

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative Mahony**

A Bill

ACT 1003 OF 1993
HOUSE BILL 1419

For An Act To Be Entitled

"SMALL BUSINESS ENTITY TAX PASS THROUGH ACT."

Subtitle

"SMALL BUSINESS ENTITY TAX PASS THROUGH ACT."

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

ARTICLE 1: GENERAL PROVISIONS

§101. Short Title.

This Act shall be known and may be cited as the Small Business Entity Tax Pass Through Act.

§102. Definitions.

As used in this Act, unless the context otherwise requires:

(a) "Articles of Organization" means Articles filed under §201, and those Articles as amended and restated.

(b) "Corporation" means a corporation formed under the laws of any state or foreign country including professional corporations or associations.

(c) "Court" includes every court having jurisdiction in the case.

(d) "Event of Dissociation" means an event that causes a Person to cease to be a Member as provided in §802.

(e) "Foreign Limited Liability Company" means an organization that is:

(1) An unincorporated association;

(2) Organized under laws of a state other than the laws of this state, or under the laws of any foreign country;

(3) Organized under a statute pursuant to which an association may be formed that affords to each of its Members limited liability with respect to the liabilities of the entity; and

1 (4) Not required to be registered or organized under any statute
2 of this state other than this Act.

3 (f) "Limited Liability Company" or "Domestic Limited Liability Company"
4 means an organization formed under this Act.

5 (g) "Limited Liability Company Interest" or "Interest in the Limited
6 Liability Company" means the interest that can be assigned under §704 and
7 charged under §705.

8 (h) "Limited Partnership" means a limited partnership formed under the
9 laws of any state or foreign country.

10 (i) "Manager" or "Managers" means, with respect to a Limited Liability
11 Company that has set forth in its Articles of Organization that it is to be
12 managed by Managers, the Person or Persons designed in accordance with §401.

13 (j) "Member" or "Members" means a Person or Persons who have been
14 admitted to Membership in a Limited Liability Company as provided in §801 and
15 who have not ceased to be Members as provided in §802.

16 (k) "Operating Agreement" means *the written agreement which shall be*
17 *entered into* among all of the Members as to the conduct of the business and
18 affairs of a Limited Liability Company.

19 (l) "Person" means an individual, a general partnership, a Limited
20 Partnership, a Domestic or Foreign Limited Liability Company, a trust, an
21 estate, an association, a corporation, a custodian, a nominee and other
22 individual entity in its own or representative capacity, or any other legal
23 entity.

24 (m) "Professional Service" means any type of professional service which
25 may be legally performed only pursuant to a license or other legally mandated
26 personal authorization. For example: the personal service rendered by
27 certified public accountants, architects, engineers, dentists, doctors and
28 attorneys at law.

29 (n) "State" means a state, territory, or possession of the United
30 States, the District of Columbia, or the Commonwealth of Puerto Rico.

31 §103. Name.

32 (a) The name of each Limited Liability Company as set forth in its
33 Articles of Organization must contain the words "Limited Liability Company" or
34 "Limited Company" or the abbreviations "L.L.C.," "L.C.," "LLC," or "LC." The
35 word "Limited" may be abbreviated as "Ltd." and the word "company" may be

1 abbreviated as "Co."

2 (b) A Limited Liability Company name may not be the same or deceptively
3 similar to:

4 (1) The name of any Limited Liability Company, Limited
5 Partnership, or Corporation existing under the laws of this state
6 or authorized to transact business in this State; or

7 (2) Any name reserved under §104.

8 (c) The provisions of subsection (b) shall not apply if the applicant
9 files with the Secretary of State either of the following:

10 (1) The written consent of the holder of a reserved or registered
11 name to use a deceptively similar name if one or more words are
12 added, altered, or deleted to make the name distinguishable from
13 the reserved or registered name; or

14 (2) A certified copy of a final decree of a court of competent
15 jurisdiction establishing the prior right of the applicant to the
16 use of the name in this State.

17 (d) The name of a Limited Liability Company which performs Professional
18 Service shall in addition contain the words "Professional Limited Liability
19 Company" or "Professional Limited Company" or the abbreviations "P.L.L.C.,"
20 "P.L.C.," "PLLC," "PLC," and the words "Limited" and "Company" may be
21 abbreviated as "Ltd." or "Co." and may not contain the name of any person who
22 is not a Member, except that the name of a deceased former Member or deceased
23 Member of a predecessor organization may continue to be included in the name.

24 §104. Reservation of Name.

25 (a) The exclusive right to use a name may be reserved by:

26 (1) Any Person intending to organize a Limited Liability Company
27 and to adopt that name;

28 (2) Any Limited Liability Company or any Foreign Limited
29 Liability Company registered in this state that intends to adopt
30 that name;

31 (3) Any Foreign Limited Liability Company intending to register
32 in this State and to adopt that name; or

33 (4) Any Person intending to organize a Foreign Limited Liability
34 Company and to have it registered in this State and to adopt that
35 name.

1 (b) The reservation shall be made by filing with the Secretary of State
2 an application, executed by the applicant, to reserve a specified name. If
3 the Secretary of State finds that the name is available for use by a Domestic
4 or Foreign Limited Liability Company, the Secretary of State shall reserve the
5 name of the exclusive use of the applicant for a period of 120 days from and
6 after the date the application is filed with the Secretary of State.

7 (c) The holder of a reserved Limited Liability Company name may renew
8 the reservation for two (2) successive periods of 120 days each from the date
9 of the first renewal.

10 (d) The right to the exclusive use of a reserved name may be
11 transferred to another Person by filing with the Secretary of State a notice
12 of the transfer, executed by the applicant for whom the name was reserved, and
13 specifying the name to be transferred and the name and address of the
14 transferee. The transfer shall not extend the term during which the name is
15 reserved.

16 §105. Registered Office, Registered Agent and Service of Process.

17 (a) A Limited Liability Company shall continuously maintain in this
18 State:

19 (1) A registered office that may, but need not, be the same as
20 its place of business; and

21 (2) A registered agent for service of process on the Limited
22 Liability Company that is an individual resident of this State, a
23 Limited Liability Company, a Foreign Limited Liability Company
24 authorized to transact business in this State, or a corporation
25 formed under the laws of or authorized to transact business in
26 this State.

27 (3) *A copy of the Operating Agreement shall be maintained at the*
28 *registered office at all times.*

29 (b) Unless the registered agent signed the document making the
30 appointment, the appointment of a registered agent or a successor registered
31 agent on whom process may be served is not effective until the agent delivers
32 a statement in writing to the Secretary of State accepting the appointment.

33 (c) A Limited Liability Company may change its registered office or
34 registered agent, or both, by delivering to the Secretary of State a statement
35 setting forth:

1 (1) The name of the Limited Liability Company.

2 (2) The address of its current registered office.

3 (3) If the address of its registered office is to be changed, the
4 address to which the registered office is to be changed.

5 (4) The name and address of its current registered agent.

6 (5) If its registered agent or the registered agent's address is
7 to be changed, the name and address of its successor registered
8 agent or the registered agent's new address.

9 (d) The change of address of the registered office or registered agent
10 is effective on delivery of the statement to the Secretary of State. The
11 appointment of a new registered agent is effective on delivery of the
12 statement to the Secretary of State and on receipt by the Secretary of State
13 of evidence that the new registered agent has accepted appointment pursuant to
14 subsection (b).

15 (e) A registered agent of a Limited Liability Company may resign as
16 registered agent by delivering a written notice of resignation, executed in
17 duplicate, to the Secretary of State. The Secretary of State shall mail a
18 copy of the notice to the Limited Liability Company at its registered office.
19 The appointment of the registered agent terminates thirty days after receipt
20 of the notice by the Secretary of State or on the appointment of a successor
21 registered agent, whichever occurs first.

22 (f) If a registered agent changes its address to another place in this
23 State, it may change the address by delivering a statement to the Secretary of
24 State as required by subsection (c), except that the statement need be signed
25 only by the registered agent. The statement shall recite that a copy of it
26 has been mailed to the Limited Liability Company.

27 §106. Nature of Business; Powers.

28 (a) A Limited Liability Company may be organized under this Act for any
29 lawful purpose including the performance of Professional Services and related
30 activities. If the purpose for which a Limited Liability Company is organized
31 or its activities make it subject to a special provision of law, the Limited
32 *Liability Company shall also comply with that provision.*

33 (b) *A Limited Liability Company shall possess and may exercise all*
34 *powers and privileges granted by this act or by any other law or by its*
35 *Operating Agreement, together with any powers incidental thereto, so far as*

1 such powers and privileges are necessary or convenient to the conduct,
2 promotion or attainment of the business, purposes or activities of the Limited
3 Liability Company.

4 § 107. Service of Process.

5 (a) Service of legal process, notice or demand required or permitted by
6 law to be served upon any Domestic or Foreign Limited Liability Company shall
7 be made on the registered agent of the Domestic or Foreign Limited Liability
8 Company in the State of Arkansas, as provided by law.

9 (b) In cases where legal process cannot by due diligence serve the
10 process in any manner provided for by subsection (a) of this section, it shall
11 be lawful to serve the process against a Domestic or Foreign Limited Liability
12 Company upon the Secretary of State, and such service shall be as effectual
13 for all intents and purposes as if made in any of the ways provided for in
14 subsection (a) hereof. In the event that service is effected through the
15 Secretary of State in accordance with this subsection, the Secretary of State
16 shall forthwith notify the Domestic or Foreign Limited Liability Company by
17 letter, certified mail, return receipt requested, directed to the Domestic or
18 Foreign Limited Company at its address as it appears on the records relating
19 to such Limited Liability Company on file with the Secretary of State or, if
20 no such address appears, at its last Registered Office. Such letter shall
21 enclose a copy of the process and any other papers served on the Secretary of
22 State pursuant to this subsection. It shall be the duty of the plaintiff in
23 the event of such service to serve process and any other papers in duplicate,
24 to notify the Secretary of State that service is being effected pursuant to
25 this subsection, and to pay the Secretary of State the sum of twenty-five
26 dollars (\$25.00) for the use of the State of Arkansas, which sum shall be
27 taxed as part of the costs in the proceeding if the plaintiff shall prevail
28 therein. The Secretary of State shall maintain an alphabetical record of any
29 such service setting forth the name of the plaintiff and defendant, the title,
30 docket number and nature of the proceeding in which process has been served
31 upon him, the fact that service has been effected pursuant to this subsection,
32 the return date thereof, and the day and hour when the service was made. The
33 Secretary of State shall not be required to retain such information for a
34 period longer than five (5) years from his receipt of the service of process.

35 (c) Nothing herein contained limits or affects the rights to serve

1 process in any other manner now or hereafter provided by law. These
2 provisions are an extension of and not a limitation upon rights otherwise
3 existing for service of legal process upon nonresidents.

4 ARTICLE 2: FORMATION

5 §201. Formation.

6 One or more Persons may form a Limited Liability Company by signing or
7 causing to be signed Articles of Organization and delivering the signed
8 Articles to the Secretary of State for filing. The Person or Persons who sign
9 the Articles of Organization causing the formation of a Limited Liability
10 Company need not be Members of the Limited Liability Company at the time of
11 formation or after formation has occurred.

12 §202. Articles of Organization

13 The Articles of Organization shall set forth:

14 (a) A name for the Limited Liability Company that satisfies the
15 requirements of §103;

16 (b) The address of the registered office and the name and business
17 residence, or mailing address of the registered agent required to be
18 maintained by §105;

19 (c) The latest date upon which the Limited Liability Company is to
20 dissolve; and

21 (d) If management of the Limited Liability Company is vested in a
22 Manager or Managers, a statement to that effect.

23 §203. Effect of Delivery or Filing of Articles of Organization.

24 (a) Unless delayed effective date is recited in the Articles of
25 Organization, A Limited Liability Company is formed when the Articles of
26 Organization are delivered to the Secretary of State for filing, even if the
27 Secretary of State is unable at the time of delivery to make the determination
28 required for filing by §1301. If the Articles of Organization, as delivered
29 to the Secretary of State, do not conform to the filing provisions of this Act
30 and are not brought into conformance within the time period prescribed by
31 §1301, the existence of the Limited Liability Company terminates at the end of
32 such time period.

33 (b) Each copy of the Articles of Organization stamped "filed" and
34 marked with the filing date is conclusive evidence that all conditions
35 precedent required to be performed by the organizers have been complied with

1 and that the Limited Liability Company has been legally organized and formed
2 under this Act.

3 §204. Amendment of Articles of Organization; Restatement.

4 (a) The Articles of Organization of a Limited Liability Company may be
5 amended by filing Articles of Amendment with the Secretary of State. The
6 Articles of Amendment shall set forth:

- 7 (1) The name of the Limited Liability Company;
- 8 (2) The date the Articles of Organization were filed; and
- 9 (3) The amendment to the Articles of Organization.

10 (b) The Articles of Organization may be amended in any respects as may
11 be desired, so long as the Articles of Organization as amended contain only
12 provisions that may be lawfully contained in Articles of Organization at the
13 time of making the amendment.

14 (c) Articles of Organization may be restated at any time. Restated
15 Articles of Organization shall be filed with the Secretary of State and shall
16 be specifically designated as such in the heading and shall state either in
17 the heading or in an introductory paragraph the Limited Liability Company's
18 present name and, if it has been changed, all of its former names and the date
19 of the filing of its Articles of Organization.

20 ARTICLE 3: RELATIONS OF MEMBERS AND MANAGERS

21 TO PERSONS DEALING WITH THE LIMITED LIABILITY COMPANY

22 §301. Agency Power of Members and Managers.

23 (a) Except as provided in subsection (b), every Member is an agent of
24 the Limited Liability Company for the purpose of its business or affairs, and
25 the act of any Member, including, but not limited to, the execution in the
26 name of the Limited Liability Company of any instrument, for apparently
27 carrying on in the usual way the business or affairs of the Limited Liability
28 Company of which he is a Member, binds the Limited Liability Company, unless
29 the Member so acting has, in fact, no authority to act for the Limited
30 Liability Company in the particular matter, and the Person with whom the
31 Member is dealing has knowledge of the fact that the Member has no such
32 authority.

33 (b) If the Articles of Organization provide that management of the
34 Limited Liability Company is vested in a Manager or Managers:

- 35 (1) No Member solely by reason of being a Member, is an agent of

1 the Limited Liability Company; and

2 (2) Every Manager is an agent of the Limited Liability Company
3 for the purpose of its business or affairs, and the act of any
4 Manager, including, but not limited to, the execution in the name
5 of the Limited Liability Company of any instrument, for apparently
6 carrying on in the usual way the business or affairs of the
7 Limited Liability Company of which he is a Manager binds the
8 Limited Liability Company, unless the Manager so acting has, in
9 fact, no authority to act for the Limited Liability Company in the
10 particular matter, and the Person with whom the Manager is dealing
11 has knowledge of the fact that the Manager has no such authority.

12 (c) An act of a Manager or a Member which is not apparently for the
13 carrying on in the usual way the business or affairs of the Limited Liability
14 Company does not bind the Limited Liability Company unless authorized in
15 accordance with an Operating Agreement, at the time of the transaction or any
16 other time.

17 (d) No act of a Manager or Member in contravention of a restriction on
18 authority shall bind the Limited Liability Company to Persons having knowledge
19 of the restriction.

20 §302. Admissions by Members and Managers.

21 (a) Except as provided in subsection (b), an admission or
22 representation made by any Member concerning the business or affairs of a
23 Limited Liability Company within the scope of his authority as provided for by
24 this Act is evidence against the Limited Liability Company.

25 (b) If the Articles of Organization provide that management of the
26 Limited Liability Company is vested in a Manager or Managers:

27 (1) An admission or representation made by a Manager concerning
28 the business or affairs of a Limited Liability Company within the
29 scope of the Manager's authority as provided for by this Act is
30 evidence against the Limited Liability Company; and

31 (2) The admission or representation of any Member, acting solely
32 in the capacity of a Member, shall not constitute evidence against
33 the Limited Liability Company.

34 §303. Limited Liability Company Charged with Knowledge of or Notice to
35 Member or Manager.

1 (a) Except as provided in subsection (b), notice to any Member of any
2 matter relating to the business or affairs of the Limited Liability Company,
3 and the knowledge of the Member acting in the particular matter, acquired
4 while a Member or known at the time of becoming a Member, and the knowledge of
5 any other Member who reasonably could and should have communicated the
6 knowledge to the acting Member, operate as notice to or knowledge of the
7 Limited Liability Company, except in the case of a fraud on the Limited
8 Liability Company committed by or with the consent of that Member.

9 (b) If the Articles of Organization provide that management of the
10 Limited Liability Company is vested in a Manager or Managers:

11 (1) Notice to any Manager of any matter relating to the business
12 or affairs of the Limited Liability Company, and the knowledge of
13 the Manager acting in the particular matter, acquired while a
14 Manager or known at the time of becoming a Manager, and the
15 knowledge of any other Manager who reasonably could and should
16 have communicated the knowledge to the acting Manager, operate as
17 notice to or knowledge of the Limited Liability Company, except in
18 the case of a fraud on the Limited Liability Company committed by
19 or with the consent of that Manager; and

20 (2) Notice to or knowledge of any Member of a Limited Liability
21 Company while the Member is acting solely in the capacity of a
22 Member is not notice to or knowledge of the Limited Liability
23 Company.

24 §304. Liability of Members to Third Parties.

25 Except for the personal liability for acts or omissions of those
26 providing Professional Service as set forth in §308, a Person who is a Member,
27 Manager, agent or employee of a Limited Liability Company is not liable for a
28 debt, obligation or liability of the Limited Liability Company, whether
29 arising in contract, tort or otherwise or for the acts or omissions of any
30 other Member, Manager, agent or employee of the Limited Liability Company.

31 §305. Parties to Actions.

32 A Member of a Limited Liability Company is not a proper party to a
33 proceeding by or against a Limited Liability Company, by reason of being a
34 Member of the Limited Liability Company, except where the object of the
35 proceeding is to enforce a Member's right against or liability to the Limited

1 Liability Company or as otherwise provided in an Operating Agreement.

2 §306. Limited Liability Company May Render Professional Service;
3 Nonprofessional Employees and Agents; Members and Managers Need Not be
4 Employees, Etc.

5 No Limited Liability Company organized under this chapter may render
6 Professional Service within this State except through its Members, employees
7 of its Members, Managers, employees and agents who are duly licensed or
8 otherwise legally authorized to render those professional services. However,
9 this provision shall not be interpreted to preclude clerks, secretaries,
10 bookkeepers, technicians and other assistants who are not usually and
11 ordinarily considered by custom and practice to be rendering Professional
12 Service to the public for which a license or other legal authorization is
13 required from acting as employees, Managers or agents of a professional
14 limited liability company.

15 §307. Limited Liability Company May Qualify As Executor, Administrator
16 or in Other Fiduciary Capacity.

17 A Limited Liability Company engaged in the practice of law, as a part of
18 the practice of law, may act as an executor, trustee or administrator of an
19 estate, guardian for an infant, or in any other fiduciary capacity. Any
20 Member, employee of a Member, Manager, employee or agent of a Limited
21 Liability Company engaged in the practice of law who is duly licensed as an
22 attorney in this State may perform necessary fiduciary responsibilities on
23 behalf of the Limited Liability Company.

24 §308. Professional Relationship - Personal Liability.

25 All individuals rendering Professional Service may be personally liable
26 for any results of that individual's acts or omissions. No Member, employee
27 of a Member, Manager, or employee of a Limited Liability Company shall be
28 personally liable for the acts or omission of any other Member, employee of a
29 Member, Manager, or employee of the Limited Liability Company.

30 § 309. *Liability of LIC to Third Parties.*

31 *Notwithstanding the limitations on liability contained herein for*
32 *Members and Managers, a Limited Liability Company shall be liable to third*
33 *parties for its valid obligations.*

34 § 310. *Execution of Documents.*

35 (a) Unless otherwise provided in any other section of this Act, any

1 document required by this Act to be filed with the Secretary of State shall be
2 executed:

3 (1) *By any manager if management of the Limited Liability Company is*
4 *vested in one or more Managers;*

5 (2) *By any Member if management of the Limited Liability Company is*
6 *reserved to the Members;*

7 (3) If the Limited Liability Company has not been formed, by the
8 Person or Persons forming the Limited Liability Company; or

9 (4) If the Limited Liability Company is in the hands of a
10 receiver, trustee, or other court-appointed fiduciary, by that
11 fiduciary.

12 (b) The Person executing the document shall sign it and state beneath
13 or opposite his signature the Person's name and the capacity in which he
14 signs.

15 (c) The Person executing the document may do so as an attorney-in-fact.
16 Powers of attorney relating to the execution of the document need not be
17 provided to or filed with the Secretary of State.

18 §311. Filing With The Secretary of State.

19 (a) The original signed copy, together with a duplicate copy that may
20 be either signed, photocopied, or conformed copy, of the Articles of
21 Organization or any other document required to be filed pursuant to this Act,
22 shall be delivered to the Secretary of State. If the Secretary of State
23 determines that the documents conform to the filing provisions of this Act, it
24 shall, when all required filing fees have been paid:

25 (1) Endorse on each signed original and duplicate copy the word
26 "filed" and the date and time of the document's acceptance for
27 filing;

28 (2) Retain the signed original in the Secretary of State's files;
29 and

30 (3) Return the duplicate copy to the Person who filed it or the
31 Person's representative.

32 (b) If at the time any documents are delivered for filing, the
33 Secretary of State is unable to make the determination required for filing by
34 subsection (a) the documents are deemed to have been filed at the time of
35 delivery if the Secretary of State subsequently determines that:

1 (1) The documents as delivered conform to the filing provisions
2 of this Act; or

3 (2) The documents have been brought into conformance within
4 twenty days after notification of nonconformance is given by the
5 Secretary of State to the Person who delivered the documents for
6 filing or the Person's representative.

7 (c) If the filing and determination requirements of this Act are not
8 satisfied within the time prescribed in subsection (b)(2), the documents shall
9 not be filed.

10 ARTICLE 4: RIGHTS AND DUTIES OF MEMBERS AND MANAGERS.

11 §401. Management.

12 (a) Unless the Articles of Organization indicate that management of the
13 Limited Liability Company is vested in a Manager or Managers, or unless an
14 Operating Agreement vests management of the Limited Liability Company in a
15 Manager or Managers, management of the business or affairs of the Limited
16 Liability Company shall be vested in the Members. Subject to any provisions
17 in an Operating Agreement or this Act restricting or enlarging the management
18 rights and duties of any Person or group or class of Persons, the Members
19 shall have the right and authority to manage the affairs of the Limited
20 Liability Company and to make all decisions with respect thereto.

21 (b) If the Articles of Organization indicate that management of the
22 Limited Liability Company is vested in a Manager or Managers, or unless an
23 Operating Agreement vests management of the Limited Liability Company in one
24 or more Managers, then the Manager or Managers shall have exclusive power to
25 manage the business and affairs of the Limited Liability Company except to the
26 extent otherwise provided in an Operating Agreement. Unless otherwise
27 provided in an Operating Agreement, Managers:

28 (1) Shall be designated, appointed, elected, removed or replaced by a
29 vote, approval or consent of more than one-half by number of the Members;

30 (2) Need not be Members of the Limited Liability Company or
31 natural Persons; and

32 (3) Unless they are sooner removed or sooner resign, shall hold
33 office until their successors shall have been elected and
34 qualified.

35 §402. Duties of Managers and Members.

1 Unless otherwise provided in an Operating Agreement:

2 (a) A Member or Manager shall not be liable, responsible or accountable
3 in damages or otherwise to the Limited Liability Company or to the Members of
4 the Limited Liability Company for any action taken or failure to act on behalf
5 of the Limited Liability Company unless the act or omission constitutes gross
6 negligence or willful misconduct.

7 (b) Every Member and Manager must account to the Limited Liability
8 Company and hold as trustee for it any profit or benefit derived by that
9 Person without the consent of more than one-half by number of the
10 disinterested Managers or Members, or other Persons participating in the
11 management of the business or affairs of the Limited Liability Company, from
12 (1) any transaction connected with the conduct or winding up of the Limited
13 Liability Company; or (2) any use by the Member or Manager of its property,
14 including, but not limited to, confidential or proprietary information of the
15 Limited Liability Company or other matters entrusted to the Person as a result
16 of his status as Manager or Member.

17 (c) One who is a Member of a Limited Liability Company in which
18 management is vested in Managers under §401 and who is not a Manager shall
19 have no duties to the Limited Liability Company or to the other Members solely
20 by reason of acting in the capacity of a Member.

21 §403. Voting.

22 (a) Unless otherwise provided in an Operating Agreement or this Act,
23 and subject to subsection (b), the affirmative vote, approval or consent of
24 more than one-half by number of the Members, if management of the Limited
25 Liability Company is vested in the Members, or of the Managers if the
26 management of the Limited Liability Company is vested in Managers, shall be
27 required to decide any matter connected with the business of the Limited
28 Liability Company.

29 (b) Unless otherwise provided in writing in an Operating Agreement, the
30 affirmative vote, approval or consent of all Members shall be required to:

31 (1) Amend a written Operating Agreement; or

32 (2) Authorize a Manager or Member to do any act on behalf of the
33 Limited Liability Company that contravenes a written Operating
34 Agreement, including any written provision thereof which expressly
35 limits the purpose, business or affairs of the Limited Liability

1 Company or the conduct thereof.

2 §404. Limitation of Liability and Indemnification of Members and
3 Managers.

4 An Operating Agreement which is in writing may:

5 (a) Eliminate or limit the Personal liability of a Member or Manager
6 for monetary damages for breach of any duty provided for in §402; and

7 (b) Provide for indemnification of a Member or Manager for judgments,
8 settlements, penalties, fines, or expenses incurred in a proceeding to which a
9 Person is a party because the Person is or was a Member or Manager.

10 §405. Records and Information.

11 (a) Unless otherwise provided in writing in an Operating Agreement, a
12 Limited Liability Company shall keep at its principal place of business the
13 following:

14 (1) A current and a past list, setting forth the full name and
15 last known mailing address of each Member and Manager, if any, set
16 forth in alphabetical order;

17 (2) A copy of the Articles of Organization and all amendments
18 thereto, together with executed copies of any powers of attorney
19 pursuant to which the Articles of Amendment have been executed.

20 (3) Copies of the Limited Liability Company's federal, state and
21 local income tax returns and financial statements, if any, for the
22 three most recent years or, if those returns and statements were
23 not prepared for any reason, copies of the information and
24 statements provided to, or which should have been provided to, the
25 Members to enable them to prepare their federal, state and local
26 tax returns for the period;

27 (4) Copies of any effective written Operating Agreements, and all
28 amendments thereto, and copies of any written Operating Agreements
29 no longer in effect;

30 (5) Unless contained in writing in an Operating Agreement:

31 (i) A writing, if any, setting forth the amount of cash and a
32 statement of the agreed value of other property or services
33 contributed by each Member and the times at which or events
34 upon the happening of which any additional contributions are
35 to be made by each Member;

1 (ii) A writing, if any, stating events upon the happening of
2 which the Limited Liability Company is to be dissolved and
3 its affairs wound up; and

4 (iii) Other writings, if any, prepared pursuant to a requirement
5 in an Operating Agreement.

6 (b) Upon reasonable request, a Member may, at the Member's own expense,
7 inspect and copy during ordinary business hours any Limited Liability Company
8 record, wherever the record is located.

9 (c) Members, if the management of the Limited Liability Company is
10 vested in the Members, or Managers, if management of the Limited Liability
11 Company is vested in Managers, shall render, to the extent the circumstances
12 render it just and reasonable, true and full information of all things
13 affecting the Members to any Member and to the legal representative of any
14 deceased Member or of any Member under legal disability.

15 (d) Failure of the Limited Liability Company to keep or maintain any of
16 the records or information required pursuant to this section shall not be
17 grounds for imposing liability on any Member or Manager for the debts and
18 obligations of the Limited Liability Company.

19 ARTICLE 5: FINANCE

20 §501. Contributions to Capital.

21 A Limited Liability Company interest may be issued in exchange for
22 property, services rendered, or a promissory note or other obligation to
23 contribute cash or property or to perform services.

24 §502. Liability for Contributions.

25 (a) A promise by a Member to contribute to the Limited Liability
26 Company is not enforceable unless set forth in a writing signed by the Member.

27 (b) Unless otherwise provided in an Operating Agreement, a Member is
28 obligated to the Limited Liability Company to perform any enforceable promise
29 to contribute cash or property or to perform services, even if the Member is
30 unable to perform because of death, disability or other reason.

31 (c) If a Member does not make the required contribution of property or
32 services, the Member is obligated, at the option of the Limited Liability
33 Company, to contribute cash equal to that portion of value of the stated
34 contribution that has not been made.

35 (d) Unless otherwise provided in an Operating Agreement, the obligation

1 of a Member to make a contribution may be compromised only with the unanimous
2 consent of the Members.

3 (e) Only a creditor of a Limited Liability Company who extends credit
4 in reliance on an obligation to contribute, or otherwise acts in reliance on
5 that obligation to contribute after the Member signs a writing which reflects
6 the obligation to contribute pursuant to subsection (d) may enforce any
7 obligation to contribute.

8 §503. Sharing of Profits.

9 Unless otherwise provided in writing in an Operating Agreement, each
10 Member shall be repaid that Member's contributions to capital and share
11 equally in the profits and assets remaining after all liabilities, including
12 those to Members, are satisfied.

13 ARTICLE 6: DISTRIBUTIONS AND WITHDRAWAL

14 §601. Sharing of Interim Distributions.

15 Except as otherwise provided in §§602 and 905, distributions of cash or
16 other assets of a Limited Liability Company shall be shared among the Members
17 and among classes of Members in the manner provided in writing in an Operating
18 Agreement. If an Operating Agreement does not so provide in writing each
19 Member shall share equally in any distribution. A Member is entitled to
20 receive distributions described in this section from a Limited Liability
21 Company to the extent and at the times or upon the happening of the events
22 specified in an Operating Agreement or at the times determined by the Members
23 or Managers pursuant to §403.

24 §602. Distributions on an Event of Dissociation.

25 Upon the occurrence of an Event of Dissociation under §802 which does
26 not cause dissolution, other than an Event of Dissociation described in
27 §802(a)(3)(ii), a dissociating Member is entitled to receive any distribution
28 which the Member was entitled to receive prior to the Event of Dissociation.
29 If an Operating Agreement does not provide the amount of or a method for
30 determining the distribution to a dissociating Member, the Member shall
31 receive within a reasonable time after dissociation, the fair value of the
32 Member's interest in the Limited Liability Company as of the date of
33 dissociation based upon the Member's right to share in distributions from the
34 Limited Liability Company.

35 §603. Distribution in Kind.

1 Unless otherwise provided in an Operating Agreement:

2 (a) A Member, regardless of the nature of the Member's contribution,
3 has no right to demand and receive any Distribution from the Limited Liability
4 Company in any form other than cash; and

5 (b) A Member may not be compelled to accept from the Limited Liability
6 Company a distribution of any asset in kind to the extent that the percentage
7 of the asset distributed to the Member exceeds the percentage that the Member
8 would have shared in a cash distribution equal to the value of the property at
9 the time of distribution.

10 §604. Right to Distribution.

11 At the time a Member becomes entitled to receive a distribution, the
12 Member has the status of, and is entitled to all remedies available to, a
13 creditor of the Limited Liability Company
14 with respect to that distribution.

15 ARTICLE 7: OWNERSHIP AND TRANSFER OF PROPERTY

16 §701. Ownership of Limited Liability Company Property.

17 (a) Property transferred to or otherwise acquired by a Limited
18 Liability Company is property of the Limited Liability Company and not of the
19 Members individually.

20 (b) Property may be acquired, held and conveyed in the name of the
21 Limited Liability Company. Any interest in real property may be acquired in
22 the name of the Limited Liability Company and title to any interest so
23 acquired shall vest in the Limited Liability Company rather than in the
24 Members individually.

25 §702. Transfer of Real Property.

26 (a) *If the Articles of Organization provide that management of the*
27 *Limited Liability Company is vested in a Manager or Managers:*

28 (1) *Title to property of the Limited Liability Company that is*
29 *held in the name of the Limited Liability Company may be transferred by an*
30 *instrument of transfer executed by any Manager in the name of the Limited*
31 *Liability Company; and*

32 (2) *A Member, solely by reason of being a Member, shall not have*
33 *authority to transfer property of the Limited Liability Company.*

34 (b) *If the Articles of Organization do not provide that management is*
35 *vested in a manager or managers then property of the Limited Liability Company*

1 held in the name of the Limited Liability Company may be transferred by an
2 instrument of transfer executed by any Member in the name of the Limited
3 Liability Company.

4 (c) Property of the Limited Liability Company that is held in the name
5 of one or more Members or Managers with an indication in the instrument
6 transferring the property to them of their capacity as Members or Managers of
7 a Limited Liability Company or of the existence of a Limited Liability
8 Company, if the name of the Limited Liability Company is not indicated, may be
9 transferred by an instrument of transfer executed by the Persons in whose name
10 title is held.

11 (d) *Property transferred under subsections (b) and (c) may be recovered*
12 *by the Limited Liability Company only if it proves that the person executing*
13 *the instrument had no authority to do so, and the initial transferee had*
14 *knowledge of the lack of authority unless the property has been transferred by*
15 *the initial transferee or a Person claiming through the initial transferee to*
16 *a subsequent transferee who gives value without having notice that the Person*
17 *who executed the instrument of initial transfer lacked authority to bind the*
18 *Limited Liability Company.*

19 (e) Property of the Limited Liability Company held in the name of one
20 or more Persons other than the Limited Liability Company without an indication
21 in the instrument transferring title to the property to them of their capacity
22 as Members or Managers of a Limited Liability Company or of the existence of a
23 Limited Liability Company, may be transferred free of any claims of the
24 Limited Liability Company or the Members by the Persons in whose name title is
25 held to a transferee who gives value without having notice that it is property
26 of the Limited Liability Company.

27 §703. Nature of Limited Liability Company Interest.

28 A Limited Liability Company Interest is personal property.

29 §704. Assignment of Interest.

30 (a) Unless otherwise provided in writing in an Operating Agreement:

31 (1) A Limited Liability Company Interest is assignable in whole
32 or in part;

33 (2) An assignment entitles the assignee to receive, to the extent
34 assigned, only the distributions to which the assignor would be
35 entitled;

1 (3) An assignment of a Limited Liability Company Interest does
2 not dissolve the Limited Liability Company or entitle the assignee
3 to participate in the management and affairs of the Limited
4 Liability Company or to become or exercise any rights of a Member;

5 (4) Until the assignee of a Limited Liability Company Interest
6 becomes a Member, the assignor continues to be a Member and to
7 have the power to exercise any rights of a Member, subject to the
8 Member's right to remove the assignor pursuant to §802(a)(3)(ii);

9 (5) Until an assignee of a Limited Liability Company Interest
10 becomes a Member, the assignee has no liability, if any, as a
11 Member solely as a result of the assignment; and

12 (6) The assignor of a Limited Liability Company Interest is not
13 released from his liability as a Member solely as a result of the
14 assignment.

15 (b) An Operating Agreement may provide that a Member's Limited
16 Liability Company Interest may be evidenced by a certificate of Limited
17 Liability Company Interest issued by the Limited Liability Company and may
18 also provide for the assignment or transfer of any interest represented by the
19 certificate.

20 §705. Rights of Judgment Creditor.

21 On application to a court of competent jurisdiction by any judgment
22 creditor of a Member, the court may charge the Member's Limited Liability
23 Company Interest with payment of the unsatisfied amount of judgment with
24 interest. To the extent so charged, the judgment creditor has only the rights
25 of an assignee of the Member's Limited Liability Company Interest. This Act
26 does not deprive any Member of the benefit of any exemption laws applicable to
27 his Limited Liability Company Interest.

28 §706. Right of Assignee to Become a Member.

29 (a) Unless otherwise provided in writing in an Operating Agreement, an
30 assignee of a Limited Liability Company Interest may become a Member only if
31 the other Members unanimously consent. The consent of a Member may be
32 evidenced in any manner specified in writing in an Operating Agreement, but in
33 the absence of such specification, consent shall be evidenced by a written
34 instrument, dated and signed by the Member.

35 (b) As assignee who becomes a Member has, to the extent assigned, the

1 rights and powers, and is subject to the restrictions and liabilities, of a
2 Member under the Articles of Organization, any Operating Agreement and this
3 Act. An assignee who becomes a Member also is liable for any obligations of
4 the assignor to make contributions under §502. However, the assignee is not
5 obligated for liabilities of which the assignee had no knowledge at the time
6 he became a Member and which could not be ascertained from the written records
7 of the Limited Liability Company kept pursuant to §405.

8 (c) Whether or not an assignee of a Limited Liability Company Interest
9 becomes a Member, the assignor is not released from his liability, if any, to
10 the Limited Liability Company under §502.

11 (d) Unless otherwise provided in writing in an Operating Agreement, a
12 Member who assigns his entire Limited Liability Company Interest ceases to be
13 a Member or to have the power to exercise any rights of a Member when the
14 assignee becomes a Member with respect to the entire assigned interest.

15 §707. Powers of Estate of a Deceased or Incompetent Member.

16 If a Member who is an individual dies or a court of competent
17 jurisdiction adjudges the Member to be incompetent to manage his Person or
18 property, the Member's executor, administrator, guardian, conservator or other
19 legal representative shall have all of the rights of an assignee of the
20 Member's interest.

21 ARTICLE 8: ADMISSION AND WITHDRAWAL OF MEMBERS

22 §801. Admission of Members.

23 (a) Subject to subsection (b), a Person may become a Member in a
24 Limited Liability Company:

25 (1) In the case of a Person acquiring a Limited Liability Company
26 Interest directly from the Limited Liability Company, upon
27 compliance with an Operating Agreement or, if an Operating
28 Agreement does not so provide in writing, upon the written consent
29 of all Members; and

30 (2) In the case of an assignee of a Limited Liability Company
31 Interest, as provided in §706.

32 (b) The effective time of admission of a Member to a Limited Liability
33 Company shall be the later of:

34 (1) The date the Limited Liability Company is formed; or

35 (2) The time provided in an Operating Agreement or, if no such

1 time is provided therein, then when the Person's admission is
2 reflected in the records of the Limited Liability Company.

3 §802. Events of Dissociation.

4 (a) A Person ceases to be a Member of a Limited Liability Company upon
5 the occurrence of one or more of the following events:

6 (1) The Member withdraws by voluntary act from the Limited
7 Liability Company as provided in subsection (c);

8 (2) The Member ceases to be a Member of the Limited Liability
9 Company as provided in §706;

10 (3) The Member is removed as a Member:

11 (i) In accordance with an Operating Agreement; or

12 (ii) Unless otherwise provided in writing in an Operating
13 Agreement, when the Member assigns all of his interest in
14 the Limited Liability Company, by an affirmative vote of a
15 majority of the Members who have not assigned their
16 interests;

17 (4) Unless otherwise provided in writing in an Operating
18 Agreement or by the written consent of all Members at the time,
19 the Member (i) makes an assignment for the benefit of creditors;
20 (ii) files a voluntary petition in bankruptcy; (iii) is
21 adjudicated a bankrupt or insolvent; (iv) files a petition or
22 answer seeking for the Member any reorganization, arrangement,
23 composition, readjustment, liquidation, dissolution, or similar
24 relief under any statute, law, or regulation; (v) files an answer
25 or other pleading admitting or failing to contest the material
26 allegations of a petition filed against the Member in any
27 proceeding of the nature described in (iv) preceding; or (vi)
28 seeks, consents to, or acquiesces in the appointment of a trustee,
29 receiver, or liquidator of the Member or of all or any substantial
30 part of the Member's properties;

31 (5) Unless otherwise provided in writing in an Operating
32 Agreement or by the written consent of all Members at the time, if
33 within 120 days after the commencement of any proceeding against
34 the Member seeking reorganization, arrangement, composition,
35 readjustment, liquidation, dissolution, or similar relief under

1 any statute, law, or regulation, the proceeding has not been
2 dismissed, or if within 120 days after the appointment without his
3 consent or acquiescence of a trustee, receiver, or liquidator of
4 the Member or of all or any substantial part of his properties,
5 the appointment is not vacated or stayed or if within 120 days
6 after the expiration of any stay, the appointment is not vacated.

7 (6) Unless otherwise provided in writing in an Operating
8 Agreement or by the written consent of all Members at the time, in
9 the case of a Member who is an individual:

10 (i) The Member's death; or

11 (ii) The entry of an order by a court of competent jurisdiction
12 adjudicating the Member incompetent to manage his Person or
13 estate;

14 (7) Unless otherwise provided in writing in an Operating
15 Agreement or by the written consent of all Members at the time, in
16 the case of a Member who is a trust or is acting as a Member by
17 virtue of being a trustee of a trust, the termination of the
18 trust, but not merely the substitution of a new trustee;

19 (8) Unless otherwise provided in writing in an Operating
20 Agreement or by the written consent of all Members at the time, in
21 the case of a Member that is a separate Limited Liability Company,
22 the dissolution and commencement of winding up of the separate
23 Limited Liability Company;

24 (9) Unless otherwise provided in writing in an Operating
25 Agreement or by the written consent of all Members at the time, in
26 the case of a Member that is a corporation, the filing of a
27 certificate of its dissolution or the equivalent for the
28 corporation or the revocation of its charter and the lapse of 90
29 days after notice to the corporation of revocation without
30 reinstatement of its charter; or

31 (10) Unless otherwise provided in writing in an Operating
32 Agreement or by the written consent of all Members at the time, in
33 the case of an estate, the distribution by the fiduciary of the
34 estate's entire interest in the Limited Liability Company.

35 (b) The Members may provide in writing in an Operating Agreement for

1 other events the occurrence of which shall result in a Person ceasing to be a
2 Member of the Limited Liability Company.

3 (c) Unless an Operating Agreement provides in writing that a Member has
4 no power to withdraw by voluntary act from a Limited Liability Company, the
5 Member may do so at any time by giving 30 days' written notice to the other
6 Members, or such other notice as is provided for in an Operating Agreement.
7 If the Member has the power to withdraw but the withdrawal is a breach of an
8 Operating Agreement, or the withdrawal occurs as a result of otherwise
9 wrongful conduct of the Member, the Limited Liability Company may recover from
10 the withdrawing Member damages for breach of the Operating Agreement or as a
11 result of the wrongful conduct, including the reasonable costs of obtaining
12 replacement of the services the withdrawn Member was obligated to perform and
13 may offset the damages against the amount otherwise distributable to him, in
14 addition to pursuing any remedies provided for in an Operating Agreement or
15 otherwise available under applicable law. Unless otherwise provided in an
16 Operating Agreement, in the case of a Limited Liability Company for a definite
17 term or particular undertaking, a withdrawal by a Member before the expiration
18 of that term is a breach of the Operating Agreement.

19 ARTICLE 9: DISSOLUTION

20 §901. Dissolution.

21 A Limited Liability Company is dissolved and its affairs shall be wound
22 up upon the happening of the first to occur of the following:

23 (a) At the time or upon the occurrence of events specified in writing
24 in the Articles of Organization or an Operating Agreement;

25 (b) The written consent of all Members;

26 (c) An Event of Dissociation of a Member, unless (1) the business of
27 the Limited Liability Company is continued by the consent of all the remaining
28 Members on or before the 90th day following the occurrence of any such event
29 or (2) otherwise provided in writing in an Operating Agreement; or

30 (d) Entry of a decree of judicial dissolution under §902.

31 §902. Judicial Dissolution.

32 On application by or for a Member, a Chancery Court may decree
33 dissolution of a Limited Liability Company whenever it is not reasonably
34 practicable to carry on the business of the Limited Liability Company in
35 conformity with the Operating Agreement.

1 §903. Winding Up.

2 Unless otherwise provided in writing in an Operating Agreement:

3 (a) The business or affairs of the Limited Liability Company may be
4 wound up:

5 (1) By the Members or Managers who have authority to manage the
6 Limited Liability Company prior to dissolution pursuant to §401;
7 or

8 (2) If one or more of such Members or Managers have engaged in
9 *wrongful conduct, or upon other cause shown, by a Chancery Court*
10 *on application of any Member or any Member's legal representative*
11 *or assignee.*

12 (b) The Persons winding up the business or affairs of the Limited
13 Liability Company may, in the name of, and for and on behalf of, the Limited
14 Liability Company:

15 (1) Prosecute and defend suits;

16 (2) Settle and close the business of the Limited Liability
17 Company;

18 (3) Dispose of and transfer the property of the Limited Liability
19 Company;

20 (4) Discharge the liabilities of the Limited Liability Company;
21 and

22 (5) Distribute to the Member's any remaining assets of the
23 Limited Liability Company.

24 §904. Agency Power of Managers or Members After Dissolution.

25 (a) Except as provided in subsections (c), (d) and (e), after
26 dissolution of the Limited Liability Company, each of the Members having
27 authority to wind up the Limited Liability Company's business and affairs can
28 bind the Limited Liability Company:

29 (1) By any act appropriate for winding up the Limited Liability
30 Company's affairs or completing transactions unfinished at
31 dissolution; and

32 (2) By any transaction that would have bound the Limited
33 Liability Company if it had not been dissolved, if the other party
34 to the transaction does not have notice of the dissolution.

35 (b) The filing of the Articles of Dissolution shall be presumed to

1 constitute notice of dissolution for purposes of subsection (a) (2).

2 (c) An act of a Member which is not binding on the Limited Liability
3 Company pursuant to subsection (a) is binding if it is otherwise authorized by
4 the Limited Liability Company.

5 (d) An act of a Member which would be binding under subsection (a) or
6 would be otherwise authorized but which is in contravention of a restriction
7 on authority shall not bind the Limited Liability Company to Persons having
8 knowledge of the restriction.

9 (e) If the Articles of Organization vest management of the Limited
10 Liability Company in Managers, a Manager shall have the authority of a Member
11 provided for in subsection (a), and no Member shall have such authority if the
12 Member is acting solely in the capacity of a Member.

13 §905. Distribution of Assets.

14 Upon the winding up of a Limited Liability Company, the assets shall be
15 distributed as follows:

16 (a) Payment, or adequate provision for payment, shall be made to
17 creditors, including, to the extent permitted by law, Members who are
18 creditors in satisfaction of liabilities of the Limited Liability Company;

19 (b) Unless otherwise provided in writing in an Operating Agreement, to
20 Members or former Members in satisfaction of liabilities for distributions
21 under §§601 and 602; and

22 (c) Unless otherwise provided in writing in an Operating Agreement, to
23 Members and former Members first for the return of their contribution and
24 second in proportion to the Members' respective rights to share in
25 distributions from the Limited Liability Company prior to dissolution.

26 §906. Articles of Dissolution.

27 After the dissolution of the Limited Liability Company pursuant to §901,
28 the Limited Liability Company may file Articles of Dissolution with the
29 Secretary of State which set forth:

30 (a) The name of the Limited Liability Company;

31 (b) The date of filing of its Articles of Organization and all
32 amendments thereto;

33 (c) The reason for filing the Articles of Dissolution;

34 (d) The effective date (which shall be a date certain) of the Articles
35 of Dissolution if they are not to be effective upon the filing; and

1 (e) Any other information the Members or Managers filing the
2 certificate shall deem proper.

3 §907. Known Claims Against Dissolved Limited Liability Company.

4 (a) Upon dissolution, a Limited Liability Company may dispose of the
5 known claims against it by filing Articles of Dissolution pursuant to §906 and
6 following the procedures described in this section.

7 (b) The Limited Liability Company shall notify its known claimants in
8 writing of the dissolution at any time after the effective date of
9 dissolution. The written notice must:

10 (1) Describe information that must be included in a claim;

11 (2) Provide a mailing address where a claim may be sent;

12 (3) State the deadline, which may not be fewer than 120 days
13 after the later of the date of the written notice or the filing of
14 Articles of Dissolution pursuant to §906, by which the Limited
15 Liability Company must receive the claim;

16 (4) State that the claim will be barred if not received by *the*
17 *deadline; and*

18 (5) *Provided that any claim not responded to by the Limited Liability*
19 *Company within thirty (30) days after receipt shall be deemed to have been*
20 *rejected.*

21 (c) A claim against the Limited Liability Company is barred:

22 (1) If a claimant who was given written notice under subsection

23 (b) does not deliver the claim to the Limited Liability Company by
24 the deadline;

25 (2) If a claimant whose claim was rejected by the Limited
26 Liability Company does not commence a proceeding to enforce the
27 claim within 90 days after the date of the rejection notice or
28 *deemed rejection.*

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

32 §908. Unknown Claims Against Dissolved Limited Liability Company.

33 (a) A Limited Liability Company may publish notice of its dissolution
34 pursuant to this section which requests that Persons with claims against the
35 Limited Liability Company present them in accordance with the notice.

1 (b) The notice must:

2 (1) Be published once in a newspaper of general circulation in
3 the county where the Limited Liability Company's principal office
4 (or, if none in this state, its registered office) is located;

5 (2) Describe the information that must be included in a claim and
6 provide a mailing address where the claim may be sent; and

7 (3) State that a claim against the Limited Liability Company will
8 be barred unless a proceeding to enforce the claim is commenced
9 within *the earlier of five years after the publication of the*
10 *notice, or the expiration of the applicable period of limitations*
11 *otherwise provided under law.*

12 (c) If the Limited Liability Company publishes a newspaper notice in
13 accordance with subsection (b) and files Articles of Dissolution pursuant to
14 §906, the claim of each of the following claimants is barred unless the
15 claimant commences a proceeding to enforce the claim against the Limited
16 Liability Company within *the earlier of the applicable period of limitations*
17 *otherwise provided under law or five years after the later of the publication*
18 *date of the newspaper notice or the filing of the Articles of Dissolution:*

19 (1) A claimant who did not receive written notice under §907; or

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

22 (d) A claim may be enforced under this section:

23 (1) Against the Limited Liability Company, to the extent of its
24 undistributed assets; or

25 (2) If the assets have been distributed in liquidation, against a
26 Member of the Limited Liability Company to the extent of his pro
27 rata share of the claim or the assets of the Limited Liability
28 Company distributed to him in liquidation, whichever is less, but
29 a Member's total liability for all claims under this section may
30 not exceed the total amount of assets distributed to him in
31 liquidation.

32 ARTICLE 10: FOREIGN LIMITED LIABILITY COMPANIES

33 §1001. Law Governing.

34 Subject to the Constitution of this State, the laws of the State of
35 other jurisdiction under which a Foreign Limited Liability Company is

1 organized shall govern its organization and internal affairs and the liability
2 and authority of its Managers and Members. A Foreign Limited Liability
3 Company may not be denied registration by reason of any difference between
4 those laws and the laws of this State.

5 §1002. Registration.

6 Before transacting business in this State, a Foreign Limited Liability
7 Company shall register with the Secretary of State by submitting to the
8 Secretary of State an original signed copy of an Application for Registration
9 as a Foreign Limited Liability Company, together with a duplicate copy that
10 may be either a signed, photocopied, or conformed copy, executed by a Person
11 with authority to do so under the laws of the state or other jurisdiction of
12 its formation. The Application shall set forth:

13 (a) The name of the Foreign Limited Liability Company and, if
14 different, the name under which it proposes to transact business in this
15 State;

16 (b) The state or other jurisdiction where formed, and date of its
17 formation;

18 (c) The name and address of a registered agent for service of process
19 required to be maintained by §105;

20 (d) A statement that the Secretary of State is appointed the agent of
21 the Foreign Limited Liability Company for service of process if the Foreign
22 Limited Liability Company fails to appoint or maintain a registered agent in
23 satisfaction of the requirements of §105;

24 (e) The address of the office required to be maintained in the state or
25 other jurisdiction of its formation by the laws of that state or jurisdiction
26 or, if not so required, of the principal office of the Foreign Limited
27 Liability Company; and

28 (f) A statement evidencing that the Foreign Limited Liability Company
29 is a "Foreign Limited Liability Company" as defined in §101(f).

30 §1003. Issuance of Registration.

31 (a) If the Secretary of State finds that an Application for
32 Registration conforms to the provisions of this article and all requisite fees
33 have been paid, the Secretary shall:

34 (1) Endorse on each signed original and duplicate copy the word
35 "filed" and the date and time of its acceptance for filing;

1 (2) Retain the signed original in the Secretary of State's files;
2 and

3 (3) Return the duplicate copy to the Person who filed it or the
4 Person's representative.

5 (b) If the Secretary of State is unable to make the determination
6 required for filing by subsection (a) at the time any documents are delivered
7 for filing, the documents are deemed to have been filed at the time of
8 delivery if the Secretary of State subsequently determines that:

9 (1) The documents as delivered conform to the filing provisions
10 of this Act; or

11 (2) Within twenty days after notification of nonconformance is
12 given by the Secretary of State to the Person who delivered the
13 documents for filing or the Person's representative, the documents
14 are brought into conformance.

15 (c) If the filing and determination requirements of this Act are not
16 satisfied within the time prescribed in subsection (b)(2), the documents shall
17 not be filed.

18 §1004. Name.

19 No Certificate of Registration shall be issued to a Foreign Limited
20 Liability Company unless the name of such company satisfies the requirements
21 of §103. If the name under which a Foreign Limited Liability Company is
22 registered in the jurisdiction of its formation does not satisfy the
23 requirements of §103, to obtain or maintain a Certificate of Registration the
24 Foreign Limited Liability Company may use a designated name that is available,
25 and which satisfies the requirements of §103.

26 §1005. Amendments.

27 (a) The Application for Registration of a Foreign Limited Liability
28 Company is amended by filing Articles of Amendment with the Secretary of State
29 signed by a Person with authority to do so under the laws of the state or
30 other jurisdiction of its formation. The Articles of Amendment shall set
31 forth:

32 (1) The name of the Foreign Limited Liability Company;

33 (2) The date the original Application for Registration was filed;
34 and

35 (3) The amendment to the Application for Registration.

1 (b) The Application for Registration may be amended in any way,
2 provided that the Application for Registration as amended contains only
3 provisions that may be lawfully contained in an Application for Registration
4 at the time of the amendment.

5 §1006. Cancellation of Registration.

6 (a) A Foreign Limited Liability Company authorized to transact business
7 in this State may cancel its registration upon procuring from the Secretary of
8 State a Certificate of Cancellation. In order to procure such certificate,
9 the Foreign Limited Liability Company shall deliver to the Secretary of State
10 an Application for Cancellation, which shall set forth:

11 (1) The name of the Foreign Limited Liability Company and the
12 state or other jurisdiction under the laws of which it is formed;

13 (2) That the Foreign Limited Liability Company is not transacting
14 business in this State;

15 (3) That the Foreign Limited Liability Company surrenders its
16 Certificate of Registration to transact business in this State;

17 (4) That the Foreign Limited Liability Company revokes the
18 authority of its registered agent for service of process in this
19 State and consents that service of process in any action, suit, or
20 proceeding based upon any cause of action arising in this State
21 during the time the Foreign Limited Liability Company was
22 authorized to transact business in this State may thereafter be
23 made on such Foreign Limited Liability Company by service thereof
24 upon the Secretary of State; and

25 (5) An address to which a Person may mail a copy of any process
26 against the Foreign Limited Liability Company.

27 (b) The Application for Cancellation shall be in the form and manner
28 designated by the Secretary of State and shall be executed on behalf of the
29 Foreign Limited Liability Company by a Person with authority to do so under
30 the laws of the state or other jurisdiction of its formation, or, if the
31 Foreign Limited Liability Company is in the hands of a receiver, trustee, or
32 other court-appointed fiduciary, by that fiduciary.

33 (c) A cancellation does not terminate the authority of the Secretary of
34 State to accept service of process on the Foreign Limited Liability Company
35 with respect to causes of action arising out of the doing of business in this

1 State.

2 §1007. Transaction of Business Without Registration.

3 (a) A Foreign Limited Liability Company transacting business in this
4 State may not maintain an action, suit, or proceeding in a court of this State
5 until it has registered in this State.

6 (b) The failure of a Foreign Limited Liability Company to *register* in
7 this State does not:

8 (1) Impair the validity of any contract or act of the Foreign
9 Limited Liability Company;

10 (2) Affect the right of any other party to the contract to
11 maintain any action, suit or proceeding on the contract; or

12 (3) Prevent the Foreign Limited Liability Company from defending
13 any action, suit, or proceeding in any court of this State.

14 (c) A Foreign Limited Liability Company, by transacting business in
15 this State without registration, appoints the Secretary of State as its agent
16 for service of process with respect to a cause of action arising out of the
17 transaction of business in this State.

18 (d) A Foreign Limited Liability Company which transacts business in
19 this State without registration shall be liable to the State for the years or
20 parts thereof during which it transacted business in this State without
21 registration in an amount equal to all fees which would have been imposed by
22 this Act upon that Foreign Limited Liability Company had it duly registered,
23 and all penalties imposed by this Act. The Attorney General may bring
24 proceedings to recover all amounts due this state under the provisions of this
25 section.

26 (e) A Foreign Limited Liability Company which transacts business in
27 this State without registration shall be subject to a civil penalty, payable
28 to the State, not to exceed \$5,000.00 for each twelve (12) month period or
29 part thereof, beginning with the date it began transacting business in this
30 State and ending on the date it becomes registered.

31 (f) The civil penalty set forth in subsection (e) may be recovered in
32 an action brought within a court by the Attorney General. Upon a finding by
33 the court that a Foreign Limited Liability Company has transacted business in
34 this State in violation of this Act, the court shall issue, in addition to the
35 imposition of a civil penalty, an injunction restraining further transactions

1 of the business of the Foreign Limited Liability Company and the further
2 exercise of any Limited Liability Company's rights and privileges in this
3 State. The Foreign Limited Liability Company shall be enjoined from
4 transacting business in this State until all civil penalties plus any interest
5 and court costs which the court may assess have been paid and until the
6 Foreign Limited Liability Company has otherwise complied with the provisions
7 of this article.

8 (g) A Member or Manager of a Foreign Limited Liability Company is not
9 liable for the debts and obligations of the Limited Liability Company solely
10 because the Limited Liability Company transacted business of this State
11 without registration.

12 §1008. Transactions Not Constituting Transacting Business.

13 (a) The following activities of a Foreign Limited Liability Company,
14 among others, do not constitute transacting business within the meaning of
15 this article:

- 16 (1) Maintaining, defending, or settling any proceeding;
- 17 (2) Holding meetings of its Members or Managers or carrying on
18 any other activities concerning its internal affairs;
- 19 (3) Maintaining bank accounts;
- 20 (4) Maintaining offices or agencies for the transfer, exchange
21 and registration of the Foreign Limited Liability Company's own
22 securities or interests or maintaining trustees or depositories
23 with respect to those securities or interests;
- 24 (5) Selling through independent contractors;
- 25 (6) Soliciting or obtaining orders, whether by mail or through
26 employees or agents or otherwise, if the orders require acceptance
27 outside this State before they become contracts;
- 28 (7) Creating or acquiring indebtedness, mortgages, and security
29 interests in real or personal property;
- 30 (8) Securing or collecting debts or enforcing mortgages and
31 security interests in property securing debts;
- 32 (9) Owning, without more, real or personal property;
- 33 (10) Conducting an isolated transaction that is completed within
34 thirty (30) days and that is not one in the course of repeated
35 transactions of a like nature; or

1 (11) Transacting business in interstate *commerce*.

2 (b) The Foreign Limited Liability Company shall not be considered to be
3 transacting business solely because it:

4 (1) Owns a controlling interest in a corporation that is
5 transacting business;

6 (2) Is a limited party of a limited partnership that is
7 transacting business; or

8 (3) Is a Member or Manager of a Limited Liability Company or
9 Foreign Limited Liability Company that is transacting business.

10 (c) This section does not apply in determining the *contacts* or
11 activities that may subject a Foreign Limited Liability Company to service of
12 process or taxation in this State or to *other law, or to* regulation under any
13 other law of this State.

14 ARTICLE 11: SUITS BY AND AGAINST THE LIMITED LIABILITY COMPANY

15 §1101. Suits By and Against the Limited Liability Company.

16 Suit may be brought by or against a Limited Liability Company in its own
17 name.

18 §1102. Authority to Sue on Behalf of Limited Liability Company.

19 Unless otherwise provided in an Operating Agreement, a suit on behalf of
20 the Limited Liability Company may be brought only in the name of the Limited
21 Liability Company by:

22 (a) One or more Members of a Limited Liability Company, whether or not
23 an Operating Agreement vests management of the Limited Liability Company in
24 one or more Managers, who are authorized to sue by the vote of more than one
25 half by number of the Members eligible to vote thereon, unless the vote of all
26 Members shall be required pursuant to §403(b), provided that in determining
27 the vote required under §403, the vote of any Member who has an interest in
28 the outcome of the suit that is adverse to the interest of the Limited
29 Liability Company shall be excluded; or

30 (b) One or more Managers of a Limited Liability Company, if an
31 Operating Agreement vests management of the Limited Liability Company in one
32 or more Managers, who are authorized to do so by the vote required pursuant to
33 §403 of the Members eligible to vote thereon, provided that in determining
34 such required vote, the vote of any Manager who has an interest in the outcome
35 of the suit that is adverse to the interest of the Limited Liability Company

1 shall be excluded.

2 §1103. Effect of Lack of Authority to Sue.

3 The lack of authority of a Member or Manager to sue on behalf of the
4 Limited Liability Company may not be asserted as a defense to an action by the
5 Limited Liability Company or by the Limited Liability Company as a basis for
6 bringing a subsequent suit on the same cause of action.

7 ARTICLE 12: MERGER AND CONSOLIDATION

8 §1201. Merger or Consolidation.

9 (a) Unless otherwise provided in writing in an Operating Agreement, and
10 subject to any law applicable to business entities other than Limited
11 Liability Companies, one or more Limited Liability Companies may merge or
12 consolidate with or into one or more other business entities with the Limited
13 Liability Company or other business entity as the merger or consolidation
14 agreement shall provide being the surviving or resulting Limited Liability
15 Company or other business entity.

16 (b) Rights or securities of or interests in a business entity that is a
17 party to the merger or consolidation may be exchanged for or converted into
18 cash, property, obligations, rights or securities of or interests in the
19 surviving or resulting business entity or of any other business entity;

20 (c) As used in this Article 12, "business entity" or "business
21 entities" shall mean Domestic and Foreign Limited Liability Companies and
22 Corporations.

23 §1202. Approval of Merger or Consolidation.

24 (a) Unless otherwise provided in writing in an Operating Agreement, a
25 Limited Liability Company that is a party to a proposed merger or
26 consolidation shall approve the merger or consolidation agreement by the
27 consent of more than one-half by number of the Members.

28 (b) Each corporation and Foreign Limited Liability Company that is a
29 party to a proposed merger or consolidation shall approve the merger or
30 consolidation in the manner and by the vote required by the laws applicable to
31 such business entity.

32 (c) Each business entity that is a party to the merger or consolidation
33 shall have such rights to abandon the merger as are provided for in the merger
34 or consolidation agreement or in the laws applicable to the business entity.

35 §1203. Articles of Merger of Consolidation.

1 (a) The business entity surviving or resulting from the merger or
2 consolidation shall deliver to the Secretary of State Articles of Merger or
3 Consolidation executed by each constituent entity setting forth:

4 (1) The name and jurisdiction of formation or organization of
5 each business entity which is to merge or consolidate;

6 (2) That an Agreement of Merger or Consolidation has been
7 approved and executed by each business entity which is a party to
8 the merger or consolidation;

9 (3) The name of the surviving or resulting business entity;

10 (4) The future effective date of the merger or consolidation
11 (which shall be a date or time certain) if it is not to be
12 effective upon the filing of the Articles of Merger or
13 Consolidation;

14 (5) That the Agreement of Merger or Consolidation is on file at a
15 place of business of the surviving or resulting business entity,
16 and the address of that place of business;

17 (6) That a copy of the Agreement of Merger or Consolidation will
18 be furnished by the surviving or resulting business entity, on
19 request and without cost, to any Person holding an interest in any
20 business entity which is to merge or consolidate; and

21 (7) If the surviving or resulting entity is not a business entity
22 organized under the laws of this State, a statement that such
23 surviving or resulting business entity:

24 (i) Agrees that it may be served with process in this State in
25 any proceeding for enforcement of any obligation of any
26 business entity party to the merger or consolidation that
27 was organized under the laws of this State, as well as for
28 enforcement of any obligation of the surviving business
29 entity or the new business entity arising from the merger or
30 consolidation; and

31 (ii) Appoints the Secretary of State as its agent for service of
32 process in any such proceeding, and the surviving business
33 entity or the new business entity shall specify the address
34 to which a copy of the process shall be mailed to it by the
35 Secretary of State.

1 (b) A merger or consolidation takes effect upon the later of the
2 effective date of the filing of the Articles of Merger or Consolidation or the
3 date set forth in the Articles of Merger or Consolidation.

4 (c) The Articles of Merger or Consolidation shall be executed by a
5 Limited Liability Company that is a party to the merger or consolidation in
6 the manner provided for in §204, and shall be filed with the Secretary of
7 State in the manner provided for in §205.

8 (d) Articles of Merger or Consolidation shall constitute Articles of
9 Dissolution for a Limited Liability Company which is not the surviving or
10 resulting business entity in the merger or consolidation.

11 (e) An Agreement of Merger or Consolidation approved in accordance with
12 §1202 may effect any amendment to an Operating Agreement or effect the
13 adoption of a new Operating Agreement for a Limited Liability Company if it is
14 the surviving or resulting Limited Liability Company in the merger or
15 consolidation. An approved Agreement of Merger or Consolidation may also
16 provide that the Operating Agreement of any constituent Limited Liability
17 Company to the merger or consolidation (including a Limited Liability Company
18 formed for the purpose of consummating a merger or consolidation) shall be the
19 Operating Agreement of the surviving or resulting Limited Liability Company,
20 any amendment to an Operating Agreement or adoption of a new Operating
21 Agreement made pursuant to this subsection (e) shall be effective at the
22 effective time or date of the merger or consolidation. The provisions of this
23 subsection shall not be construed to limit the accomplishment of a merger or
24 of any of the matters referred to herein by any other means provided for in an
25 Operating Agreement or other agreement or as otherwise permitted by law.

26 §1204. Effects of Merger or Consolidation.

27 A merger or consolidation has the following effects:

28 (a) The business entities that are parties to the Merger or
29 Consolidation Agreement shall be a single entity, which, in the case of a
30 merger shall be the entity designated in the Plan of Merger as the surviving
31 entity, and, in the case of a consolidation, shall be the new entity provided
32 for in the Plan of Consolidation;

33 (b) Each party to the merger or consolidation agreement, except the
34 surviving entity or the new entity, shall cease to exist;

35 (c) The surviving entity or the new entity shall thereupon and

1 thereafter possess all the rights, privileges, immunities, and powers of each
2 constituent entity and shall be subject to all the restrictions, disabilities,
3 and duties of each of such constituent entities to the extent such rights,
4 privileges, immunities, powers, franchises, restrictions, disabilities, and
5 duties are applicable to the type of business entity that is the surviving
6 entity or the new entity;

7 (d) All property, real, personal and mixed, and all debts due on
8 whatever account, including promises to make capital contributions and
9 subscriptions for shares, and all other choses in action, and all and every
10 other interest of or belonging to or due to each of the constituent entities
11 shall be vested in the surviving entity or the new entity without further act
12 or deed;

13 (e) The title to all real estate and any interest therein, vested in
14 any such constituent entity shall not revert or be in any way impaired by
15 reason of such merger or consolidation;

16 (f) The surviving entity or the new entity shall thenceforth be liable
17 for all liabilities and obligations of each of the constituent entities so
18 merged or consolidated, and any claim existing or action or proceeding pending
19 by or against any such constituent entity may be prosecuted as if such merger
20 or consolidation had not taken place, or the surviving entity or the new
21 entity may be substituted in the action;

22 (g) Neither the rights of creditors nor any liens on the property of
23 any constituent entity shall be impaired by the merger or consolidation;

24 (h) The interests in a Limited Liability Company or shares or other
25 interests in a corporation that are to be converted or exchanged into
26 interests, shares or other securities, cash, obligations or other property
27 under the terms of the Merger or Consolidation Agreement are so converted, and
28 the former holders thereof are entitled only to the rights provided in the
29 Merger or Consolidation Agreement or the rights otherwise provided by law.

30 ARTICLE 13: MISCELLANEOUS

31 §1301. Filing Requirements.

32 (a) A document must satisfy the requirements of this section, and of
33 any other section that adds to or varies from these requirements, to be
34 entitled to filing by the Secretary of State.

35 (b) This chapter must require or permit filing the document in the

1 office of the Secretary of State.

2 (c) The document must contain the information required by this chapter.
3 It may contain other information as well.

4 (d) The document must be typewritten or printed.

5 (e) The document must be in the English language. A *Limited Liability*
6 *Company* or *Foreign Limited Liability Company* name need not be in English if
7 written in English letters or Arabic or Roman numerals, and the certificate of
8 existence required of *Foreign Limited Liability Companies* need not be in
9 English if accompanied by a reasonably authenticated English translation.

10 (f) The document must be executed:

11 (1) The original signed copy, together with a duplicate copy that may
12 either be a signed, photocopied or conformed copy, of any document
13 required to be filed pursuant to this Act, shall be delivered to the
14 Secretary of State. When the Secretary of State determines that the
15 documents conform to the filing provisions of this Act, it shall, when
16 all required filing fees, tax, license fee, or penalty required by this
17 chapter or other law has been paid;

18 (i) Endorsed on each signed original and duplicate copy the word
19 "filed" and the date and time of the documents acceptance for
20 filing;

21 (ii) Retain the signed original in the Secretary of State's file;
22 and

23 (iii) Return the duplicate copy to the Person who filed it or the
24 Person's representative.

25 (2) If at the time any documents are delivered for filing, the
26 Secretary of State is unable to make the determination required for
27 filing, the documents are deemed to have been filed at the time of
28 delivery if the Secretary of State subsequently determines that:

29 (i) The documents as delivered conform to the filing provisions
30 of this Act;

31 (ii) The documents have been brought into conformance within
32 twenty (20) days after notification of nonperformance is given by
33 the Secretary of State to the Person who delivered the documents
34 for filing or that Person's representative.

35 (3) If the filing and determination requirements of this Act are not

1 satisfied within the time prescribed in subsection (2)(ii) the documents
2 shall not be filed.

3 (4) A document may specify a delayed effective time and date, and if it
4 does so the document becomes effective at the time and date specified.
5 If a delayed effective date but no time is specified, the document is
6 effective at the close of business on that date. A delayed effective
7 date for a document may not be later than the 90th day after the date it
8 is filed.

9 §1302. Filing, Service, and Copying Fees.

10 (a) The Secretary of State shall collect the following fees when the
11 documents described in this subsection are delivered to him for filing:

12 DOCUMENT	FEE
13 (i) Articles of Organization	\$ 50.00
14 (ii) Application for use of indistinguishable name	25.00
15 (iii) Application for reserved name	25.00
16 (iv) Notice of transfer of reserved name	25.00
17 (v) Statement of change of registered agent or	
18 registered office or both	25.00
19 (vi) Agent's statement of change of registered office	
20 for each affected Limited Liability Company	
21 not to exceed a total of	125.00
22 (vii) Agent's statement of resignation	25.00
23 (viii) Amendment of articles of organization	25.00
24 (ix) Restatement of articles of organization with	
25 amendment of articles of organization	25.00
26 (x) Articles of merger or share exchange	50.00
27 (xi) Articles of dissolution	50.00
28 (xii) Certificate of judicial dissolution	No fee
29 (xiii) Application for certificate of authority by	
30 Foreign Limited Liability Company	300.00
31 (xiv) Application for amended certificate of authority	
32 by Foreign Limited Liability Company	300.00
33 (xv) Application for certificate of withdrawal by	
34 Foreign Limited Liability Company	25.00
35 (xvi) Certificate of revocation of authority to transact	

1	business	No fee
2	(xvii) Articles of correction	\$30.00
3	(xviii) Application for certificate of existence or	
4	authorization by Domestic Limited Liability	
5	Company	15.00
6	(xix) Any other document required or permitted to be	
7	filed by this chapter	25.00

8 (b) The Secretary of State shall collect a fee of twenty-five dollars
9 (\$25.00) each time process is served on him under this chapter. The party to
10 a proceeding causing service of process is entitled to recover this fee as
11 costs if he prevails in the proceeding.

12 (c) The Secretary of State shall collect the following fees for
13 copying and certifying the copy of any filed document relating to a domestic
14 or foreign Limited Liability Company:

- 15 (1) Fifty cents (\$.50) a page for copying; and
- 16 (2) Five dollars (\$5.00) for the certificate.
- 17 §1303. Correcting filed document.

18 (a) A Domestic or Foreign Limited Liability Company may correct a
19 document filed by the Secretary of State if the document:

- 20 (1) Contains an incorrect statement; or
- 21 (2) Was defectively executed, attested, sealed, verified, or
- 22 acknowledged.

23 (b) A document is corrected:

- 24 (1) By preparing articles of *correction* that:
 - 25 (i) Describe the document (including its filing date) or attach
 - 26 a copy of it to the articles;
 - 27 (ii) Specify the incorrect statement and the reason it is
 - 28 incorrect or the manner in which the execution was defective; and
 - 29 (iii) Correct the incorrect statement or defective execution; and

30 (2) By delivering the articles to the Secretary of State for filing.

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

35 §1304. Appeal from Secretary of State's refusal to file document.

1 (a) If the Secretary of State refused to file a document delivered to
2 this office for filing, the Domestic or Foreign Limited Liability Company may
3 appeal the refusal within thirty (30) days after the return of the document to
4 the Pulaski County Circuit Court. The appeal is commenced by petitioning the
5 court to compel filing the document and by attaching to the petition the
6 document and the Secretary of State's explanation of his refusal to file.

7 (b) The court may summarily order the Secretary of State to file the
8 document or take other action the court considers appropriate.

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

11 §1305. Evidentiary Effect of Copy of Filed Document.

12 A certificate attached to a copy of a document filed by the Secretary of
13 State, bearing his signature (which may be in facsimile) and the seal of this
14 state, is conclusive evidence that the original document is on file with the
15 Secretary of State.

16 §1306. Certificate of Existence.

17 (a) Anyone may apply to the Secretary of State to furnish a
18 certificate of existence for a domestic Limited Liability Company or a
19 certificate of authorization for a foreign Limited Liability Company.

20 (b) A certificate of existence or authorization sets forth:

21 (1) The domestic Limited Liability Company name or the foreign Limited
22 Liability Company's corporate name used in this state;

23 (2) That:

24 (i) The domestic Limited Liability Company is duly formed under
25 the laws of this state, the date of its formation, and the period
26 of its duration; or

27 (ii) That the foreign Limited Liability Company is authorized to
28 transact business in this state;

29 (3) That all fees, taxes, and penalties owed to this state have been
30 paid if:

31 (i) Payment is reflected in the records of the Secretary of
32 State; and

33 (ii) Nonpayment affects the existence or authorization of the
34 domestic or foreign Limited Liability Company.

35 (4) That articles of dissolution have not been filed; and

1 (5) Other facts of record in the office of the Secretary of State that
2 may be requested by the applicant.

3 (c) Subject to any qualification stated in the certificate, a
4 certificate of existence or authorization issued by the Secretary of State may
5 be relied upon as conclusive evidence that the Domestic or Foreign Limited
6 Liability Company is in existence or is authorized to transact business in
7 this state.

8 §1307. Penalty for Signing False Documents.

9 (a) A person commits an offense if he signs a document he knows is
10 false in any material respect with intent that the document be delivered to
11 the Secretary of State for filing.

12 (b) An offense under this section is a Class C misdemeanor.

13 §1308. Powers of Secretary of State.

14 The Secretary of State has the power reasonably necessary to perform the
15 duties required of him by this chapter.

16 §1309. Definition of Knowledge.

17 A Person has "knowledge" of a fact within the meaning of this Act not
18 only when he has actual knowledge thereof, but also when he has knowledge of
19 such other facts as in the circumstances shows bad faith.

20 §1310. Rules of Construction.

21 (a) It is the policy of this Act to give maximum effect to the
22 principle of freedom of contract and to the enforceability of Operating
23 Agreements.

24 (b) Unless displaced by particular provisions of this Act, the
25 principles of law and equity supplement this Act.

26 (c) Rules that statutes in derogation of the common law are to be
27 strictly construed shall have no application to this Act.

28 (d) Neither this Act nor any amendment of this Act shall be construed
29 so as to impair the obligations of any contract existing when the Act or
30 amendment goes into effect, nor to affect any action or proceedings begun or
31 right accrued before the Act or amendment takes effect.

32 §1311. Severability. If any provision of this Act or its application
33 to any Person or circumstance is held invalid, the invalidity does not affect
34 other provisions or applications of this Act which can be given effect without
35 the invalid provision or application. To this end, the provisions of this Act

1 are severable.

2 §1312. Interstate Application.

3 A Limited Liability Company organized and existing under this Act may
4 conduct its business, carry on its operations and have and exercise the powers
5 granted by this Act in any state or foreign country.

6 §1313. Tax Status.

7 Every Limited Liability Company having two or more Members shall make a
8 return for each taxable year as required for every partnership pursuant to ACA
9 § 26-51-802. The income and expenses of every Limited Liability Company
10 having only one Member shall be reported on the Member's income tax return.

11 §1314. Governing Law.

12 (a) The liability of Members, Managers, employees and agents of a
13 Limited Liability Company organized and existing under this Act shall at all
14 times be determined solely and exclusively by this Act and the laws of this
15 State.

16 (b) If a conflict arises between the law of this State and the laws of
17 any other jurisdiction with regard to the liability of a Member, Manager,
18 employee or agent of a Limited Liability Company organized and existing under
19 this Act for the debts, obligations and liabilities of the Limited Liability
20 Company, or for the acts or omissions of another Member, Manager, employee, or
21 agent of the Limited Liability Company, this Act and the laws of this State
22 shall govern in determining such liability.

23 §1315. Full Faith and Credit.

24 It is the intent of the legislature that the legal existence of Limited
25 Liability Companies organized under this Act be recognized outside the
26 boundaries of this State and that, subject to any reasonable requirement of
27 registration, a domestic Limited Liability Company transacting business
28 outside this State be granted full faith and credit under Section 1 of Article
29 IV of the Constitution of the United States.

30

31 §1316. REPEALER

32 All laws and parts of laws in conflict with the provisions of this Act
33 are hereby repealed. Furthermore, the laws of this State relating to the
34 establishment and regulation of Professional Service are hereby amended and
35 superseded to the extent such laws are inconsistent as to form of organization

1 with the provisions of this Act, and are deemed amended to permit the
2 provisions of Professional Service within this State by Limited Liability
3 Companies. *By way of example and not by way of limitation of the foregoing,*
4 *Arkansas Code Annotated §17-12-702 presently applies to persons, partnerships,*
5 *and corporations and shall hereafter be deemed to apply to persons,*
6 *partnerships, corporations, and limited liability companies.*

7

8 §1317. All provisions of this act of a general and permanent nature are
9 amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
10 Revision Commission shall incorporate the same in the Code.

11

12 §1318. EMERGENCY CLAUSE

13 It is hereby found and determined by the Seventy-Ninth General Assembly
14 that there is a public need for adoption of this Act, and that the immediate
15 passage of this Act is necessary. Therefore, an emergency is hereby declared
16 to exist and this Act shall be in full force and effect from and after its
17 passage and approval.

18

/s/J. Mahony

19

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APPROVED: 4/12/93

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