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
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.


In this chapter:

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

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

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

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

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

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

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

(8) "Foreign limited liability company" means an unincorporated entity organized under laws other than the laws of this state which afford limited liability to its owners comparable to the liability under section 3-303 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.
(19) "Term company" means a limited liability company in which its members have agreed to remain members until the expiration of a term specified in the articles of organization.

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

§31B-1-102. Knowledge and notice.

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

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

(1) Knows the fact;

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

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

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

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

(1) Comes to the person’s attention; or

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

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

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

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

(b) The operating agreement may not:

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

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

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

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

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

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

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

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

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

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

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

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

§31B-1-105. Name.

(a) The name of a limited liability company must
contain “limited liability company” or “limited com-
pany” or the abbreviation “L.L.C.”, “LLC”, “L.C.” or
“LC”. “Limited” may be abbreviated as “Ltd.” and
“company” may be abbreviated as “Co.”.

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

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

(2) A name reserved or registered under section
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14 1-106 or 1-107;

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

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

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

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

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

40 (1) Merged with the other company;

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

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

§31B-1-106. Reserved name.

1 (a) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious name for a foreign company whose name is not available,
by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the name applied for is available, it must be reserved for the applicant's exclusive use for a nonrenewable one hundred twenty-day period.

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

§31B-1-107. Registered name.

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

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

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

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

(c) A foreign limited liability company whose registration is effective may renew it for successive years by delivering for filing in the office of the secretary of state a renewal application complying with subsection (b) of this section between the first day of October and the thirty-first day of December of the preceding year. The 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 pro-
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.
A limited liability company may change its designated office or agent for service of process by delivering to the secretary of state for filing a statement of change which sets forth:

1. The name of the company;
2. The street address of its current designated office;
3. If the current designated office is to be changed, the street address of the new designated office;
4. The name and address of its current agent for service of process; and
5. If the current agent for service of process or street address of that agent is to be changed, the new address or the name and street address of the new agent for service of process.

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

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

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

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

§31B-1-111. Service of process.

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

(b) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in this state or the agent for service
of process cannot with reasonable diligence be found at the agent’s address, the secretary of state is an agent of the company upon whom process, notice or demand may be served.

(c) Service of any process, notice or demand on the secretary of state may be made by delivering to and leaving with the secretary of state, the assistant secretary or clerk having charge of the limited liability company department of the secretary of state, the original process, notice or demand and two copies thereof for each defendant, along with a fee of ten dollars. No process, notice or demand may be served on or accepted by the secretary of state less than ten days before the return day thereof. If the process, notice or demand is served on the secretary of state, the secretary of state shall forward one of the copies by registered or certified mail, return receipt requested, to the company at its designated office and shall file in his or her office a copy of such process, notice or demand, with a note thereon endorsed of the time of service, or acceptance, as the case may be. Such service or acceptance of such process, notice or demand is sufficient if such return receipt is signed by an agent or employee of such company, or the registered or certified mail so sent by the secretary of state is refused by the addressee and the registered or certified mail is returned to the secretary of state, showing thereon the stamp of the United States postal service that delivery thereof has been refused, and such return receipt or registered or certified mail is appended to the original process, notice or demand and filed therewith in the clerk’s office of the court from which such process, notice or demand was issued.

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

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

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

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

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

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

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

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

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

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

9. (7) Be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;
(8) Conduct its business, locate offices and exercise the powers granted by this chapter within or without this state;

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

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

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

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

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

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


(a) One or more persons may organize a limited liability company, consisting of one or more members, by delivering articles of organization to the office of the secretary of state for filing, together with a fee in the amount of one hundred dollars.

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

(c) The filing of the articles of organization by the secretary of state is conclusive proof that the organizers satisfied all conditions precedent to the creation of a limited liability company.
§31B-2-203. Articles of organization.

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

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

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

1. Provisions permitted to be set forth in an operating agreement; or
2. Other matters not inconsistent with law.

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

1. The operating agreement controls as to managers, members and members’ transferees; and
2. The articles of organization control as to persons other than managers, members and their transferees who reasonably rely on the articles to their detriment.

§31B-2-204. Amendment or restatement of articles of organization.
(a) Articles of organization of a limited liability company may be amended at any time by delivering articles of amendment to the secretary of state for filing. The articles of amendment must set forth the:

1. Name of the limited liability company;
2. Date of filing of the articles of organization; and
3. Amendment to the articles.

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

§31B-2-205. Signing of records.

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

1. Manager of a manager-managed company;
2. Member of a member-managed company;
3. Person organizing the company, if the company has not been formed; or
4. Fiduciary, if the company is in the hands of a receiver, trustee or other court-appointed fiduciary.

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

(c) Any person may sign a record to be filed under subsection (a) of this section by an attorney-in-fact.
Powers of attorney relating to the signing of records to be filed under subsection (a) of this section by an attorney-in-fact need not be filed in the office of the secretary of state as evidence of authority by the person filing but must be retained by the company.

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

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

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

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

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

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

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

§31B-2-207. Correcting filed record.
(a) A limited liability company or foreign limited liability company may correct a record filed by the secretary of state if the record contains a false or erroneous statement or was defectively signed.

(b) A record is corrected:

(1) By preparing articles of correction that:

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

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

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

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

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

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

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

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

(1) The company’s name;

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

(3) If payment is reflected in the records of the secre-
tary of state and if nonpayment affects the existence of
the company, that all fees, taxes and penalties owed to
this state have been paid;
(4) Whether its most recent annual report required by
section 2-211 has been filed with the secretary of state;
(5) That articles of termination have not been filed; and
(6) Other facts of record in the office of the secretary of
state which may be requested by the applicant.
(c) A certificate of authorization for a foreign limited
liability company must set forth:
(1) The company's name used in this state;
(2) That it is authorized to transact business in this
state;
(3) If payment is reflected in the records of the secre-
tary of state and nonpayment affects the authorization
of the company, that all fees, taxes and penalties owed to
this state have been paid;
(4) Whether its most recent annual report required by
section 2-211 has been filed with the secretary of state;
(5) That a certificate of cancellation has not been filed;
and
(6) Other facts of record in the office of the secretary of
state which may be requested by the applicant.
(d) Subject to any qualification stated in the certifi-
cate, a certificate of existence or authorization issued by
the secretary of state may be relied upon as conclusive
evidence that the domestic or foreign limited liability
company is in existence or is authorized to transact
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
the loss from a person who signed the record or caused
another to sign it on the person’s behalf and knew the
statement to be false at the time the record was signed.


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

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

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

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

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

(3) The address of its principal office; and

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

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

(c) The first annual report must be delivered to the
secretary of state between the first day of January and
the first day of April of the year following the calendar
year in which a limited liability company was organized
or a foreign company was authorized to transact busi-
ness. Subsequent annual reports must be delivered to
the secretary of state between the first day of January
and the first day of April of the ensuing calendar years.
(d) If an annual report does not contain the information required in subsection (a) of this section, the secretary of state shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) of this section and delivered to the secretary of state within thirty days after the effective date of the 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§31B-4-401. Form of contribution.

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

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

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

(b) A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in subsection (a) of this section, and
§31B-4-403. Member's and manager's rights to payments and reimbursement.

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

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

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

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

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

(a) In a member-managed company:

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

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

(b) In a manager-managed company:

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

(2) Except as otherwise provided in subsection (c) of
this section or in section 8-801(b)(3)(i), any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

(3) A manager:

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

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

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

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

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

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

(4) The compromise of an obligation to make a contribution under section 4-402(b);

(5) The compromise, as among members, of an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter;

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

(7) The admission of a new member;

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

(9) The consent to dissolve the company under section
8-801(b)(2);

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

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

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

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

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

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

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

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

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

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

(a) A distribution may not be made if:

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

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

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

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

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

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

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

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

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

(e) Indebtedness of a limited liability company, includ-
ing indebtedness issued in connection with or as part of
a distribution, is not considered a liability for purposes
of determinations under subsection (a) of this section if
its terms provide that payment of principal and interest
are made only if and to the extent that payment of a
distribution to members could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

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

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

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

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

1. Other members or managers who voted for or asserted to the distribution in violation of subsection (a) of this section and may compel contribution from them; and

2. Members who received a distribution in violation of subsection (b) of this section and may compel contribution from the member in the amount received in violation of subsection (b) of this section.

(d) A proceeding under this section is barred unless it is commenced within two years after the distribution.
§31B-4-408. Member's right to information.

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

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

(1) Without demand, information concerning the company’s business or affairs reasonably required for the proper exercise of the member’s rights and performance of the member’s duties under the operating agreement or this chapter; and

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

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

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

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

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

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

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

(3) To refrain from competing with the company in the conduct of the company’s business before the dissolution of the company.

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

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

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

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

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

(h) In a manager-managed company:

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

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

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

(4) A manager is relieved of liability imposed by law for violation of the standards prescribed by subsections (b) through (f) of this section to the extent of the managerial authority delegated to the members by the operating agreement.

§31B-4-410. Actions by members.

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

(1) The member’s rights under the operating agreement;

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

(3) The rights and otherwise protect the interests of the member, including rights and interests arising independently of the member’s relationship to the company.

(b) The accrual, and any time limited for the assertion,
of a right of action for a remedy under this section is
governed by other law. A right to an accounting upon a
dissolution and winding up does not revive a claim
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.
(a) A transferee of a distributional interest may become a member of a limited liability company if and to the extent that the transferor gives the transferee the right in accordance with authority described in the operating agreement or all other members consent.

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

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

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

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

1. Receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

2. Receive, upon dissolution and winding up of the limited liability company's business:

   i. In accordance with the transfer, the net amount otherwise distributable to the transferor;

   ii. A statement of account only from the date of the
latest statement of account agreed to by all the members;

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

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

§31B-5-504. Rights of creditor.

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

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

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

(1) By the judgment debtor;

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

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

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

(e) This section provides the exclusive remedy by
which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's 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 company upon the occurrence of any of the following events:

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

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

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

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

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

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

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

24 (iii) Within ninety days after the company notifies a corporate member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the member fails to obtain a revocation of the 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;
(ii) The appointment of a guardian or general conservator for the member; or

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

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

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

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

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

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

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

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

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

(i) The member withdraws by express will;

(ii) The member is expelled by judicial determination
(iii) The member is dissociated by becoming a debtor in bankruptcy; or
(iv) In the case of a member who is not an individual, trust other than a business trust, or estate, the member is expelled or otherwise dissociated because it willfully dissolved or terminated its existence.
(c) A member who wrongfully dissociates from a limited liability company is liable to the company and to the other members for damages caused by the dissociation. The liability is in addition to any other obligation of the member to the company or to the other members.
(d) If a limited liability company does not dissolve and wind up its business as a result of a member’s wrongful dissociation under subsection (b) of this section, damages sustained by the company for the wrongful dissociation must be offset against distributions otherwise due the member after the dissociation.
§31B-6-603. Effect of member’s dissociation.
(a) If under section 8-801 a member’s dissociation from a limited liability company results in a dissolution and winding up of the company’s business, article eight of this chapter applies. If a member’s dissociation from the company does not result in a dissolution and winding up of the company’s business under section 8-801:
(1) In an at-will company, the company must cause the dissociated member’s distributional interest to be purchased under article seven of this chapter; and
(2) In a term company:
(i) If the company dissolves and winds up its business on or before the expiration of its specified term, article eight of this chapter applies to determine the dissociated member’s rights to distributions; and
(ii) If the company does not dissolve and wind up its business on or before the expiration of its specified term,
the company must cause the dissociated member’s
distributional interest to be purchased under article
seven of this chapter on the date of the expiration of the
term specified at the time of the member’s dissociation.

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

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

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

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

ARTICLE 7. MEMBER’S DISSOCIATION WHEN BUSINESS NOT WOUND UP.

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

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

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

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

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

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

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

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

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

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

(e) The court shall determine the fair value of the distributional interest in accordance with the standards set forth in section 7-702 together with the terms for the purchase. Upon making these determinations, the court shall order the limited liability company to purchase or cause the purchase of the interest.
(f) Damages for wrongful dissociation under section 6-602(b), and all other amounts owing, whether or not currently due, from the dissociated member to a limited liability company, must be offset against the purchase price.

§31B-7-702. Court action to determine fair value of distributive interest.

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

(1) Determine the fair value of the interest, considering among other relevant evidence the going concern value of the company, any agreement among some or all of the members fixing the price or specifying a formula for determining value of distributational interests for any purpose, the recommendations of any appraiser appointed by the court, and any legal constraints on the company’s ability to purchase the interest;

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

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

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

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

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

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

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

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

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

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

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

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

(a) A dissociated member or a limited liability company may file in the office of the secretary of state a statement of dissociation stating the name of the com-
pany and that the member is dissociated from the company.

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

ARTICLE 8. WINDING UP COMPANY'S BUSINESS.

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

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

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

(1) An event specified in the operating agreement;

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

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

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

(A) The remaining members that would be entitled to
receive a majority of any distributions that would be
made to them assuming the business of the company
were dissolved and wound up on the date of the dissociation; and

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

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

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

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

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

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

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

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

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

(6) On application by a transferee of a member's
interest, a judicial determination that it is equitable to
wind up the company's business:
62   (i) After the expiration of the specified term, if the company was for a specified term at the time the applicant became a transferee by member dissociation, transfer or entry of a charging order that gave rise to the transfer; or
63   (ii) At any time, if the company was at will at the time the applicant became a transferee by member dissociation, transfer or entry of a charging order that gave rise to the transfer.

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

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

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

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

4   (2) The rights of a third party accruing under section 8-804(a) or arising out of conduct in reliance on the dissolution before the third party knew or received a 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 dissociated may participate in winding up a limited liability company's business, but on application of any member, member's legal representative or transferee, the
circuit court, for good cause shown, may order judicial
supervision of the winding up.

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

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

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

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

(1) Is appropriate for winding up the company’s
business; or

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

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

§31B-8-805. Articles of termination.

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

(1) The name of the company;
§31B-8-806. Distribution of assets in winding up limited liability company's business.

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

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

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

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

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

1. Specify the information required to be included in a claim;
2. Provide a mailing address where the claim is to be sent;
(3) State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the written notice is received by the claimant; and

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

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

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

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

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

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

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

(b) The notice must:

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

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

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

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

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

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

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

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

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

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

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

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

(2) Deliver its annual report to the secretary of state 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 exists for administratively dissolving a limited liability company, the secretary of state shall enter a record of the determination and serve the company with a copy of the record.

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

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

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

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

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

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

3 (2) State that the ground for dissolution either did not exist or have been eliminated;
(3) State that the company's name satisfies the requirements of section 1-105; and

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

(b) If the secretary of state determines that the application contains the information required by subsection (a) of this section and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

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

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

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

(b) The company may appeal the denial of reinstatement to the circuit court within thirty days after service of the notice of denial is perfected. The company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the company's application for reinstatement and the secretary of state's notice of denial.

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

(d) The court's final decision may be appealed as in
ARTICLE 9. CONVERSIONS AND MERGERS.

§31B-9-901. Definitions.

1. In this article:

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

3. (2) “General partner” means a partner in a partnership and a general partner in a limited partnership.

4. (3) “Limited partner” means a limited partner in a limited partnership.

5. (4) “Limited partnership” means a limited partnership created under article nine, chapter forty-seven of this code, a predecessor law, or comparable law of another jurisdiction.

6. (5) “Partner” includes a general partner and a limited partner.

7. (6) “Partnership” means a general partnership under chapter forty-seven-b of this code, a predecessor law, or comparable law of another jurisdiction.

8. (7) “Partnership agreement” means an agreement among the partners concerning the partnership or limited partnership.


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

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

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

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

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

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

(2) Its former name;

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

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

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

(f) A conversion takes effect when the articles of
organization are filed in the office of the secretary of
state or at any later date specified in the articles of
organization.
(g) A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect.

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

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

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

(b) When a conversion takes effect:

1. All property owned by the converting partnership or limited partnership vests in the limited liability company;

2. All debts, liabilities and other obligations of the converting partnership or limited partnership continue as obligations of the limited liability company;

3. An action or proceeding pending by or against the converting partnership or limited partnership may be continued as if the conversion had not occurred;

4. Except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of the converting partnership or limited partnership vest in the limited liability company; and

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

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

(a) Pursuant to a plan of merger approved under subsection (c) of this section, a limited liability company may be merged with or into one or more limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships or other domestic or foreign entities.

(b) A plan of merger must set forth:

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

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

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

(4) The terms and conditions of the merger;

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

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

(c) A plan of merger must be approved:

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

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

(3) In the case of a partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under section 9-
(4) In the case of any other entities that are parties to
the merger, by the vote required for approval of a merger
by the law of this state or of the state or foreign jurisdic-
tion in which the entity is organized and, in the absence
of such a requirement, by all the owners of interests in
the entity.

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

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

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

§31B-9-905. Articles of merger.

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

(1) The name and jurisdiction of formation or organiza-
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 liability
31 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
§31B-9-906. Effect of merger.

(a) When a merger takes effect:

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

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

3. All debts, liabilities and other obligations of each limited liability company and other entity that is party to the merger become the obligations of the surviving entity;

4. An action or proceeding pending by or against a limited liability company or other party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and

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

(b) The secretary of state is an agent for service of process in an action or proceeding against the surviving foreign entity to enforce an obligation of any party to a merger if the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the designated office.

Upon receipt of process, the secretary of state shall send a copy of the process by registered or certified mail,
return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

(1) The date the company receives the process, notice or demand;
(2) The date shown on the return receipt, if signed on behalf of the company; or
(3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

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

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

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

§31B-9-907. Article not exclusive.
1 This article does not preclude an entity from being 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 which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its managers, members and their transferees.
(b) A foreign limited liability company may not be denied a certificate of authority by reason of any differ-
ence between the laws of another jurisdiction under which the foreign company is organized and the laws of this state.

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

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

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

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

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

(3) The street address of its principal office;

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

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

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

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

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

(b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the 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.

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

1 (1) Maintaining, defending or settling an action or
2 proceeding;
3 (2) Holding meetings of its members or managers or
4 carrying on any other activity concerning its internal
5 affairs;
6 (3) Maintaining bank accounts;
7 (4) Maintaining offices or agencies for the transfer,
8 exchange and registration of the foreign company’s own
9 securities or maintaining trustees or depositories with
10 respect to those securities;
11 (5) Selling through independent contractors;
12 (6) Soliciting or obtaining orders, whether by mail or
13 through employees or agents or otherwise, if the orders
14 require acceptance outside this state before they become
15 contracts;
16 (7) Creating or acquiring indebtedness, mortgages or
17 security interests in real or personal property;
18 (8) Securing or collecting debts or enforcing mortgages
19 or other security interests in property securing the debts,
20 and holding, protecting and maintaining property so
21 acquired;
22 (9) Conducting an isolated transaction that is com-
23 pleted within thirty days and is not one in the course of
24 similar transactions of a like manner; and
25 (10) Transacting business in interstate commerce.
26 (b) For purposes of this article, the ownership in this
state of income-producing real property or tangible personal property, other than property excluded under subsection (a) of this section, constitutes transacting business in this state.

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

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

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

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

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

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

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

(2) A name reserved or registered under section 1-106
(3) The fictitious name of another foreign limited liability company authorized to transact business in this state.

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

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

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

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

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

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

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

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

(1) The company fails to:

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

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

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

(iv) File a statement of a change in the name or business address of the agent as required by this article; or

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

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

§31B-10-1007. Cancellation of authority.
A foreign limited liability company may cancel its authority to transact business in this state by filing in the office of the secretary of state a certificate of cancellation. Cancellation does not terminate the authority of the secretary of state to accept service of process on the company for claims for relief arising out of the transactions of business in this state.

§31B-10-1008. Effect of failure to obtain certificate of authority.

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

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

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

(d) If a foreign limited liability company transacts business in this state without a certificate of authority, it appoints the secretary of state as its agent for service of process for claims for relief arising out of the transaction of business in this state.

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

The attorney general may maintain an action to restrain a foreign limited liability company from transacting business in this state in violation of this article.

ARTICLE 11. DERIVATIVE ACTIONS.

§31B-11-1101. Right of action.

A member of a limited liability company may maintain
an action in the right of the company if the members or
managers having authority to do so have refused to
commence the action or an effort to cause those members
or managers to commence the action is not likely to
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
devolved upon the plaintiff by operation of law or
pursuant to the terms of the operating agreement from a
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
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.

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

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

§31B-13-1303. Name.

The name of a professional limited liability company
shall contain the words "professional limited liability
company" or the abbreviation "P.L.L.C." or "Professional L.L.C."

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

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

(a) The provisions of this article shall not be construed
to alter or affect the professional relationship between
an individual furnishing professional services and a
person receiving that service either with respect to
liability arising out of that professional service or any
confidential relationship between the individual render-
ing and the individual receiving the professional ser-
dices, and all confidential relationships enjoyed under
the laws of this state, whether now in existence, or
hereafter enacted, shall remain inviolate.
(b) A member, manager, agent or employee of a professional limited liability company shall not, by reason of being a member, manager, agent or employee of a professional limited liability company, be personally liable for any debts or claims against, or the acts or omissions of the professional limited liability company or of another member, manager, agent or employee of the professional limited liability company.

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

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

(e) A professional limited liability company organized under this article shall carry at all times at least one million dollars of professional liability insurance which shall insure the limited liability company and its members against liability imposed upon the company or any of its members arising out of the performance of professional services to patients or clients of the company by any of the members or professional or nonprofessional managers or employees of the limited liability company.

(f) If, in any proceeding, compliance by a professional limited liability company with the requirements of subsection (e) of this section is disputed, that issue shall be determined by the court, and the burden of proof of compliance shall be on the person who claims the limitation of liability set forth in subsection (b) of this
(g) If a professional limited liability company is in compliance with the requirements of subsection (e) of this section, the requirements of this section shall not be admissible or in any way be made known to a jury in determining an issue of liability for or extent of the obligation or damages in question.

(h) A professional limited liability company is considered to be in compliance with subsection (e) of this section if it provides one million dollars of funds specifically designated and segregated for the satisfaction of judgments against the limited liability company, its members or any of its professional or nonprofessional managers or employees resulting from any of the types of claims covered by subsection (e) of this section, by:

(1) Deposit in trust or in bank escrow of cash, bank certificates of deposit or United States treasury obligation; or

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

§31B-13-1306. Application of article.

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

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 6. MONEY AND INTEREST.

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

No corporation, partnership, limited partnership or limited liability company may interpose the defense of usury in any civil action, nor may any bond, note, debt or contract of a corporation, partnership, limited partnership or limited liability company be set aside, impaired or adjudged invalid by reason of anything contained in the laws prohibiting usury.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the day of , 1996.

Governor