongful act or omission in which the  
31 individual personally participated to the same extent as  
32 if the individual rendered the professional service as a  
33 sole practitioner.

34 (e) A professional limited liability company organized  
35 under this article shall carry at all times at least one  
36 million dollars of professional liability insurance which  
37 shall insure the limited liability company and its mem-  
38 bers against liability imposed upon the company or any  
39 of its members arising out of the performance of profes-  
40 sional services to patients or clients of the company by  
41 any of the members or professional or nonprofessional  
42 managers or employees of the limited liability company.

43 (f) If, in any proceeding, compliance by a professional  
44 limited liability company with the requirements of  
45 subsection (e) of this section is disputed, that issue shall  
46 be determined by the court, and the burden of proof of  
47 compliance shall be on the person who claims the  
48 limitation of liability set forth in subsection (b) of this

49 section.

50 (g) If a professional limited liability company is in  
51 compliance with the requirements of subsection (e) of  
52 this section, the requirements of this section shall not be  
53 admissible or in any way be made known to a jury in  
54 determining an issue of liability for or extent of the  
55 obligation or damages in question.

56 (h) A professional limited liability company is consid-  
57 ered to be in compliance with subsection (e) of this  
58 section if it provides one million dollars of funds specifi-  
59 cally designated and segregated for the satisfaction of  
60 judgments against the limited liability company, its  
61 members or any of its professional or nonprofessional  
62 managers or employees resulting from any of the types of  
63 claims covered by subsection (e) of this section, by:

64 (1) Deposit in trust or in bank escrow of cash, bank  
65 certificates of deposit or United States treasury obliga-  
66 tion; or

67 (2) A bank letter of credit or insurance company bond.

**§31B-13-1306. Application of article.**

1 Except as otherwise specifically provided in this  
2 article, all provisions of this chapter governing limited  
3 liability companies shall be applicable to professional  
4 limited liability companies.

**CHAPTER 47. REGULATION OF TRADE.**

**ARTICLE 6. MONEY AND INTEREST.**

**§47-6-10. Corporations, partnerships, and limited partner-  
ships not entitled to defense of usury.**

1 No corporation, partnership, limited partnership or  
2 limited liability company may interpose the defense of  
3 usury in any civil action, nor may any bond, note, debt or  
4 contract of a corporation, partnership, limited partner-  
5 ship or limited liability company be set aside, impaired  
6 or adjudged invalid by reason of anything contained in  
7 the laws prohibiting usury.

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

*Randy Schoenover*  
.....  
Chairman Senate Committee

*Randy Seaint*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Darrell E. Bickman*  
.....  
Clerk of the Senate

*Raymond A. Boy*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*Will Rubin*  
.....  
Speaker House of Delegates

The within *as appended* this the *20th*  
*March*  
day of ....., 1996.

*Gaston Caperton*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/20/96

Time

4:01 pm