

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 780
Judiciary II Committee Substitute Adopted 6/17/93

Short Title: N.C. Lmted. Liability Co. Act.

(Public)

Sponsors:

Referred to: Finance.

April 8, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO PERMIT THE ORGANIZATION AND OPERATION OF LIMITED
3 LIABILITY COMPANIES AND TO LIMIT THE LIABILITY OF
4 SHAREHOLDERS OF PROFESSIONAL CORPORATIONS AND PARTNERS
5 OF REGISTERED LIMITED LIABILITY PARTNERSHIPS.

6 The General Assembly of North Carolina enacts:

7 Section 1. The General Statutes are amended by adding a new Chapter to
8 read:

9 **"CHAPTER 57C.**

10 **"NORTH CAROLINA LIMITED LIABILITY COMPANY ACT.**

11 **"ARTICLE 1.**

12 **"GENERAL PROVISIONS.**

13 **"PART 1. SHORT TITLE; RESERVATION OF POWER; DEFINITIONS.**

14 **"§ 57C-1-01. Short title.**

15 This Chapter is the 'North Carolina Limited Liability Company Act' and may be
16 cited by that name.

17 **"§ 57C-1-02. Reservation of power to amend or repeal.**

18 The General Assembly has power to amend or repeal all or part of this Chapter at
19 any time and all domestic limited liability companies and foreign limited liability
20 companies subject to this Chapter are governed by the amendment or repeal.

21 **"§ 57C-1-03. Definitions.**

22 The following definitions apply in this Chapter, unless otherwise specifically
23 provided:

- 1 (1) Articles of organization. – The document filed under G.S. 57C-2-20 of
2 this Chapter for the purpose of forming a limited liability company, as
3 amended or restated.
- 4 (2) Bankrupt. – Bankrupt under the United States Bankruptcy Code, as
5 amended, or insolvent under State insolvency laws.
- 6 (3) Business. – Any trade, occupation, investment, or other commercial
7 activity engaged in for gain or profit.
- 8 (4) Corporation. – Has the same meaning as in G.S. 55-1-40(4).
- 9 (5) Court. – Includes every court and judge having jurisdiction in the case.
- 10 (6) Distribution. – A direct or indirect transfer of money or other property
11 or incurrence of indebtedness by a limited liability company to or for
12 the benefit of its members in respect of their membership interests.
- 13 (7) Foreign corporation. – Has the same meaning as in G.S. 55-1-40(10).
- 14 (8) Foreign limited liability company. – An unincorporated organization
15 formed under laws other than the laws of this State, that affords to
16 each of its members, pursuant to the laws under which it is formed,
17 limited liability with respect to the liabilities of the organization.
- 18 (9) Foreign limited partnership. – Has the same meaning as in G.S. 59-
19 102(5).
- 20 (10) Individual. – A human being.
- 21 (11) Limited liability company or domestic limited liability company. – An
22 entity formed and existing under this Chapter.
- 23 (12) Limited partnership or domestic limited partnership. – Has the same
24 meaning as in G.S. 59-102(97).
- 25 (13) Manager. – Has the following meanings: (i) with respect to a limited
26 liability company that has set forth in its articles of organization that it
27 is to be or may be managed by persons other than members, any
28 person designated in accordance with G.S. 57C-3-20(a), (ii) with
29 respect to any other limited liability company, its members, and (iii)
30 with respect to a foreign limited liability company, any person
31 authorized to act for and bind the foreign limited liability company.
- 32 (14) Member. – A person who has been admitted to membership in the
33 limited liability company as provided in G.S. 57C-3-01 until the
34 person's membership ceases as provided in G.S. 57C-3-02.
- 35 (15) Membership interest or interest. – All of a member's rights in the
36 limited liability company, including without limitation the member's
37 share of the profits and losses of the limited liability company, the
38 right to receive distributions of the limited liability company assets,
39 any right to vote, and any right to participate in management.
- 40 (16) Operating agreement. – Any agreement, written or oral, of the
41 members with respect to the affairs of a limited liability company and
42 the conduct of its business that is binding on all the members.
- 43 (17) Person. – An individual, trust, estate, domestic corporation, foreign
44 corporation, professional corporation, partnership, limited partnership,

1 limited liability company, foreign limited liability company,
2 unincorporated association, or other entity.

3 (18) State. – A state, territory or possession of the United States, the
4 District of Columbia, or the Commonwealth of Puerto Rico.

5 **"PART 2. FILING DOCUMENTS.**

6 **"§ 57C-1-20. Filing requirements.**

7 (a) To be entitled to filing by the Secretary of State under this Chapter, a
8 document must satisfy the requirements of this section, and of any other section that
9 adds to or varies these requirements.

10 (b) The document must be one that is required or permitted by this Chapter to be
11 filed in the office of the Secretary of State.

12 (c) The document must contain the information required by this Chapter. It may
13 contain other information as well.

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

15 (e) The document must be in the English language. The name of a limited
16 liability company need not be in English if written in English letters or Arabic or
17 Roman numerals, and the certificate of existence required of foreign limited liability
18 companies need not be in English if accompanied by a reasonably authenticated English
19 translation.

20 (f) The document must be executed:

21 (1) By a manager of a domestic or foreign limited liability company;

22 (2) If managers have not been selected, or if the limited liability company
23 does not have a manager other than a member, by any member;

24 (3) If the limited liability company has not been formed, by an organizer;
25 or

26 (4) If the limited liability company is in the hands of a receiver, trustee, or
27 other court-appointed fiduciary, by that fiduciary.

28 (g) The person executing the document shall sign it and state beneath or opposite
29 his signature his name and the capacity in which he signs. The document may but need
30 not contain an acknowledgement, verification, or proof.

31 (h) If the Secretary of State has prescribed a mandatory form for the document
32 under G.S. 57C-1-21, the document must be in or on the prescribed form unless the
33 Secretary of State otherwise permits an alternative form.

34 (i) The document must be delivered to the office of the Secretary of State for
35 filing and must be accompanied by one exact or conformed copy, and all fees required
36 by this Chapter.

37 (j) Any signature on any document authorized to be filed with the Secretary of
38 State under any provision of this Chapter may be a facsimile.

39 **"§ 57C-1-21. Forms.**

40 (a) The Secretary of State may promulgate and furnish on request forms for:

41 (1) An application for a certificate of existence;

42 (2) A foreign limited liability company's application for a certificate of
43 authority to transact business in this State; and

1 (3) A foreign limited liability company's application for a certificate of
2 withdrawal.

3 If the Secretary of State so requires, use of these forms is mandatory.

4 (b) The Secretary of State may promulgate and furnish on request forms for other
5 documents required or permitted to be filed by this Chapter but their use is not
6 mandatory.

7 **"§ 57C-1-22. Filing, service, and copying fees.**

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

Document	Fee
(1) <u>Articles of organization</u>	<u>\$100.00</u>
(2) <u>Application for reserved name</u>	<u>10.00</u>
(3) <u>Notice of transfer of reserved name</u>	<u>10.00</u>
(4) <u>Application for registered name</u>	<u>10.00</u>
(5) <u>Application for renewal of registered name</u>	<u>10.00</u>
(6) <u>Limited liability company's statement of</u> <u>change of registered agent or registered</u> <u>office or both</u>	<u>5.00</u>
(7) <u>Agent's statement of change of registered</u> <u>office for each affected limited</u> <u>liability company</u>	<u>5.00</u>
(8) <u>Agent's statement of resignation</u>	<u>No fee</u>
(9) <u>Designation of registered agent or</u> <u>registered office or both</u>	<u>5.00</u>
(10) <u>Amendment of articles of organization</u>	<u>50.00</u>
(11) <u>Restated articles of organization</u> <u>with amendment of articles</u>	<u>10.00</u> <u>50.00</u>
(12) <u>Articles of merger</u>	<u>50.00</u>
(13) <u>Articles of dissolution</u>	<u>30.00</u>
(14) <u>Articles of revocation of dissolution</u>	<u>10.00</u>
(15) <u>Certificate of administrative dissolution</u>	<u>No fee</u>
(16) <u>Certificate of reinstatement</u>	<u>No fee</u>
(17) <u>Certificate of judicial dissolution</u>	<u>No fee</u>
(18) <u>Application for certificate of authority</u>	<u>200.00</u>
(19) <u>Application for amended certificate</u> <u>of authority</u>	<u>50.00</u>
(20) <u>Application for certificate of withdrawal</u>	<u>10.00</u>
(21) <u>Certificate of revocation of authority</u> <u>to transact business</u>	<u>No fee</u>
(22) <u>Articles of correction</u>	<u>10.00</u>
(23) <u>Application for certificate of existence</u> <u>or authorization</u>	<u>5.00</u>
(24) <u>Annual report</u>	<u>100.00</u>
(25) <u>Any other document required or permitted</u>	

1 to be filed by this Chapter 10.00.

2 (b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time
3 process is served on the Secretary of State under this Chapter. The party to a
4 proceeding causing service of process is entitled to recover this fee as costs if he
5 prevails in the proceeding.

6 (c) The Secretary of State shall collect the following fees for copying,
7 comparing, and certifying a copy of any filed document relating to a domestic or foreign
8 limited liability company:

9 (1) One dollar (\$1.00) a page for copying or comparing a copy to the
10 original; and

11 (2) Five dollars (\$5.00) for the certificate.

12 **"§ 57C-1-23. Effective time and date of document.**

13 (a) Except as provided in subsection (b) of this section and G.S. 57C-1-24(c), a
14 document accepted for filing is effective:

15 (1) At the time of filing on the date it is filed, as evidenced by the
16 Secretary of State's date and time endorsement on the original
17 document; or

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

20 (b) A document may specify a delayed effective time and date, and if it does so
21 the document becomes effective at the time and date specified. If a delayed effective
22 date but no time is specified, the document is effective at 11:59 p.m. Raleigh, North
23 Carolina time on that date. A delayed effective date for a document may not be later
24 than the 90th day after the date it is filed.

25 (c) The fact that a document has become effective under this section does not
26 determine its validity or invalidity or the correctness or incorrectness of the information
27 contained in the document.

28 **"§ 57C-1-24. Correcting filed document.**

29 (a) A domestic or foreign limited liability company may correct a document filed
30 by the Secretary of State if the document (i) contains an incorrect statement or (ii) was
31 defectively executed.

32 (b) A document is corrected:

33 (1) By preparing articles of correction that (i) describe the document
34 (including its filing date) or attach a copy of it to the articles, (ii)
35 specify the incorrect statement and the reason it is incorrect or the
36 manner in which the execution was defective, and (iii) correct the
37 incorrect statement or defective execution; and

38 (2) By delivering the articles of correction to the Secretary of State for
39 filing.

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

43 **"§ 57C-1-25. Filing duty of Secretary of State.**

1 (a) If a document delivered to the office of the Secretary of State for filing
2 satisfies the requirements of this Chapter, the Secretary of State shall file it.

3 (b) The Secretary of State files a document by stamping or otherwise endorsing
4 'Filed', together with his name and official title and the date and time of filing, on both
5 the original and the document copy. After filing a document, the Secretary of State
6 shall deliver the document copy to the domestic or foreign limited liability company or
7 its representative.

8 (c) If the Secretary of State refuses to file a document, the Secretary of State
9 shall return it to the domestic or foreign limited liability company or its representative
10 within five days after the document was received, together with a brief, written
11 explanation of the reason for his refusal.

12 (d) The Secretary of State's duty is to review and file documents that satisfy the
13 requirements of this Chapter. The Secretary of State's filing or refusing to file a
14 document does not:

15 (1) Affect the validity or invalidity of the document in whole or part;

16 (2) Relate to the correctness or incorrectness of information contained in
17 the document; or

18 (3) Create a presumption that the document is valid or invalid or that
19 information contained in the document is correct or incorrect.

20 **"§ 57C-1-26. Appeal from Secretary of State's refusal to file document.**

21 (a) If the Secretary of State refuses to file a document delivered to the Secretary
22 of State's office for filing, the person tendering the document for filing may, within 30
23 days after the refusal, appeal the refusal to the Superior Court of Wake County. The
24 appeal is commenced by filing a petition with the court and with the Secretary of State
25 requesting the court to compel the Secretary of State to file the document. The petition
26 shall have attached to it the document to be filed and the Secretary of State's explanation
27 for his refusal to file. The appeal to the superior court is not governed by the
28 Administrative Procedure Act and shall be determined upon such further notice and
29 opportunity to be heard, if any, as the court may deem appropriate under the
30 circumstances.

31 (b) Upon consideration of the petition and any response made by the Secretary of
32 State, the court may, prior to entering final judgment, order the Secretary of State to file
33 the document or take other action the court considers appropriate.

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

35 **"§ 57C-1-27. Evidentiary effect of copy of filed document.**

36 A certificate attached to a copy of a document filed by the Secretary of State,
37 bearing the Secretary of State's signature (which may be in facsimile) and the seal of
38 office and certifying that said copy is a true copy of said document, is conclusive
39 evidence that the original document is on file with the Secretary of State.

40 **"§ 57C-1-28. Certificate of existence.**

41 (a) Anyone may apply to the Secretary of State to furnish a certificate of
42 existence for a domestic limited liability company or a certificate of authorization for a
43 foreign limited liability company.

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

- 1 (1) The domestic limited liability company's name or the foreign limited
2 liability company's name used in this State;
3 (2) That (i) the domestic limited liability company is duly formed under
4 the law of this State, the date of its formation, and the period of its
5 duration; or (ii) that the foreign limited liability company is authorized
6 to transact business in this State;
7 (3) That the articles of organization of a domestic limited liability
8 company or the certificate of authority of a foreign limited liability
9 company has not been suspended for failure to comply with the
10 Revenue Act of this State, and that the limited liability company has
11 not been administratively dissolved for failure to comply with the
12 provisions of this Chapter;
13 (4) That articles of dissolution have not been filed; and
14 (5) Other facts of record in the office of the Secretary of State that may be
15 requested by the applicant.

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

20 **"§ 57C-1-29. Penalty for signing false document.**

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

24 (b) An offense under this section is a misdemeanor.

25 **"PART 3. SECRETARY OF STATE.**

26 **"§ 57C-1-30. Powers of the Secretary of State.**

27 The Secretary of State has the power reasonably necessary to perform the duties
28 required by this Chapter.

29 **"§ 57C-1-31. Interrogatories by Secretary of State.**

30 The Secretary of State may propound to any foreign or domestic limited liability
31 company that the Secretary of State has reason to believe is subject to the provisions of
32 this Chapter, and to any manager thereof, such written interrogatories as may be
33 reasonably necessary and proper to enable the Secretary of State to ascertain whether
34 the limited liability company is subject to the provisions of this Chapter or has complied
35 with all of the provisions of this Chapter applicable to it. Subject to applicable
36 jurisdictional requirements, the interrogatories shall be answered within 30 days after
37 the mailing thereof, or within such additional time as shall be fixed by the Secretary of
38 State, and the answers thereto shall be full and complete and shall be made in writing
39 and under oath. If the interrogatories are directed to an individual they shall be
40 answered by the individual, and if directed to a foreign or domestic limited liability
41 company they shall be answered by any manager thereof. The Secretary of State shall
42 certify to the Attorney General for such action as the Attorney General may deem
43 appropriate, all interrogatories and answers thereto which disclose a violation of any of
44 the provisions of this Chapter requiring or permitting action by the Attorney General.

1 **"§ 57C-1-32. Penalties imposed upon domestic and foreign limited liability**
2 **companies for failure to answer interrogatories.**

3 (a) If a foreign or domestic limited liability company fails or refuses to answer
4 truthfully and fully within the time prescribed in this Chapter interrogatories
5 propounded by the Secretary of State in accordance with the provisions of this Chapter,
6 the Secretary of State may suspend its articles of organization or its certificate of
7 authority to do business in this State.

8 (b) Each manager of a foreign or domestic limited liability company who fails or
9 refuses within the time prescribed by this Chapter to answer truthfully and fully
10 interrogatories propounded to the manager by the Secretary of State in accordance with
11 the provisions of this Chapter shall be guilty of a misdemeanor.

12 **"§ 57C-1-33. Information disclosed by interrogatories.**

13 Interrogatories propounded by the Secretary of State and the answers thereto shall
14 not be open to public inspection nor shall the Secretary of State disclose any facts or
15 information obtained therefrom except insofar as the Secretary of State's official duty
16 may require the same to be made public or in the event the interrogatories or the
17 answers thereto are required for evidence in any criminal proceedings or in any other
18 action or proceedings by this State.

19 **"ARTICLE 2.**

20 **"PURPOSES, POWERS, FORMATION, ANNUAL REPORT,**
21 **NAME, REGISTERED OFFICE, AND AGENT.**

22 **"PART 1. PURPOSES AND POWERS.**

23 **"§ 57C-2-01. Purposes.**

24 (a) Every limited liability company organized under this Chapter has the purpose
25 of engaging in any lawful business unless a more limited lawful purpose is set forth in
26 its articles of organization.

27 (b) A domestic or foreign limited liability company engaging in a business that is
28 subject to regulation under another statute of this State may be formed or authorized to
29 transact business under this Chapter only if permitted by and subject to all limitations of
30 the other statute giving effect to subsection (c) of this section.

31 (c) Subsections (a) and (b) of this section to the contrary notwithstanding, and
32 except as set forth in this subsection, a domestic or foreign limited liability company
33 shall engage in rendering professional services only to the extent that, and subject to the
34 conditions and limitations under which, a professional corporation may engage in
35 rendering professional services under Chapter 55B of the General Statutes (the
36 Professional Corporation Act) and under the applicable licensing statute. Chapter 55B
37 of the General Statutes and each applicable licensing statute are deemed amended to
38 provide that professionals licensed under the applicable licensing statute may render
39 professional services through a domestic or foreign limited liability company. For
40 purposes of applying the provisions, conditions, and limitations of Chapter 55B of the
41 General Statutes and the applicable licensing statute to domestic and foreign limited
42 liability companies that engage in rendering professional services, (i) unless the context
43 clearly requires otherwise, references to Chapter 55 of the General Statutes (the North
44 Carolina Business Corporation Act) shall be treated as references to this Chapter, and

1 references to a 'corporation' or 'foreign corporation' shall be treated as references to a
2 limited liability company or foreign limited liability company, respectively, (ii)
3 members shall be treated in the same manner as shareholders of a professional
4 corporation, (iii) managers shall be treated in the same manner as directors of a
5 professional corporation, (iv) the persons signing the articles of organization of a
6 limited liability company shall be treated in the same manner as the incorporators of a
7 professional corporation, and (v) the name of a domestic or foreign limited liability
8 company so engaged shall comply with G.S. 57C-2-30 or G.S. 57C-7-06 and, in
9 addition, shall contain the word 'Professional' or the abbreviation 'P.L.L.C.' or 'PLLC'.
10 For purposes of this subsection, 'applicable licensing statute' shall mean those
11 provisions of the General Statutes referred to in G.S. 55B-2(6).

12 Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter
13 the law in this State applicable to the professional relationship and liabilities between
14 the individual furnishing the professional services and the person receiving the
15 professional services, or the standards of professional conduct applicable to the
16 rendering of the services. A member or manager of a professional limited liability
17 company is not individually liable for debts and obligations of the professional limited
18 liability company arising from errors, omissions, negligence, incompetence, or
19 malfeasance committed in the course of the professional limited liability company's
20 business by another member or manager or a representative of the professional limited
21 liability company not working under the supervision or direction of the first member or
22 manager at the time the errors, omissions, negligence, incompetence, or malfeasance
23 occurred, unless the first member or manager was directly involved in the specific
24 activity in which the errors, omissions, negligence, incompetence, or malfeasance were
25 committed by the other member or manager or representative.

26 **"§ 57C-2-02. Powers of the limited liability company.**

27 Unless its articles of organization of this Chapter provide otherwise, each limited
28 liability company has the same powers as an individual to do all things necessary or
29 convenient to carry out its business and affairs, including, without limitation, power:

- 30 (1) To sue and be sued, complain and defend in its own name;
- 31 (2) To make and amend operating agreements, not inconsistent with its
32 articles of organization or with the laws of this State, for managing the
33 business and regulating the affairs of the limited liability company;
- 34 (3) To purchase, receive, lease, or otherwise acquire, and own, hold,
35 improve, use, and otherwise deal with, real or personal property, or
36 any legal or equitable interest in property, wherever located.
- 37 (4) To sell, convey, mortgage, pledge, lease, exchange, and otherwise
38 dispose of all or any part of its property;
- 39 (5) To purchase, receive, subscribe for, or otherwise acquire; own, hold,
40 vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and
41 deal in and with shares or other interests in, or obligations of, any other
42 entity;
- 43 (6) To make contracts and guarantees, incur liabilities, borrow money,
44 issue its notes, bonds, and other obligations (which may be convertible

- 1 into or include the option to purchase other interests in the limited
2 liability company), and secure any of its obligations by mortgage or
3 pledge of any of its property, franchises, or income;
- 4 (7) To lend money, invest and reinvest its funds, and receive and hold real
5 and personal property as security for repayment;
- 6 (8) To be a promoter, partner, member, associate, or manager of any
7 partnership, joint venture, trust, or other entity;
- 8 (9) To conduct its business, locate offices, and exercise the powers
9 granted by this Chapter within or without this State;
- 10 (10) To elect or appoint managers, officers, employees, and agents of the
11 limited liability company, define their duties, fix their compensation,
12 and lend them money and credit;
- 13 (11) To pay pensions and establish pension plans, pension trusts, profit
14 sharing plans, and other benefit or incentive plans for any or all of its
15 current or former managers, officers, employees, and agents;
- 16 (12) To make donations for the public welfare or for charitable, religious,
17 cultural, scientific, or educational purposes;
- 18 (13) To transact any lawful business that will aid governmental policy;
- 19 (14) To make payments or donations, or do any other act, not inconsistent
20 with law, that furthers the business and affairs of the limited liability
21 company;
- 22 (15) To provide insurance for its benefit on the life or physical or mental
23 ability of any of its managers, officers, or employees or on the life or
24 physical or mental ability of any owner of any interest in the limited
25 liability company for the purpose of acquiring the interest owned by
26 him at the time of his death or disability, and for these purposes the
27 limited liability company is deemed to have an insurable interest in its
28 managers, officers, employees, or members and other interest owners;
29 and to provide insurance for its benefit on the life or physical or mental
30 ability of any other person in whom it has an insurable interest; and
- 31 (16) To render professional services, subject to G.S. 57C-2-01(c).

32 **"PART 2. FORMATION; ARTICLES OF ORGANIZATION;**
33 **AMENDMENT OF ARTICLES; ANNUAL REPORT.**

34 **"§ 57C-2-20. Formation.**

- 35 (a) Two or more persons may organize a limited liability company by delivering
36 executed articles of organization to the Secretary of State for filing.
- 37 (b) (1) When the Secretary of State files the articles of
38 organization, the proposed organization becomes a limited liability
39 company subject to this Chapter and to the purposes, conditions, and
40 provisions stated in the articles, and the persons executing the
41 articles of organization become members of the limited liability
42 company.
- 43 (2) Filing of the articles by the Secretary of State is conclusive evidence of
44 the organization of the limited liability company, except in a

1 proceeding by the State to cancel or revoke the articles of organization
2 or involuntarily dissolve the limited liability company.

3 **"§ 57C-2-21. Articles of organization.**

4 (a) The articles of organization must set forth:

- 5 (1) A name for the limited liability company that satisfies the provisions
6 of G.S. 57C-2-30;
7 (2) The latest date on which the limited liability company is to dissolve;
8 (3) The name and address of each person executing the articles of
9 organization;
10 (4) The street address, and the mailing address if different from the street
11 address, of the limited liability company's initial registered office, the
12 county in which the initial registered office is located, and the name of
13 the limited liability company's initial registered agent at that address;
14 (5) Unless all of the members by virtue of their status as members shall be
15 managers of the limited liability company, a statement that, except as
16 provided in G.S. 57C-3-20(a), the members shall not be managers by
17 virtue of their status as members.

18 (b) The articles of organization may set forth any other provision, not
19 inconsistent with law, including any other matter that under this Chapter is permitted to
20 be set forth in an operating agreement.

21 (c) The articles of organization need not set forth any of the powers enumerated
22 in this Chapter.

23 **"§ 57C-2-22. Amendment of articles of organization.**

24 (a) The articles of organization shall be amended when:

- 25 (1) There is a change in the name of the limited liability company;
26 (2) There is a false or erroneous statement in the articles of organization;
27 (3) There is a change in the time as stated in the articles of organization
28 for the dissolution of the limited liability company; or
29 (4) The members desire to make a change in the articles of organization.

30 (b) Unless otherwise provided in the articles of organization or a written
31 operating agreement, any amendment to the articles of organization shall require the
32 unanimous vote of the members.

33 **"§ 57C-2-23. Annual report for Secretary of State.**

34 (a) Each domestic limited liability company and each foreign limited liability
35 company authorized to transact business in this State, shall deliver to the Secretary of
36 State for filing an annual report that sets forth:

- 37 (1) The name of the limited liability or foreign limited liability company
38 and the state or country under whose law it is organized;
39 (2) The street address, and the mailing address if different from the street
40 address, of the registered office, the county in which the registered
41 office is located, and the name of its registered agent at that office in
42 this State, and a statement of any change of the registered office or
43 registered agent, or both;
44 (3) The address of its principal office;

1 (3) The fictitious name adopted by a foreign corporation, foreign limited
2 partnership, or foreign limited liability company authorized to transact
3 business in this State because its real name is unavailable.

4 (c) A person may apply to the Secretary of State for authorization to use a name
5 that is not distinguishable upon the Secretary of State's records from one or more of the
6 names described in subsection (b) of this section. The Secretary of State shall authorize
7 use of the name applied for if:

8 (1) The other person who has or uses the name or who has reserved or
9 registered the name consents to the use in writing and submits an
10 undertaking in form satisfactory to the Secretary of State to change its
11 name to a name that is distinguishable upon the records of the
12 Secretary of State from the name of the applicant; or

13 (2) The applicant delivers to the Secretary of State a certified copy of the
14 final judgment of a court of competent jurisdiction establishing the
15 applicant's right to use the name applied for in this State.

16 (d) The use of assumed names or fictitious names, as provided for in Chapter 66
17 of the General Statutes, is not affected by this Chapter.

18 (e) Neither the reservation or registration of a name, the organization of a limited
19 liability company, nor the obtaining by a foreign limited liability company of a
20 certificate of authority shall authorize the use in this State of a name in violation of the
21 rights of any third party under the federal trademark act, the trademark act of this State,
22 or other statutory common law, or be a defense to an action for violation of any such
23 rights.

24 (f) The name of a limited liability company dissolved under G.S. 57C-6-03 may
25 not be used by another limited liability company until the expiration of two years after
26 the effective date of the articles of dissolution unless the dissolved limited liability
27 company consents in writing to the use.

28 **"§ 57C-2-31. Reserved name.**

29 (a) A person may reserve the exclusive use of a limited liability company name,
30 including a fictitious name for a foreign limited liability company whose name is not
31 available, by filing an application with the Secretary of State. The application must set
32 forth the name and address of the applicant and the name proposed to be reserved. If
33 the Secretary of State finds that the name applied for is available, the Secretary of State
34 shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day
35 period.

36 (b) The owner of a reserved limited liability company name may transfer the
37 reservation to another person by filing with the Secretary of State a signed notice of the
38 transfer that states the name and address of the transferee.

39 (c) Any person acquiring the goodwill of a domestic limited liability company or
40 of a foreign limited liability company authorized to transact business in this State may,
41 on furnishing the Secretary of State satisfactory evidence of such acquisition, reserve
42 the exclusive right to the limited liability company name of the limited liability
43 company for a period of 10 years.

44 **"§ 57C-2-32. Registered name.**

1 (a) A foreign limited liability company may register its limited liability company
2 name, or its limited liability company name with any addition required to conform its
3 name to the requirements of G.S. 57C-7-06.

4 (b) A foreign limited liability company registers its name, or its name with any
5 required addition, by filing with the Secretary of State an application:

6 (1) Setting forth its name, or its name with any required addition, the state
7 or country and date of its organization, and a brief description of the
8 nature of the business in which it is engaged; and

9 (2) Accompanied by a certificate of existence (or a document of a similar
10 import) from the state or country of organization.

11 (c) The name is registered for the applicant's exclusive use upon the effective
12 date of the application and until the end of the calendar year in which it became
13 effective.

14 (d) A foreign limited liability company whose registration is effective may renew
15 it for successive years by filing with the Secretary of State a renewal application, which
16 complies with the requirements of subsection (b) of this section, between October 1 and
17 December 31 of the preceding year. The renewal application renews the registration for
18 the following calendar year. Any renewal application filed after the expiration of the
19 registration shall be treated as a new application for registration.

20 (e) A foreign limited liability company whose registration is effective may
21 thereafter qualify as a foreign limited liability company under that name or consent in
22 writing to the use of that name by a limited liability company thereafter organized under
23 this Chapter or by another foreign limited liability company thereafter authorized to
24 transact business in this State. The registration terminates when the domestic limited
25 liability company is organized or the foreign limited liability company qualifies or
26 consents to the qualification of another foreign limited liability company under the
27 registered name.

28 **"§ 57C-2-33. Reserved and registered names; powers of the Secretary of State.**

29 The Secretary of State may revoke any reservation or registration of a limited
30 liability company name if the Secretary of State finds, upon a hearing not less than 20
31 days after written notice has been sent by registered or certified mail, return receipt
32 requested, to the person or limited liability company who made the reservation or
33 registration, that the application thereof or any transfer thereof was not made in good
34 faith or that any statement contained in the application for reservation or registration
35 was false when the application was filed or has thereafter become false.

36 **"§ 57C-2-34. Real property records.**

37 (a) Whenever the name of any domestic or foreign limited liability company
38 holding title to real property in this State is changed upon amendment to its articles of
39 organization or whenever title to real property in this State is transferred by operation of
40 law upon merger of two or more limited liability companies, a certificate reciting the
41 change or transfer shall be recorded in the office of the register of deeds of the county
42 where the property lies, or if the property is located in more than one county, then in
43 each county where any portion of the property lies.

1 (b) The Secretary of State shall adopt uniform certificates to be furnished for
2 registration in accordance with this section. In the case of a foreign limited liability
3 company, a similar certificate by any competent authority of the jurisdiction of
4 organization may be registered in accordance with this section.

5 (c) The certificate required by this section shall be recorded by the register of
6 deeds in the same manner as deeds, and for the same fees, but no formalities as to
7 acknowledgement, probate, or approval by any other officer shall be required. The
8 former name of the limited liability company holding title to the real property before the
9 amendment or merger shall appear 'Grantor' index, and the amended name of the limited
10 liability company holding title to the real property by virtue of the amendment or
11 merger shall appear in the 'Grantee' index.

12 **"PART 4. REGISTERED OFFICE AND AGENT.**

13 **"§ 57C-2-40. Registered office and registered agent.**

14 (a) Each limited liability company must continuously maintain in this State:

- 15 (1) A registered office that may be the same as any of its places of
16 business; and
- 17 (2) A registered agent, who shall be (i) an individual who resides in this
18 State and whose business office is identical with the registered office;
19 (ii) a domestic corporation, nonprofit corporation, or limited liability
20 company whose business office is identical with the registered office;
21 or (iii) a foreign corporation, nonprofit corporation, or limited liability
22 company authorized to transact business in this State whose business
23 office is identical with the registered office.

24 (b) The sole duty of the registered agent to the limited liability company is to
25 forward to the limited liability company at its last known address any notice, process, or
26 demand that is served on the registered agent.

27 **"§ 57C-2-41. Change of registered office or registered agent.**

28 (a) A limited liability company may change its registered office or registered
29 agent by delivering to the Secretary of State for filing a statement of change that sets
30 forth:

- 31 (1) The name of the limited liability company;
- 32 (2) The street address, and the mailing address if different from the street
33 address, of the limited liability company's current registered office,
34 and the county in which it is located;
- 35 (3) If the address of the limited liability company's registered office is to
36 be changed, the street address, and the mailing address if different
37 from the street address, of the new registered office, and the county in
38 which it is located;
- 39 (4) The name of its current registered agent;
- 40 (5) If the current registered agent is to be changed, the name of the new
41 registered agent and the new agent's written consent (either on the
42 statement or attached to it) to the appointment; and

1 (6) That after the change or changes are made, the addresses of its
2 registered office and the business office of its registered agent will be
3 identical.

4 (b) If a registered agent changes the address of his business office, he may
5 change the address of the registered office of any limited liability company for which he
6 is the registered agent by notifying the limited liability company in writing of the
7 change and signing (either manually or in facsimile) and delivering to the Secretary of
8 State for filing a statement that complies with the requirements of subsection (a) of this
9 section; and recites that the limited liability company has been notified of the change.

10 **"§ 57C-2-42. Resignation of registered agent.**

11 (a) A registered agent may resign his agency appointment by signing and filing
12 with the Secretary of State the signed original and two exact or conformed copies of a
13 statement of resignation which may include a statement that the registered office is also
14 discontinued. The statement must include or be accompanied by a certification from the
15 registered agent that he has mailed or delivered to the limited liability company at its
16 last known address written notice of his resignation. Such certification shall include the
17 name and title of the officer notified, if any, and the address to which the notice was
18 mailed or delivered.

19 (b) After filing the statement the Secretary of State shall mail one copy to the
20 registered office (if not discontinued) and the other copy to the limited liability
21 company at the address certified in the statement of resignation or, if different, at the
22 address indicated in the latest communication received by the Secretary of State from
23 the limited liability company stating the current mailing address of its principal office.

24 (c) The agency appointment is terminated, and the registered office discontinued
25 if so provided, on the 31st day after the date on which the statement was filed.

26 **"§ 57C-2-43. Service on limited liability company.**

27 (a) A limited liability company's registered agent is an agent of the limited
28 liability company for service of process, notice, or demand required or permitted by law
29 to be served on the limited liability company.

30 (b) Whenever a limited liability company shall fail to appoint or maintain a
31 registered agent in this State, or whenever its registered agent cannot with due diligence
32 be found at the registered office, then the Secretary of State shall be an agent of the
33 limited liability company upon whom any process, notice, or demand may be served.
34 Service on the Secretary of State of any such process, notice, or demand shall be made
35 by delivering to and leaving with the Secretary of State or with any clerk having charge
36 of the limited liability company department of the Secretary of State's office, duplicate
37 copies of the process, notice, or demand. In the event any such process, notice, or
38 demand is served on the Secretary of State, the Secretary of State shall immediately
39 mail one of the copies thereof, by registered or certified mail, return receipt requested, to
40 the limited liability company at the address indicated in the latest communication
41 received by the Secretary of State from the limited liability company stating the current
42 mailing address of its principal office or, if there is no mailing address for the principal
43 office on file, to the limited liability company at its registered office. Service on a

1 limited liability company under this subsection shall be effective for all purposes from
2 and after the date of the service on the Secretary of State.

3 (c) The Secretary of State shall keep a record of all processes, notices, and
4 demands served upon the Secretary of State under this section and shall record therein
5 the time of the service and his action with reference thereto.

6 (d) Nothing herein contained shall limit or affect the right to serve any process,
7 notice, or demand required or permitted by law to be served upon a limited liability
8 company in any other manner now or hereafter permitted by law.

9 **"ARTICLE 3.**

10 **"MEMBERSHIP AND MANAGEMENT.**

11 **"PART 1. MEMBERSHIP.**

12 **"§ 57C-3-01. Admission of members.**

13 (a) The persons executing the articles of organization become members upon the
14 effective time of filing of the articles of organization by the Secretary of State as
15 specified in G.S. 57C-2-20.

16 (b) After the formation of a limited liability company, a person may be admitted
17 as a member:

18 (1) In the case of a person acquiring a membership interest directly from
19 the limited liability company, upon compliance with the articles of
20 organization or operating agreement or, if the articles of organization
21 or operating agreement do not so provide, upon the unanimous consent
22 of the members; and

23 (2) In the case of an assignee of an interest of a member, upon compliance
24 with the provisions of G.S. 57C-5-04(a).

25 **"§ 57C-3-02. Cessation of membership.**

26 Unless otherwise provided in this Chapter, the articles of organization, or a written
27 operating agreement, a person who has ceased to be a member shall have only the rights
28 of an assignee as provided in G.S. 57C-5-02, but shall not be released from his liability
29 to the limited liability company under G.S. 57C-4-02 (liability for contribution) and
30 G.S. 57C-4-07 (liability upon wrongful distribution). A person ceases to be a member
31 of a limited liability company upon the happening of any of the following events of
32 withdrawal:

33 (1) The person's voluntary withdrawal from the limited liability company
34 as provided in G.S. 57C-5-06;

35 (2) The person's removal as a member in accordance with the articles of
36 organization or an operating agreement;

37 (3) Unless otherwise provided in the articles of organization or a written
38 operating agreement or with the consent of all other members, the
39 person's:

40 a. Making an assignment for the benefit of creditors;

41 b. Filing a voluntary petition in bankruptcy;

42 c. Being adjudged bankrupt or insolvent or having entered against
43 him an order for relief in any bankruptcy or insolvency
44 proceeding;

- 1 d. Filing a petition or answer seeking for him any reorganization,
2 arrangement, composition, readjustment, liquidation,
3 dissolution, or similar relief under any statute, law, or
4 regulation;
- 5 e. Seeking, consenting to, or acquiescing in, the appointment of a
6 trustee or receiver for, or liquidation of the member or of all or
7 any substantial part of his properties; or
- 8 f. Filing an answer or other pleading admitting or failing to
9 contest the material allegations of a petition filed against the
10 person in any proceeding described in subdivision (3) of this
11 section;
- 12 (4) Unless otherwise provided in the articles of organization or a written
13 operating agreement or with the consent of all other members, the
14 continuation of any proceeding against the person seeking
15 reorganization, arrangement, composition, readjustment, liquidation,
16 dissolution, or similar relief under any statute, law, or regulation, for
17 120 days after the commencement thereof or the appointment of a
18 trustee, receiver, or liquidator for the person or all or any substantial
19 part of the person's properties without the person's agreement or
20 acquiescence, which appointment is not vacated or stayed for 120 days
21 or, if the appointment is stayed, for 120 days after the expiration of the
22 stay during which period the appointment is not vacated;
- 23 (5) Unless otherwise provided in the articles of organization or a written
24 operating agreement or with the consent of all other members, in the
25 case of a member who is an individual, the individual's:
- 26 a. Death; or
- 27 b. Adjudication by a court of competent jurisdiction as
28 incompetent to manage his person or property;
- 29 (6) Unless otherwise provided in the articles of organization or a written
30 operating agreement or with the consent of all other members, in the
31 case of a member who is acting as a member by virtue of being a
32 trustee of a trust, the termination of the trust (but not merely the
33 substitution of a new trustee);
- 34 (7) Unless otherwise provided in the articles of organization or a written
35 operating agreement or with the consent of all other members, in the
36 case of a member that is a partnership or another limited liability
37 company, the dissolution and commencement of winding up of the
38 partnership or limited liability company;
- 39 (8) Unless otherwise provided in the articles of organization or a written
40 operating agreement or with the consent of all other members, in the
41 case of a member that is a corporation, the dissolution of the
42 corporation or the revocation of its charter; or
- 43 (9) Unless otherwise provided in the articles of organization or a written
44 operating agreement or with the consent of all other members, in the

1 case of a member that is an estate, the distribution by the fiduciary of
2 the estate's entire interest in the limited liability company.

3 **"§ 57C-3-03. Voting of members.**

4 Except as provided in the articles of organization or a written operating agreement,
5 the affirmative vote, approval, agreement, or consent of all members shall be required
6 to:

- 7 (1) Adopt or amend an operating agreement;
- 8 (2) Admit any person as a member;
- 9 (3) Sell, transfer, or otherwise dispose of all or substantially all of the
10 assets of the limited liability company prior to the dissolution of the
11 limited liability company;
- 12 (4) Merge the limited liability company into or with another limited
13 liability company.

14 **"§ 57C-3-04. Members' access to information; records.**

15 (a) Each member has the right, subject to such reasonable standards (including
16 standards governing what information and documents are to be furnished, at what time
17 and location and at whose expense) as may be set forth in the articles of organization or
18 a written operating agreement, to obtain from the limited liability company from time to
19 time upon reasonable demand for any purpose reasonably related to the member's
20 interest as a member:

- 21 (1) Information regarding the status of the business and the financial
22 condition of the limited liability company;
- 23 (2) Promptly after becoming available, a copy of the limited liability
24 company's federal, State, and local income tax returns for each year;
- 25 (3) A current list of the name and last known business, residence, or
26 mailing address of each member;
- 27 (4) A copy of the articles of organization and any written operating
28 agreement and all amendments thereto, together with copies of any
29 written powers of attorney pursuant to which the articles of
30 organization, operating agreement, and all amendments thereto have
31 been executed;
- 32 (5) Information regarding the amount of cash and description and
33 statement of the agreed value of any other property or services
34 contributed by each member, and the property and services that each
35 member has agreed to contribute in the future, and the date on which
36 each became a member; and
- 37 (6) Such other information regarding the affairs of the limited liability
38 company as is just and reasonable.

39 (b) A limited liability company may maintain its records in other than written
40 form if the form is capable of conversion into written form within a reasonable time.

41 (c) Any demand under this section shall (i) be in writing, (ii) be made in good
42 faith and for a proper purpose, and (iii) describe with reasonable particularity the
43 purpose and the records or information desired.

1 (d) Failure of the limited liability company to keep or maintain any of the records
2 or information required pursuant to this section shall not be grounds for imposing
3 liability on any person for the debts and obligations of the limited liability company.

4 (e) The managers shall have the right to keep confidential from members who are
5 not managers, for such period of time as the managers deem reasonable, any
6 information which the managers reasonably believe to be in the nature of trade secrets
7 or other information the disclosure of which the managers in good faith believe is not in
8 the best interest of the limited liability company.

9 **"§ 57C-3-05. Members bound by operating agreements.**

10 A member shall be bound by any operating agreement, including any amendment
11 thereto, otherwise valid under this Chapter and other applicable law, (i) to which the
12 member has expressly assented or (ii) which was in effect at the time the member
13 became a member and either was in writing or the terms of which were actually known
14 to the member, or (iii) with respect to any amendment, if the member was bound by the
15 operating agreement as in effect immediately prior to such amendment and such
16 amendment was adopted in accordance with the terms of such operating agreement.
17 The articles of organization or written operating agreement may require that all
18 agreements of the members constituting the operating agreement be in writing, in which
19 case the term 'operating agreement' shall not include oral agreements of the members.

20 **"PART 2. MANAGERS.**

21 **"§ 57C-3-20. Determination of managers; management.**

22 (a) Unless the articles of organization provide otherwise, all members by virtue
23 of their status as members shall be managers of the limited liability company, together
24 with any other persons that may be designated as managers in a written operating
25 agreement. If the articles of organization provide that all members are not necessarily
26 managers by virtue of their status as members, then those persons designated as
27 managers in a written operating agreement shall be managers, but for any period during
28 which no such designation has been made or is in effect, all members shall be managers.

29 (b) Management of the affairs of the limited liability company shall be vested in
30 its managers. Subject to any provisions in the articles of organization or a written
31 operating agreement or this Chapter restricting, enlarging, or modifying the
32 management rights and duties of any manager or managers, or management procedures,
33 each manager shall have equal rights and authority to participate in the management of
34 the limited liability company, and management decisions shall require the approval,
35 consent, agreement, or ratification of a majority of the managers.

36 **"§ 57C-3-21. Qualification, designation, and removal of managers.**

37 Subject to G.S. 57C-3-20(a), the articles of organization or a written operating
38 agreement may set forth the number and qualification of managers and the manner in
39 which they are to be designated, removed, and replaced. Unless otherwise provided in
40 the articles of organization or a written operating agreement or this Chapter:

- 41 (1) Managers need not be members and, unless otherwise required by G.S.
42 57C-3-20(a), members need not be managers;

1 (2) Designation of managers (other than those managers who are such by
2 virtue of their status as members) shall be evidenced in a written
3 operating agreement, as amended from time to time;

4 (3) Upon designation as manager in a written operating agreement and the
5 person's consent to such designation, the designated person shall serve
6 as manager until the earliest to occur of (i) the person's resignation, (ii)
7 any event described in G.S. 57C-3-02(e), (f), (g), (h), or (i) with
8 respect to the manager, (iii) any event specified in the articles of
9 organization or written operating agreement that results in a manager
10 ceasing to be a manager, or (iv) the amendment of the written
11 operating agreement removing the person's designation as a manager.

12 **"§ 57C-3-22. Duties of managers.**

13 (a) The provisions of this section are all subject to G.S. 57C-3-30.

14 (b) A manager shall discharge his duties as manager in good faith, with the care
15 an ordinary prudent person in a like position would exercise under similar
16 circumstances, and in the manner the manager reasonably believes to be in the best
17 interests of the limited liability company. In discharging his duties, a manager is
18 entitled to rely on information, opinions, reports, or statements, including, but not
19 limited to, financial statements or other financial data, if prepared or presented by:

20 (1) One or more employees of the limited liability company whom the
21 manager reasonably believes to be reliable and competent in the
22 matters presented;

23 (2) Legal counsel, certified public accountants, or other persons on matters
24 the manager reasonably believes are within the person's professional or
25 expert competence; or

26 (3) A committee of managers of which the manager is not a member if the
27 manager reasonably believes the committee merits confidence.

28 (c) A manager is not acting in good faith if the manager has actual knowledge
29 concerning the matter in question that makes reliance otherwise permitted by subsection
30 (b) of this section unwarranted.

31 (d) A manager is not liable for any action taken as a manager, or any failure to
32 take any action, if the manager performs the duties of his office in compliance with this
33 section.

34 (e) Except as otherwise provided in the articles of organization or a written
35 operating agreement, every manager must account to the limited liability company and
36 hold as trustee for it any profit or benefit derived without the informed consent of the
37 members by the manager from any transaction connected with the formation, conduct,
38 or liquidation of the limited liability company or from any personal use by the manager
39 of its property.

40 **"§ 57C-3-23. Agency power of managers.**

41 Every manager is an agent of the limited liability company for the purpose of its
42 business, and the act of every manager, including execution in the name of the limited
43 liability company of any instrument, for apparently carrying on in the usual way the
44 business of the limited liability company of which he is a manager, binds the limited

1 liability company, unless the manager so acting has in fact no authority to act for the
2 limited liability company in the particular matter and the person with whom the
3 manager is dealing has knowledge of the fact that the manager has no authority. An act
4 of a manager which is not apparently for the carrying on the usual course of the business
5 of the limited liability company does not bind the limited liability company unless
6 authorized in fact or ratified by the managers of the limited liability company.

7 **"§ 57C-3-24. Delegation of authority of managers.**

8 (a) The authority of a manager or the managers to act on behalf of the limited
9 liability company may be delegated by such manager or the managers to persons other
10 than managers if and to the extent a written operating agreement so provides. The
11 delegation of authority may be general or limited to specific matters. The act of any
12 such person within the scope of the authority so delegated shall be as effective to bind
13 the limited liability company as would the act of such manager or the managers, unless
14 the delegation has been revoked and the person with whom such person is dealing has
15 actual knowledge of the fact that the delegation has been revoked.

16 (b) The creation of, delegation of authority to, or action by a manager's delegate
17 does not alone constitute compliance by a manager with the standards of conduct
18 described in G.S. 57C-3-22.

19 (c) Each person acting on behalf of the limited liability company within the
20 scope of authority delegated by a manager or the managers pursuant to subsection (a) of
21 this section, or reasonably and in good faith believing himself to be so acting, shall be
22 entitled, with respect to such acts, to the same limitation on personal liability as is
23 afforded to a manager pursuant to G.S. 57C-3-30. A limited liability company may, but
24 is not required to, provide persons acting on behalf of the limited liability company
25 within the scope of the authority delegated by a manager or the managers pursuant to
26 subsection (a) of this section with the same limitation on personal liability and rights to
27 indemnification as are, or may be, afforded to managers pursuant to G.S. 57C-3-31 and
28 G.S. 57C-3-32.

29 **"§ 57C-3-25. Identity of managers, authentication of records, and execution of**
30 **documents.**

31 (a) Any person dealing with a limited liability company may rely conclusively
32 upon its most recent annual report and any amendments thereto filed with the Secretary
33 of State pursuant to G.S. 57C-2-23 as to the identity of the managers of the domestic or
34 foreign limited liability company, except to the extent the person has actual knowledge
35 that a person identified therein as a manager is not a manager.

36 (b) The documents, if any, constituting the operating agreement of a limited
37 liability company or a foreign limited liability company authorized to transact business
38 in this State, and records of the actions of its members or managers, may be
39 authenticated by any manager of the domestic or foreign limited liability company. Any
40 person dealing with the domestic or foreign limited liability company may rely
41 conclusively upon the certificate or written statement of a manager authenticating the
42 documents and records except to the extent the person has actual knowledge that the
43 certificate or written statement is false.

1 (c) Any document or instrument required or permitted by law to be filed,
2 registered, or recorded with any public authority and to be executed by a limited
3 liability company or a foreign limited liability company authorized to transact business
4 in this State shall be sufficiently executed for such purpose if signed on its behalf by one
5 of its managers.

6 **"PART 3. LIABILITY.**

7 **"§ 57C-3-30. Liability to third parties of members and managers; parties to**
8 **actions; governing law.**

9 (a) A person who is a member or manager, or both, of a limited liability company
10 is not liable for the obligations of a limited liability company solely by reason of being a
11 member or manager or both, and does not become so by participating, in whatever
12 capacity, in the management or control of the business. A member or manager may,
13 however, become personally liable by reason of his own acts or conduct.

14 (b) A member of a limited liability company is not a proper party to proceedings
15 by or against a limited liability company, except where the object of the proceeding is to
16 enforce a member's right against or liability to the limited liability company.

17 (c) The liability of members and managers of a limited liability company
18 organized and existing under this Chapter shall at all times be determined solely and
19 exclusively by this Chapter and the laws of this State.

20 (d) If a conflict arises between the law of this State and the laws of any other
21 jurisdiction with regard to the liability of a member or manager of a limited liability
22 company organized and existing under this Chapter for the debts, obligations, and
23 liabilities of the limited liability company, this Chapter and the laws of this State shall
24 govern in determining the liability.

25 **"§ 57C-3-31. Mandatory indemnification of managers and members.**

26 (a) A limited liability company must indemnify every manager in respect of
27 payments made and personal liabilities reasonably incurred by the manager in the
28 authorized conduct of its business or for the preservation of its business or property.

29 (b) Unless limited by its articles of organization, a limited liability company shall
30 indemnify a member or manager who is wholly successful, on the merits or otherwise,
31 in the defense of any proceeding to which he was a party because he is or was a member
32 or manager of the limited liability company against reasonable expenses incurred by
33 him in connection with the proceeding.

34 **"§ 57C-3-32. Limitation of liability of managers and members and permissive**
35 **indemnification of managers and members; insurance.**

36 (a) Subject to subsection (b) of this section, the articles of organization or a
37 written operating agreement may:

38 (1) Eliminate or limit the personal liability of a manager for monetary
39 damages for breach of any duty provided for in G.S. 57C-3-22 (other
40 than liability under G.S. 57C-4-07); and

41 (2) Provide for indemnification of a manager or member for judgments,
42 settlements, penalties, fines, or expenses incurred in a proceeding to
43 which the member or manager is a party because he is or was a
44 manager or member. For purposes of this subdivision, the words

1 'expenses', 'proceeding', and 'party' shall have the meanings set forth in
2 G.S. 55-8-50(b).

3 (b) No provision permitted under subsection (a) of this section shall limit or
4 eliminate or indemnify with respect to the liability of a manager for (i) acts or omissions
5 that the manager knew at the time of such acts or omissions were clearly in conflict with
6 the interests of the limited liability company, (ii) any transaction from which the
7 manager derived an improper personal benefit, or (iii) acts or omissions occurring prior
8 to the date the provision became effective except that indemnification under subsection
9 (a)(2) of this section may be provided if approved by all of the members. As used in
10 this subsection, 'improper personal benefit' does not include reasonable compensation or
11 other reasonable incidental benefit for or on account of service as a manager, officer,
12 employee, independent contractor, attorney, or consultant of the limited liability
13 company.

14 (c) A limited liability company may purchase and maintain insurance on behalf
15 of an individual who is or was a manager, employee, or agent of the limited liability
16 company, or who, while a manager, employee, or agent of the limited liability company
17 is or was serving at the request of the limited liability company as a director, officer,
18 partner, manager, trustee, employee, or agent of a person, against liability asserted
19 against or incurred by him in that capacity or arising from his status as a manager,
20 employee, or agent, whether or not the limited liability company would have the power
21 to indemnify him against the same liability under any provision of this Chapter.

22 **"ARTICLE 4.**

23 **"FINANCE.**

24 **"§ 57C-4-01. Contributions to capital.**

25 The contribution of a member may be in the form of any tangible or intangible
26 property or benefit to the limited liability company that a person contributes in cash,
27 property, services rendered, promissory notes, or other binding obligation to contribute
28 cash or property or to render services. Except as provided in an operating agreement, in
29 the case of noncash contributions, the value of the contribution to the limited liability
30 company shall be the fair market value of the contribution on the date it is made, as
31 agreed to by the limited liability company and the contributor.

32 **"§ 57C-4-02. Liability for contribution.**

33 (a) A promise by a member to contribute to the limited liability company is not
34 enforceable unless set out in a writing signed by the member.

35 (b) Except as provided in an operating agreement, a member is obligated to the
36 limited liability company to perform any enforceable promises to contribute cash or
37 property or to render services, even if the member is unable to perform because of
38 death, disability, or any other reason. If a member does not make the required
39 contribution of property or services, the member (or the member's estate or personal
40 representative) is obligated, at the option of the limited liability company, to contribute
41 cash equal to that portion of the value of the stated contribution that has not been made.

42 (c) Unless otherwise provided in the operating agreement, the obligation of a
43 member to make a contribution or to return money or other property paid or distributed
44 in violation of this Chapter may be compromised only with the unanimous consent of

1 the members. Any such compromise, however, shall not affect the rights of a creditor
2 of a limited liability company to enforce a claim that arose prior to the date of the
3 compromise.

4 **"§ 57C-4-03. Allocation of income, gain, loss, deduction, or credit.**

5 Income, gain, loss, deduction, or credit of a limited liability company shall be
6 allocated among the members, and among classes of members, in the manner agreed to
7 in an operating agreement. To the extent an operating agreement does not so provide
8 for the allocation of such items, income, gain, loss, deduction, or credit shall be
9 allocated among the members in proportion to the agreed value, as stated in the limited
10 liability company records required to be kept pursuant to G.S. 57C-3-04(a)(5), of the
11 contributions made by each member, taking into account variations in the capital
12 contributions of each member during the period for which the allocations are made
13 using any reasonable method selected by the managers.

14 **"§ 57C-4-04. Interim distributions.**

15 Except as provided in this Chapter, a member is entitled to receive distributions from
16 a limited liability company before the withdrawal of the member from the limited
17 liability company and before the dissolution and winding up of the limited liability
18 company as provided in an operating agreement. In the absence of any provision for
19 interim distributions in an operating agreement, such distributions may be made at such
20 times and in such amounts as determined by the managers, in proportion to the agreed
21 value, as stated in the limited liability company records required to be kept pursuant to
22 G.S. 57C-3-04(a)(5), of the contributions made by each member as of the date of such
23 distribution, or as of such date within 90 days prior to the distribution that may be
24 determined by the managers.

25 **"§ 57C-4-05. Distribution in kind.**

26 Except as provided in an operating agreement:

- 27 (1) A member, regardless of the nature of the member's contribution, has
28 no right to demand or receive any distribution from a limited liability
29 company in any form other than cash; and
30 (2) No member may be compelled to accept from a limited liability
31 company a distribution of any asset in kind unless all persons with
32 interests in the limited liability company receive at the same time as a
33 distribution an interest in the property distributed that is proportionate
34 to their interests in the limited liability company.

35 **"§ 57C-4-06. Restrictions on making distributions.**

36 (a) No distribution may be made if, after giving effect to the distribution:

- 37 (1) The limited liability company would not be able to pay its debts as
38 they become due in the usual course of business; or
39 (2) The limited liability company's total assets would be less than the sum
40 of its total liabilities plus, unless the operating agreement provides
41 otherwise, the amount that would be needed, if the limited liability
42 company were to be dissolved at the time of the distribution, to satisfy
43 the preferential rights upon dissolution of members whose preferential

1 rights are superior to the rights of the member receiving the
2 distribution.

3 (b) The limited liability company may base a determination that a distribution is
4 not prohibited under subsection (a) of this section on financial statements prepared on
5 the basis of accounting practices and principles that are reasonable under the
6 circumstances; and for this purpose may determine asset values based on book values or
7 on a fair valuation or other method that is reasonable under the circumstances.

8 (c) Except as provided in subsection (e) of this section, the effect of a distribution
9 under subsection (a) of this section is measured as of (i) the date the distribution is
10 authorized if the payment occurs within 120 days after the date of authorization; or (ii)
11 the date payment is made if it occurs more than 120 days after the date of authorization.

12 (d) A limited liability company's indebtedness issued as a distribution made in
13 accordance with this section is at parity with the limited liability company's
14 indebtedness to its general, unsecured creditors except to the extent otherwise provided
15 by agreement.

16 (e) Indebtedness of a limited liability company, including indebtedness issued as
17 a distribution, is not considered a liability for purposes of determinations under
18 subsection (a) of this section if its terms provide that payment of principal and interest
19 are made only if, and to the extent that, payment of a distribution to members could then
20 be made under this section. If indebtedness with such terms is issued as a distribution,
21 each payment of principal or interest, and not the issuance of the indebtedness, is treated
22 as a distribution, the effect of which is measured on the date the payment is actually
23 made.

24 **"§ 57C-4-07. Liability upon wrongful distribution.**

25 (a) A manager who votes for or assents to a distribution in violation of G.S. 57C-
26 4-06 or a written operating agreement is personally liable to the limited liability
27 company for the amount of the distribution that exceeds what could have been
28 distributed without violating G.S. 57C-4-06 or the operating agreement if it is
29 established that the manager did not act in compliance with G.S. 57C-3-22.

30 (b) Each manager held liable under subsection (a) of this section for a wrongful
31 distribution is entitled to:

32 (1) Contribution from each other manager who could be held liable under
33 subsection (a) of this section for the wrongful distribution; and

34 (2) Reimbursement from each member for the amount the member
35 received knowing that the distribution was made in violation of G.S.
36 57C-4-06 or the operating agreement.

37 (c) A proceeding under this section is barred unless it is commenced within three
38 years after the date on which the effect of the distribution is measured under G.S. 57C-
39 4-06(c).

40 **"§ 57C-4-08. Right to distribution.**

41 Subject to the provisions of this Article, at the time a member becomes entitled to
42 receive a distribution, the member has the status of, and is entitled to all remedies
43 available to, a creditor of the limited liability company with respect to the distribution.

44 **"ARTICLE 5.**

1 **"ASSIGNMENT OF MEMBERSHIP INTERESTS: WITHDRAWAL.**

2 **"§ 57C-5-01. Nature of membership interest.**

3 A membership interest is personal property. A member has no interest in specific
4 limited liability company property.

5 **"§ 57C-5-02. Assignment of membership interest.**

6 Except as provided in the articles of organization or a written operating agreement, a
7 membership interest is assignable in whole or in part. An assignment of a membership
8 interest does not dissolve the limited liability company or entitle the assignee to become
9 or exercise any rights of a member. An assignment entitles the assignee to receive, to
10 the extent assigned, only the distributions and allocations to which the assignor would
11 be entitled but for the assignment. Except as provided in the articles of organization or
12 a written operating agreement, a member ceases to be a member upon assignment of all
13 of his membership interest. Except as provided in the articles of organization or a
14 written operating agreement, the pledge of, or granting of a security interest, lien, or
15 other encumbrance in or against, all or any part of the membership interest of a member
16 shall not cause the member to cease to be a member or the secured party to have the
17 power to exercise any rights or powers of a member.

18 **"§ 57C-5-03. Rights of judgment creditor.**

19 On application to a court of competent jurisdiction by any judgment creditor of a
20 member, the court may charge the membership interest of the member with payment of
21 the unsatisfied amount of the judgment with interest. To the extent so charged, the
22 judgment creditor has only the rights of an assignee of the membership interest. This
23 Chapter does not deprive any member of the benefit of any exemption laws applicable
24 to his membership interest.

25 **"§ 57C-5-04. Right of assignee to become a member.**

26 (a) An assignee of an interest in a limited liability company may become a
27 member only with the assignee's consent and except as otherwise provided in the
28 articles of organization or operating agreement, only if the other members unanimously
29 agree. The consent of a member may be evidenced in any manner specified in the
30 operating agreement, but in the absence of such specification, consent shall be
31 evidenced by a written instrument, dated and signed by the member, or evidenced by a
32 vote taken at a meeting of members.

33 (b) An assignee who becomes a member has, to the extent assigned, the rights
34 and powers, and is subject to the restrictions and liabilities, of a member under the
35 articles of organization, any operating agreements, and this Chapter. Notwithstanding
36 the preceding sentence, unless otherwise provided in a written operating agreement, an
37 assignee who becomes a member is liable for any obligations of his assignor to make
38 contributions under G.S. 57C-4-02 (liability for contribution) but shall not be liable for
39 obligations of his assignor under G.S. 57C-4-07 (liability upon wrongful distribution).
40 However, the assignee is not obligated for liabilities unknown to the assignee at the time
41 the assignee became a member and which could not be ascertained from the articles of
42 organization or a written operating agreement.

43 (c) Whether or not an assignee of a membership interest becomes a member, the
44 assignor is not released from his liability to the limited liability company under G.S.

1 57C-4-02 (liability for contribution) and G.S. 57C-4-07 (liability upon wrongful
2 distribution).

3 **"§ 57C-5-05. Powers of legal representative of a deceased, incompetent, or**
4 **dissolved member.**

5 Unless otherwise provided in the articles of organization or a written operating
6 agreement, if a member who is an individual dies or a court of competent jurisdiction
7 adjudges the member to be incompetent to manage his person or his property, the
8 member's executor, administrator, guardian, conservator, or other legal representative
9 may exercise all of the member's rights for the purpose of settling his estate or
10 administering his property, including any power the member had under the articles of
11 organization or a written operating agreement to give an assignee the right to become a
12 member. If a member is a corporation, trust, or other entity and is dissolved or
13 terminated, the powers of that member may be exercised by its legal representative or
14 successor for the purpose of liquidating, winding up, and making final distributions of
15 the entity's assets to its owners, beneficiaries, or creditors.

16 **"§ 57C-5-06. Voluntary withdrawal of member.**

17 A member may withdraw by giving not less than six months' prior written notice to
18 the other members at their respective addresses as shown on the books of the limited
19 liability company, unless:

- 20 (1) The articles of organization or a written operating agreement provide
21 that the member does not have the right or power to withdraw; or
22 (2) The articles of organization or a written operating agreement specify
23 another time for or impose other conditions on withdrawal.

24 **"ARTICLE 6.**

25 **"DISSOLUTION.**

26 **"§ 57C-6-01. Dissolution.**

27 A limited liability company is dissolved and its affairs shall be wound up at or upon
28 the first to occur of the following:

- 29 (1) The time specified in the articles of organization or a written operating
30 agreement;
31 (2) The happening of an event specified in the articles of organization or a
32 written operating agreement;
33 (3) The written consent of all members;
34 (4) Unless otherwise provided in the articles of organization or a written
35 operating agreement, the happening of any event of withdrawal
36 described in G.S. 57C-3-02 (cessation of membership) with respect to
37 any member, unless at the time of the event of withdrawal (i) there is
38 at least one remaining member, (ii) the provisions of the articles of
39 organization or a written operating agreement permit the business of
40 the limited liability company to be carried on by the remaining
41 member or members, and (iii) the remaining member or members elect
42 to do so pursuant to such vote or other procedures prescribed in the
43 articles of organization or a written operating agreement or in the
44 absence of prescribed voting requirements or procedures, by a

1 unanimous vote of the remaining member or members taken after the
2 event of withdrawal. The foregoing to the contrary notwithstanding, a
3 limited liability company shall not be dissolved and is not required to
4 be wound up by reason of any event of withdrawal if, within 90 days
5 after the event of withdrawal, all remaining members, and the person
6 or persons with respect to whom the event of withdrawal has occurred
7 (or his successor), agree in writing that the business of the limited
8 liability company may be continued;

9 (5) Entry of a decree of judicial dissolution under G.S. 57C-6-02, or the
10 filing by the Secretary of State of a certificate of dissolution under G.
11 S. 57C-6-03.

12 **"§ 57C-6-02. Judicial dissolution.**

13 (a) On application by or for a member, the court may decree dissolution of a
14 limited liability company whenever it is not reasonably practicable to carry on the
15 business in conformity with the articles of organization or an operating agreement.

16 (b) Venue for a proceeding under G.S. 57C-6-02(a) to dissolve a limited liability
17 company lies in the county where the limited liability company's principal office (or, if
18 none in this State, its registered office) is or was last located.

19 **"§ 57C-6-03. Administrative dissolution.**

20 (a) The Secretary of State may administratively dissolve a limited liability
21 company if the Secretary of State determines that:

22 (1) The limited liability company has not paid within 60 days after they
23 are due any penalties, fees, or other payments due under this Chapter;

24 (2) The limited liability company does not deliver its annual report to the
25 Secretary of State on or before the date it is due;

26 (3) The limited liability company has been without a registered agent or
27 registered office in this State for 60 days or more;

28 (4) The limited liability company has not notified the Secretary of State
29 within 60 days that its registered agent or registered office has been
30 changed, that its registered agent has resigned, or that its registered
31 office has been discontinued; or

32 (5) The limited liability company's period of duration stated in its articles
33 of organization has expired.

34 (b) If the Secretary of State determines that one or more grounds exist under
35 subsection (a) of this section for dissolving a limited liability company, the Secretary of
36 State shall mail the limited liability company written notice of that determination. If,
37 within 60 days after the notice is mailed, the limited liability company does not correct
38 each ground for dissolution or demonstrate to the reasonable satisfaction of the
39 Secretary of State that each ground does not exist, the Secretary of State shall
40 administratively dissolve a limited liability company by signing a certificate of
41 dissolution that recites the ground or grounds for dissolution and its effective date. The
42 Secretary of State shall file the original certificate of dissolution and mail a copy to the
43 limited liability company.

1 (c) A limited liability company administratively dissolved under this section may
2 apply to the Secretary of State for reinstatement within two years after the effective date
3 of the administrative dissolution. The procedures for reinstatement and for the appeal of
4 any denial of the limited liability company's application for reinstatement shall be the
5 same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23,
6 and 55-14-24.

7 **"§ 57C-6-04. Winding up.**

8 (a) Except as otherwise provided in this Chapter, the articles of organization, or a
9 written operating agreement, the managers shall wind up the limited liability company's
10 affairs following its dissolution. If the dissolved limited liability company has no
11 managers, the legal representative of or successor to the member whose event of
12 withdrawal has resulted in the dissolution may wind up the limited liability company's
13 affairs. The court may wind up the limited liability company's affairs, or appoint a
14 person to wind up its affairs, on application of any member, his legal representative, or
15 assignee.

16 (b) As promptly as reasonably possible following dissolution as is consistent with
17 obtaining the fair market value for the limited liability company's assets, the persons
18 charged with winding up the limited liability company shall collect its assets, dispose of
19 its properties that will not be distributed in kind to its members, discharge or make
20 provision for discharging its liabilities, and distribute its remaining assets as provided in
21 G.S. 57C-6-05. The limited liability company shall continue in existence following its
22 dissolution and during its winding up, but shall carry on only that business appropriate
23 to wind up and liquidate its business and affairs.

24 (c) The dissolution of the limited liability company does not transfer title to its
25 assets, prevent assignment of its member interests, subject its managers to standards of
26 conduct different from those prescribed in Article 3 of this Chapter, change any
27 provisions of its operating agreement except as provided in subsection (b) of this
28 section, prevent commencement of a proceeding by or against the limited liability
29 company in its own name, abate or suspend a proceeding by or against the limited
30 liability company, or terminate the authority of the registered agent of the limited
31 liability company.

32 **"§ 57C-6-05. Distribution of assets.**

33 Upon the winding up of a limited liability company, its assets shall be applied as
34 follows:

- 35 (1) To creditors, including members who are creditors, to the extent
36 permitted by law, in satisfaction of liabilities of the limited liability
37 company other than liabilities for distributions to members under G.S.
38 57C-4-04;
- 39 (2) Except as provided in the articles of organization or a written operating
40 agreement, to members or former members in satisfaction of liabilities
41 for distributions under G.S. 57C-4-04; and
- 42 (3) Except as provided in the articles of organization or a written operating
43 agreement, by distribution to the members and to any former member
44 whose event of withdrawal resulted in the dissolution in proportion to

1 the agreed value, as stated in the limited liability company records
2 required to be kept pursuant to G.S. 57C-3-04(a)(5), of the
3 contributions made by each such member and former member, after
4 such agreed values are adjusted by: (i) adding thereto the person's
5 share of the profits of the limited liability company, and (ii) deducting
6 therefrom the person's share of the losses of the limited liability
7 company and all distributions previously received by the person.

8 **"§ 57C-6-06. Articles of dissolution.**

9 Upon the dissolution and the commencement of winding up of the limited liability
10 company, articles of dissolution shall be filed in the office of the Secretary of State and
11 shall set forth:

- 12 (1) The name of the limited liability company;
- 13 (2) The dates of filing of its articles of organization and all amendments
14 thereto;
- 15 (3) The reason for filing the articles of dissolution;
- 16 (4) The effective date (which shall be a date certain) of the dissolution, as
17 determined in accordance with G.S. 57C-6-01; and
- 18 (5) Any other information the members or managers filing the articles of
19 dissolution determine.

20 **"§ 57C-6-07. Known claims against dissolved limited liability company.**

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

23 (b) The dissolved limited liability company shall notify its known claimants in
24 writing of the dissolution at any time after it has filed its articles of dissolution. The
25 written notice must:

- 26 (1) Describe information that must be included in a claim;
- 27 (2) Provide a mailing address where claims may be sent;
- 28 (3) State the deadline, which may not be fewer than 120 days from the
29 date of the written notice, by which the dissolved limited liability
30 company must receive the claim; and
- 31 (4) State that the claim will be barred if not received by the deadline.

32 (c) A claim against the dissolved limited liability company is barred:

- 33 (1) If the limited liability company does not receive the claim by the
34 deadline from a claimant who received written notice under subsection
35 (b) of this section; or
- 36 (2) If a claimant whose claim was rejected by written notice from the
37 dissolved limited liability company does not commence a proceeding
38 to enforce the claim within 90 days from the date of receipt of the
39 rejection notice.

40 (d) For purposes of this section, 'claim' does not include a contingent liability or a
41 claim based on an event occurring after the filing of the articles of dissolution.

42 **"§ 57C-6-08. Unknown and certain other claims against dissolved limited liability**
43 company.

1 (a) A dissolved limited liability company that has filed articles of dissolution
2 may also publish notice of its dissolution and request that persons with claims against
3 the limited liability company present them in accordance with the notice.

4 (b) The notice must:

5 (1) Be published one time in a newspaper of general circulation in the
6 county where the dissolved limited liability company's principal office
7 (or, if none in this State, its registered office) is or was last located;

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

10 (3) State that a claim against the limited liability company will be barred
11 unless a proceeding to enforce the claim is commenced within five
12 years after the publication of the notice.

13 (c) If the dissolved limited liability company publishes a newspaper notice in
14 accordance with subsections (a) and (b) of this section, the claim of each of the
15 following claimants is barred unless the claimant commences a proceeding to enforce
16 the claim against the dissolved limited liability company within five years after the
17 publication date of the newspaper notice:

18 (1) A claimant who did not receive written notice under G.S. 57C-6-07;

19 (2) A claimant whose claim was timely sent to the dissolved limited
20 liability company but not acted on;

21 (3) A claimant whose claim is contingent or based on an event occurring
22 after the filing of the articles of dissolution.

23 **"§ 57C-6-09. Enforcement of claims.**

24 (a) A claim under G.S. 57C-6-07 or G.S. 57C-6-08 may be enforced:

25 (1) Against the dissolved limited liability company, to the extent of its
26 undistributed assets, including coverage under any applicable
27 insurance policy; or

28 (2) If the assets have been distributed in winding up, against a member of
29 the dissolved limited liability company to the extent of his pro rata
30 share of the claim or the limited liability company assets distributed to
31 him in winding up, whichever is less, but a member's total liability for
32 all claims under this section may not exceed the total amount of assets
33 distributed to him.

34 (b) Nothing in G.S. 57C-6-07 or G.S. 57C-6-08 shall extend any applicable
35 period of limitation.

36 **"ARTICLE 7.**

37 **"FOREIGN LIMITED LIABILITY COMPANIES.**

38 **"§ 57C-7-01. Law governing.**

39 The laws of the State or other jurisdiction under which a foreign limited liability
40 company is organized shall govern its organization and internal affairs and the liability
41 of its managers and members, regardless of whether the foreign limited liability
42 company procured or should have procured a certificate of authority under this Chapter,
43 and a foreign limited liability company may not be denied a certificate of authority by
44 reason of any difference between the laws under which it is organized and the laws of

1 this State. A foreign limited liability company with a valid certificate of authority has
2 the same but no greater rights and has the same but no greater privileges as, and is
3 subject to the same duties, restrictions, penalties, and liabilities now or later imposed on,
4 a domestic limited liability company of like character.

5 **"§ 57C-7-02. Authority to transact business required.**

6 (a) A foreign limited liability company may not transact business in this State
7 until it obtains a certificate of authority from the Secretary of State.

8 (b) Without excluding other activities that may not constitute transacting
9 business in this State, a foreign limited liability company shall not be considered to be
10 transacting business in this State for the purposes of this Chapter by reason of carrying
11 on in this State any one or more of the following activities:

12 (1) Maintaining or defending any action or suit or any administrative or
13 arbitration proceeding, or effecting the settlement thereof or the
14 settlement of claims or disputes;

15 (2) Holding meetings of its managers or members or carrying on other
16 activities concerning its internal affairs;

17 (3) Maintaining bank accounts or borrowing money in this State, with or
18 without security, even if such borrowings are repeated and continuous
19 transactions;

20 (4) Maintaining offices or agencies for the transfer, exchange, and
21 registration of its membership interests, or appointing and maintaining
22 trustees or depositories with relation to its membership interests;

23 (5) Soliciting or procuring orders, whether by mail or through employees
24 or agents or otherwise, where the orders require acceptance without
25 this State before becoming binding contracts;

26 (6) Making or investing in loans with or without security including
27 servicing of mortgages or deeds of trust through independent agencies
28 within the State, the conducting of foreclosure proceedings and sales,
29 the acquiring of property at foreclosure sale, and the management and
30 rental of such property for a reasonable time while liquidating its
31 investment, provided no office or agency therefor is maintained in this
32 State;

33 (7) Taking security for or collecting debts due to it or enforcing any rights
34 in property securing the same;

35 (8) Transacting business in interstate commerce;

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

39 (10) Selling through independent contractors; and

40 (11) Owning, without more, real or personal property.

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

44 **"§ 57C-7-03. Consequences of transacting business without authority.**

1 (a) No foreign limited liability company transacting business in this State without
2 permission obtained through a certificate of authority under this Chapter shall be
3 permitted to maintain any action or proceeding in any court of this State unless the
4 limited liability company shall have obtained a certificate of authority prior to trial. An
5 issue arising under this subsection must be raised by motion and determined by the trial
6 judge prior to trial.

7 (b) A foreign limited liability company failing to obtain a certificate of authority
8 as required by this Chapter shall be liable to the State for the years or parts thereof
9 during which it transacted business in this State without a certificate of authority in an
10 amount equal to all fees and taxes which would have been imposed by law upon the
11 limited liability company had it duly applied for and received such permission, plus
12 interest and all penalties imposed by law for failure to pay such fees and taxes. In
13 addition, the foreign limited liability company shall be liable for a civil penalty of ten
14 dollars (\$10.00) for each day, but not to exceed a total of one thousand dollars (\$1,000)
15 for each year or part thereof, it transacts business in this State without a certificate of
16 authority. The Attorney General may bring actions to recover all amounts due the State
17 under the provisions of this subsection.

18 (c) Notwithstanding subsection (a) of this section, the failure of a foreign limited
19 liability company to obtain a certificate of authority does not impair the validity of its
20 acts or prevent it from defending any proceeding in this State.

21 (d) The Secretary of State is directed to require that every foreign limited liability
22 company transacting business in this State comply with the provisions of this Chapter.
23 The Secretary of State may employ such assistants as shall be deemed necessary in the
24 Secretary of State's office for the purpose of enforcing the provisions of this Article and
25 for making such investigations as shall be necessary to ascertain foreign limited liability
26 companies transacting business in this State which may have failed to comply with the
27 provisions of this Chapter.

28 **"§ 57C-7-04. Application for certificate of authority.**

29 (a) A foreign limited liability company may apply for a certificate of authority to
30 transact business in this State by delivering an application to the Secretary of State for
31 filing. The application must set forth:

- 32 (1) The name of the foreign limited liability company or, if its name is
33 unavailable for use in this State, a name that satisfies the requirements
34 of G.S. 57C-7-06;
- 35 (2) The name of the state or country under whose law it is organized;
- 36 (3) Its date of organization and period of duration;
- 37 (4) The street address, and the mailing address if different from the street
38 address, of its principal office in the state or country under whose law
39 it is organized;
- 40 (5) The street address, and the mailing address if different from the street
41 address, of its registered office in this State and the name of its
42 registered agent at that office; and
- 43 (6) The names and usual business addresses of its current managers.

1 **(b)** The foreign limited liability company shall deliver with the completed
2 application a certificate of existence (or a document of similar import) duly
3 authenticated by the secretary of state or other official having custody of limited
4 liability company records in the state or country under whose law it is organized.

5 **(c)** If the Secretary of State finds that the application conforms to law, the
6 Secretary of State shall, when all taxes and fees have been tendered as prescribed in this
7 Chapter:

- 8 **(1)** Endorse on the application and an exact or conformed copy thereof the
9 word 'filed' and the hour, day, month, and year of the filing thereof;
- 10 **(2)** File in his office the application and the certificate of existence (or
11 document of similar import as described in subsection (b) of this
12 section);
- 13 **(3)** Issue a certificate of authority to transact business in this State to
14 which the Secretary of State shall affix the exact or conformed copy of
15 the application; and
- 16 **(4)** Send to the foreign limited liability company or its representative the
17 certificate of authority, together with the exact or conformed copy of
18 the application affixed thereto.

19 **"§ 57C-7-05. Amended certificate of authority.**

20 **(a)** A foreign limited liability company authorized to transact business in this
21 State must obtain an amended certificate of authority from the Secretary of State if it
22 changes:

- 23 **(1)** Its name;
- 24 **(2)** The period of its duration; or
- 25 **(3)** The state or country of its organization.

26 **(b)** A foreign limited liability company may apply for an amended certificate of
27 authority by delivering an application to the Secretary of State for filing that sets forth:

- 28 **(1)** The name of the limited liability company and the name in which the
29 limited liability company is authorized to transact business in North
30 Carolina if different;
- 31 **(2)** The name of the state or country under whose law it is organized;
- 32 **(3)** The date it was originally authorized to transact business in this State;
33 and
- 34 **(4)** A statement of the change or changes being made.

35 Except for the content of the application, the requirements of G.S. 57C-7-03 for
36 obtaining an original certificate of authority apply to obtaining an amended certificate
37 under this section.

38 **"§ 57C-7-06. Name of foreign limited liability company.**

39 **(a)** If the name of a foreign limited liability company does not satisfy the
40 requirements of G.S. 57C-2-30, then to obtain or maintain a certificate of authority to
41 transact business in this State, the foreign limited liability company:

- 42 **(1)** May add the words 'limited liability company', or the abbreviation
43 'L.L.C.', 'LLC', or the combination 'ltd. liability co.', 'limited liability
44 co.', or 'ltd. liability company', to its name for use in this State if such

1 addition will cause the name to satisfy the requirements of G.S. 57C-2-
2 30; or

3 (2) May use a fictitious name, which includes one or more of the words or
4 abbreviations in subdivision (1) of this subsection, to transact business
5 in this State if its real name is unavailable and it delivers to the
6 Secretary of State for filing a copy of the resolution of its managers
7 adopting the fictitious name.

8 (b) Except as authorized by subsection (c) of this section, the name (including a
9 fictitious name) of a foreign limited liability company must be distinguishable upon the
10 records of the Secretary of State from:

11 (1) The name of a corporation, limited partnership, or limited liability
12 company organized in this State, or a foreign corporation, foreign
13 limited partnership, or foreign limited liability company authorized to
14 transact business in this State;

15 (2) A name reserved or registered under G.S. 55-4-02, 55-4-03, 57C-2-31,
16 57C-2-32, or 59-104;

17 (3) The fictitious name of another foreign corporation, foreign limited
18 partnership, or foreign limited liability company authorized to transact
19 business in this State because its real name is unavailable; or

20 (4) The fictitious name of another foreign limited liability company
21 authorized to transact business in this State.

22 (c) A foreign limited liability company may apply to the Secretary of State for
23 authorization to use in this State a name that is not distinguishable upon the Secretary of
24 State's records from the name of another limited liability company (organized or
25 authorized to transact business in this State). The Secretary of State shall authorize use
26 of the name applied for if:

27 (1) The other person who has or uses the name or who has reserved or
28 registered the name consents to the use in writing and submits an
29 undertaking in form satisfactory to the Secretary of State to change its
30 name to a name that is distinguishable upon the records of the
31 Secretary of State from the name of the applying limited liability
32 company; or

33 (2) The applicant delivers to the Secretary of State a certified copy of a
34 final judgment of a court of competent jurisdiction establishing the
35 applicant's right to use the name applied for in this State.

36 (d) If a foreign limited liability company authorized to transact business in this
37 State changes its name to one that does not satisfy the requirements of G.S. 57C-2-30, it
38 may not transact business in this State under the changed name until it adopts a name
39 satisfying the requirements of G.S. 57C-2-30 or G.S. 57C-7-06 and obtains an amended
40 certificate of authority under G.S. 57C-7-05.

41 (e) The use of assumed names or fictitious names, as provided for in Chapter 66
42 of the General Statutes, is not affected by this Chapter.

43 (f) Neither the reservation or registration of a name nor the issuance of a
44 certificate of authority to a foreign limited liability company shall authorize the use in

1 this State of a name in violation of the rights of any third party under the federal
2 trademark act, the trademark act of this State, or other statutory or common law, or be a
3 defense to an action for violation of any such rights.

4 **"§ 57C-7-07. Registered office and registered agent of foreign limited liability**
5 **company.**

6 (a) Each foreign limited liability company authorized to transact business in this
7 State must continuously maintain in this State:

8 (1) A registered office that may be the same as any of its places of
9 business; and

10 (2) A registered agent, who shall be (i) an individual who resides in this
11 State and whose business office is identical with the registered office;
12 (ii) a domestic corporation, nonprofit corporation, or limited liability
13 company whose business office is identical with the registered office;
14 or (iii) a foreign corporation, nonprofit corporation, or limited liability
15 company authorized to transact business in this State whose business
16 office is identical with the registered office.

17 (b) The sole duty of the registered agent to the foreign limited liability company
18 is to forward to the limited liability company at its last known address any notice,
19 process, or demand that is served on the registered agent.

20 **"§ 57C-7-08. Change of registered office or registered agent of foreign limited**
21 **liability company.**

22 (a) A foreign limited liability company authorized to transact business in this
23 State may change its registered office or registered agent by delivering to the Secretary
24 of State for filing a statement of change that sets forth:

25 (1) Its name;

26 (2) The street address, and the mailing address if different from the street
27 address, of its current registered office, and the county in which it is
28 located;

29 (3) If the address of its registered office is to be changed, the street
30 address, and the mailing address if different from the street address, of
31 the new registered office, and the county in which it is located;

32 (4) The name of its current registered agent;

33 (5) If the current registered agent is to be changed, the name of its new
34 registered agent and the new agent's written consent (either on the
35 statement or attached to it) to the appointment; and

36 (6) That after the change or changes are made, the addresses of its
37 registered office and the business office of its registered agent will be
38 identical.

39 (b) If a registered agent changes the address of his business office, the registered
40 agent may change the address of the registered office of any foreign limited liability
41 company for which he is the registered agent by notifying the foreign limited liability
42 company in writing of the change and signing (either manually or in facsimile) and
43 delivering to the Secretary of State for filing a statement of change that complies with

1 the requirements of subsection (a) of this section and recites that the foreign limited
2 liability company has been notified of the change.

3 **"§ 57C-7-09. Resignation of registered agent of foreign limited liability company.**

4 (a) The registered agent of a foreign limited liability company may resign his
5 agency appointment by signing and filing with the Secretary of State the signed original
6 and two exact or conformed copies of a statement of resignation, which may include a
7 statement that the registered office is also discontinued. The statement must be
8 accompanied by a certification from the registered agent that he has mailed or delivered
9 to the foreign limited liability company at its last known address written notice of his
10 resignation. Such certification shall include the name and title of the manager notified,
11 if any, and the address to which the notice was mailed or delivered.

12 (b) After filing the statement, the Secretary of State shall mail one copy to the
13 registered office (if not discontinued) and the other copy to the foreign limited liability
14 company at its principal office shown in its application for certificate of authority or
15 amended certificate of authority or at the address indicated in the latest communication
16 received by the Secretary of State from the foreign limited liability company stating the
17 correct mailing address of its principal office.

18 (c) The agency appointment is terminated, and the registered office discontinued
19 if so provided, on the 31st day after the date on which the statement was filed.

20 **"§ 57C-7-10. Service on foreign limited liability company.**

21 (a) The registered agent of a foreign limited liability company authorized to
22 transact business in this State is an agent of the foreign limited liability company for
23 service of process, notice, or demand required or permitted by law to be served on the
24 limited liability company.

25 (b) Whenever a foreign limited liability company authorized to transact business
26 in this State shall fail to appoint or maintain a registered agent in this State, or whenever
27 its registered agent cannot with due diligence be found at the registered office, then the
28 Secretary of State shall be an agent of the foreign limited liability company upon whom
29 any such process, notice, or demand may be served. Service on the Secretary of State of
30 any such process, notice, or demand shall be made by delivering to and leaving with the
31 Secretary of State or with any clerk having charge of the limited liability company
32 department of the Secretary of State's office, duplicate copies of the process, notice, or
33 demand. In the event any such process, notice, or demand is served on the Secretary of
34 State, the Secretary of State shall immediately mail one of the copies thereof, by
35 registered or certified mail, return receipt requested, to the foreign limited liability
36 company at its principal office shown in its application for certificate of authority or
37 amended certificate of authority or at the address indicated in the latest communication
38 received by the Secretary of State from the foreign limited liability company stating the
39 current mailing address of its principal office or, if there is no mailing address for the
40 principal office on file, to the foreign limited liability company at its registered office.
41 Service on a foreign limited liability company under this subsection shall be effective
42 for all purposes from and after the date of the service on the Secretary of State.

1 (c) The Secretary of State shall keep a record of all processes, notices, and
2 demands served upon the Secretary of State under this section and shall record therein
3 the time of such service and the Secretary of State's action with reference thereto.

4 (d) Nothing herein contained shall limit or affect the right to service any process,
5 notice, or demand required or permitted by law to be served upon a foreign limited
6 liability company in any other manner now or hereafter permitted by law.

7 **"§ 57C-7-11. Withdrawal of foreign limited liability company.**

8 (a) A foreign limited liability company authorized to transact business in this
9 State may not withdraw from this State until it obtains a certificate of withdrawal from
10 the Secretary of State.

11 (b) A foreign limited liability company authorized to transact business in this
12 State may apply for a certificate of withdrawal by delivering an application to the
13 Secretary of State for filing. The application must set forth:

14 (1) The name of the foreign limited liability company and the name of the
15 state or country under whose law it is organized;

16 (2) That it is not transacting business in this State and that it surrenders its
17 authority to transact business in this State;

18 (3) That the foreign limited liability company revokes the authority of its
19 registered agent to accept service of process and consents that service
20 of process in any action or proceeding based upon any cause of action
21 arising in this State, or arising out of business transacted in this State,
22 during the time the foreign limited liability company was authorized to
23 transact business in this State may thereafter be made on such foreign
24 limited liability company by service thereof on the Secretary of State;

25 (4) A mailing address to which the Secretary of State may mail a copy of
26 any process served on him under subdivision (3) of this section; and

27 (5) A commitment to notify the Secretary of State in the future of any
28 change in its mailing address.

29 (c) If the Secretary of State finds that the application conforms to law, the
30 Secretary of State shall:

31 (1) Endorse on the application and an exact or conformed copy thereof the
32 word 'filed' and the hour, day, month, and year of the filing thereof;

33 (2) File the application in the Secretary of State's office;

34 (3) Issue a certificate of withdrawal to which the Secretary of State shall
35 affix the exact or conformed copy of the application; and

36 (4) Send to the foreign limited liability company or its representative the
37 certificate of withdrawal together with the exact or conformed copy of
38 the application affixed thereto.

39 (d) After the withdrawal of the foreign limited liability company is effective,
40 service of process on the Secretary of State in accordance with subsection (b)(3) of this
41 section is service on the foreign limited liability company. Upon receipt of process, the
42 Secretary of State shall mail a copy of the process to the foreign limited liability
43 company at the mailing address set forth under subsection (b) of this section.

44 **"§ 57C-7-12. Withdrawal of limited liability company by reason of a merger.**

1 (a) Whenever the separate existence of a foreign limited liability company
2 authorized to transact business in this State ceases as a result of a statutory merger
3 permitted by the laws of the state or country under which it was organized, the surviving
4 entity shall apply for a certificate of withdrawal for the merged foreign limited liability
5 company by delivering to the Secretary of State for filing a copy of the articles of
6 merger or a certificate reciting the facts of the merger, duly authenticated by the
7 Secretary of State or other official having custody of limited liability company records
8 in the state or country under the laws of which such statutory merger was effected. If
9 the surviving entity is not authorized to transact business in this State, the articles of
10 merger or certificate must be accompanied by an application which must set forth:

- 11 (1) The name of each merged foreign limited liability company authorized
12 to transact business in this State and the name of the surviving entity
13 and a statement that the surviving entity is not authorized to transact
14 business in this State;
- 15 (2) That the surviving entity consents that service of process based upon
16 any cause of action arising in this State, or arising out of business
17 transacted in this State, during the time each merged foreign limited
18 liability company was authorized to transact business in this State may
19 thereafter be made on such foreign limited liability company by
20 service thereof on the Secretary of State;
- 21 (3) A mailing address to which the Secretary of State may mail a copy of
22 any process served on him under subdivision (a)(2) of this section; and
- 23 (4) A commitment to notify the Secretary of State in the future of any
24 change in its mailing address.

25 (b) If the Secretary of State finds that the articles of merger or certificate and the
26 application for withdrawal, if required, conforms to law, the Secretary of State shall:

- 27 (1) Endorse on the articles of merger or certificate and the application for
28 withdrawal, if required, the word 'filed' and the hour, day, month, and
29 year of filing thereof;
- 30 (2) File the articles of merger or certificate and the application, if required;
- 31 (3) Issue a certificate of withdrawal; and
- 32 (4) Send to the foreign limited liability company or its representative the
33 certificate of withdrawal, together with the exact or conformed copy of
34 the application, if required, affixed thereto.

35 **"§ 57C-7-13. Action by Attorney General.**

36 The Attorney General may maintain an action to restrain a foreign limited liability
37 company from transacting business in this State in violation of this Article.

38 **"§ 57C-7-14. Revocation of certificate of authority.**

39 (a) The Secretary of State may administratively revoke the certificate of authority
40 of a foreign limited liability company authorized to transact business in this State if the
41 Secretary of State determines that:

- 42 (1) The foreign limited liability company has not paid within 60 days after
43 they are due any penalties, fees, or other payments due under this
44 Chapter;

- 1 (2) The foreign limited liability company has not delivered its annual
2 report to the Secretary of State on or before the date it is due;
3 (3) The foreign limited liability company has been without a registered
4 agent or a registered office in this State for 60 days or more;
5 (4) The foreign limited liability company does not inform the Secretary of
6 State as required by this Chapter that its registered agent or registered
7 office has been changed, that its registered agent has resigned, or that
8 its registered office has been discontinued within 60 days of the
9 change, resignation, or discontinuance;
10 (5) An organizer, member, manager, or agent of the foreign limited
11 liability company has signed a document that he knew was false in any
12 material respect with the intent the document be delivered to the
13 Secretary of State for filing;
14 (6) The Secretary of State receives a duly authenticated certificate from
15 the secretary of state or other official having custody of limited
16 liability company records in the state or country under whose law the
17 foreign limited liability company is organized stating that it has been
18 dissolved or has ceased to exist as the result of a merger or otherwise;
19 or
20 (7) The limited liability company is exceeding the authority conferred
21 upon it by this Chapter.

22 (b) If the Secretary of State determines that one or more grounds exist under this
23 section for revocation of the certificate of authority, the Secretary of State shall mail the
24 foreign limited liability company written notice of his determination. If, within 60 days
25 after notice is mailed, a foreign limited liability company does not correct each ground
26 for revocation, or demonstrate to the reasonable satisfaction of the Secretary of State
27 that each ground does not exist, the Secretary of State shall revoke the foreign limited
28 liability company's certificate of authority by signing a certificate of revocation that
29 recites the ground or grounds for the revocation, shall file the certificate of revocation,
30 and shall mail a copy to the foreign limited liability company. The authority of the
31 foreign limited liability company to transact business in this State shall cease on the date
32 the certificate of authority is revoked by the filing of the certificate of revocation by the
33 Secretary of State.

34 (c) Upon the revocation of a foreign limited liability company's certificate of
35 authority, the Secretary of State shall become the foreign limited liability company's
36 agent for service of process in any proceeding based on a cause of action arising in this
37 State or arising out of business transacted in this State during the time the foreign
38 limited liability company was authorized to transact business in this State. The
39 Secretary of State shall then proceed in accordance with G.S. 57C-7-10.

40 (d) A foreign limited liability company may appeal the Secretary of State's
41 revocation of its certificate of authority under the same procedures that a foreign
42 corporation may appeal the revocation of its certificate of authority pursuant to G.S. 55-
43 15-32 and G.S. 55-15-33.

"ARTICLE 8.

"DERIVATIVE ACTIONS.**"§ 57C-8-01. Members' derivative actions.**

(a) A member may bring an action in the superior court of this State in the right of any domestic or foreign limited liability company to recover a judgment in its favor if the following conditions are met:

(1) The plaintiff does not have the authority to cause the limited liability company to sue in its own right; and

(2) The plaintiff (i) is a member of the limited liability company at the time of bringing the action, and (ii) was a member of the limited liability company at the time of the transaction of which the plaintiff complains, or the plaintiff's status as a member of the limited liability company thereafter devolved upon the plaintiff pursuant to the terms of the operating agreement from a person who was a member at such time.

(b) The complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the managers or comparable authority and the reasons for the plaintiff's failure to obtain the action or for not making the effort. Whether or not a demand for action was made, if the limited liability company commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

(c) Upon motion of the limited liability company, the court may appoint a committee composed of two or more disinterested managers or other disinterested persons, acceptable to the limited liability company, to determine whether it is in the best interest of the limited liability company to pursue a particular legal right or remedy. The committee shall report its findings to the court. After considering the report and any other relevant evidence, the court shall determine whether the proceeding should be continued or not.

(d) No action on behalf of a limited liability company shall be discontinued, dismissed, compromised, or settled without the approval of the court. If the court shall determine that the interest of the members or any class or classes thereof, or of the creditors of the limited liability company, will be substantially affected by such discontinuance, dismissal, compromise, or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to such members or creditors whose interests it determines will be so affected. If notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same, in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of such expense shall be awarded as costs of the action.

(e) If the action on behalf of the limited liability company is successful, in whole or in part, whether by means of a compromise and settlement or by a judgment, the court may award the plaintiff the reasonable expenses of maintaining the action, including reasonable attorneys' fees, and shall direct the plaintiff to account to the limited liability company for the remainder of any proceeds of the action.

1 (f) In any such action the court, upon final judgment and a finding that the action
2 was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to
3 the defendant or defendants the reasonable expenses, including attorneys' fees, incurred
4 by them in the defense of the action.

5 (g) In proceedings hereunder, no member shall be entitled to obtain or have
6 access to any communication within the scope of the limited liability company's
7 attorney-client privilege which could not be obtained by or would not be accessible to a
8 party in an action other than on behalf of the limited liability company.

9 **"ARTICLE 9.**

10 **"MERGER.**

11 **"§ 57C-9-01. Merger.**

12 Any one or more limited liability companies may merge into another foreign or
13 domestic limited liability company.

14 **"§ 57C-9-02. Plan of merger.**

15 (a) Each limited liability company planning to merge shall enter into a written
16 plan of merger, which shall be approved in accordance with G.S. 57C-9-03.

17 (b) The plan of merger shall set forth:

18 (1) The name of each limited liability company planning to merge and the
19 name of the surviving limited liability company into which each other
20 limited liability company proposes to merge;

21 (2) The terms and conditions of the proposed merger;

22 (3) The manner and basis of converting the interests of each limited
23 liability company into interests or other securities or obligations, as the
24 case may be, of the surviving or any other limited liability company,
25 or, in whole or in part, into cash or other property;

26 (4) Such amendments to the articles of organization of the surviving
27 limited liability company as are desired to be effected by the merger,
28 or that no such changes are desired; and

29 (5) Such other provisions relating to the proposed merger as are deemed
30 necessary or desirable.

31 **"§ 57C-9-03. Approval of merger.**

32 (a) A proposed plan of merger complying with the requirements of G.S. 57C-9-
33 02 shall be approved by the unanimous consent of the members, unless the articles of
34 organization or a written operating agreement provides otherwise.

35 (b) After a merger is authorized, unless the plan of merger provides otherwise,
36 and at any time before articles of merger (as provided for in G.S. 57C-9-04) are filed,
37 the plan of merger may be abandoned (subject to any contractual rights), in accordance
38 with the procedure set forth in the plan of merger or, if none is set forth, in the manner
39 determined by the managers.

40 **"§ 57C-9-04. Articles of merger.**

41 (a) After a plan of merger is approved as provided in G.S. 57C-9-03, the
42 surviving limited liability company shall deliver to the Secretary of State for filing
43 articles of merger duly executed by each limited liability company setting forth:

44 (1) The plan of merger; and

1 (2) A statement that the plan of merger was duly authorized and approved
2 in accordance with G.S. 57C-9-03.

3 (b) A merger takes effect upon the effective date of the articles of merger.

4 **"§ 57C-9-05. Effects of merger.**

5 Consummation of a merger has the effects provided in this section:

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

10 (2) The separate existence of each limited liability company party to the
11 plan of merger, except the surviving limited liability company, shall
12 cease;

13 (3) The surviving limited liability company shall thereupon and thereafter
14 possess all the rights, privileges, immunities, powers, and franchises,
15 of a public as well as a private nature, of each limited liability
16 company party to the merger and shall be subject to all the restrictions,
17 disabilities, and duties of each of the limited liability companies;

18 (4) All property, real, personal, and mixed, and all debts due on whatever
19 account, including promises to make capital contributions and
20 subscriptions for shares, and all other choses in action, and all and
21 every other interest of or belonging to or due to each limited liability
22 company party to the merger shall be vested in the surviving limited
23 liability company without further act or deed;

24 (5) The title to all real estate and any interest therein vested in any limited
25 liability company party to the merger shall not revert or be in any way
26 impaired by reason of the merger;

27 (6) The surviving limited liability company shall thenceforth be
28 responsible and liable for all liabilities and obligations of each limited
29 liability company party to the merger, and any claim existing or action
30 or proceeding pending by or against any such limited liability
31 company may be prosecuted as if the merger had not taken place, or
32 the surviving limited liability company may be substituted in the
33 action;

34 (7) Neither the rights of creditors nor any liens on the property of any
35 limited liability company party to the merger shall be impaired by the
36 merger;

37 (8) The articles of organization of the surviving limited liability company
38 shall be amended to the extent provided in the plan of merger; and

39 (9) The membership or other interests of each limited liability company
40 that are to be converted or exchanged into interests or other securities,
41 cash, obligations, or other property under the terms of the articles of
42 merger are so converted, and the former holders thereof are entitled
43 only to the rights provided in the plan of merger or the rights otherwise
44 provided by law.

1 **"§ 57C-9-06. Merger with foreign entity.**

2 (a) Any one or more limited liability companies of this State may merge with or
3 into one or more foreign limited liability companies, if:

4 (1) The merger is permitted by the law of the state or jurisdiction under
5 whose laws each foreign limited liability company is organized or
6 formed and each foreign limited liability company complies with that
7 law in effecting the merger;

8 (2) The foreign limited liability company complies with G.S. 57C-9-04 if
9 it is the surviving limited liability company; and

10 (3) Each domestic limited liability company complies with the applicable
11 provisions of G.S. 57C-9-01 through G.S. 57C-9-03 and, if it is the
12 surviving limited liability company, with G.S. 57C-9-04.

13 (b) Upon a merger involving one or more domestic limited liability companies
14 taking effect, if the surviving limited liability company is to be governed by the laws of
15 any state other than this State or by the laws of the District of Columbia or of any
16 foreign country, then the surviving limited liability company shall agree:

17 (1) That it may be served with process in this State in any proceeding for
18 enforcement of any obligation of any limited liability company party
19 to the merger that was organized under the laws of this State, as well
20 as for enforcement of any obligation of the surviving limited liability
21 company arising from the merger; and

22 (2) To appoint the Secretary of State as its agent for service of process in
23 any such proceeding, and the surviving limited liability company shall
24 specify the address to which a copy of the process shall be mailed to it
25 by the Secretary of State.

26 (c) The effect of the merger shall be as provided in G.S. 57C-9-05, if the
27 surviving limited liability company is to be governed by the laws of this State. If the
28 surviving limited liability company is to be governed by the laws of any jurisdiction
29 other than this State, the effect of the merger shall be the same as provided in G.S. 57C-
30 9-05, except insofar as the laws of such other jurisdiction provide otherwise.

31 **"ARTICLE 10.**

32 **"MISCELLANEOUS.**

33 **"§ 57C-10-01. Execution by judicial act.**

34 Any person who is adversely affected by the failure or refusal of any person to
35 execute and file any articles or other document to be filed under this Chapter may
36 petition the superior court in the county where the limited liability company's principal
37 office (or, if none in this State, its registered office) is or was last located or, if there is
38 no such office, in the county of Wake, to direct the execution and filing of the articles or
39 other document. If the court finds that it is proper for the articles or the document to be
40 executed and filed and that there has been failure or refusal to execute and file the
41 document, it shall order the Secretary of State to file the appropriate articles or other
42 document.

43 **"§ 57C-10-02. Applicability of provisions to foreign and interstate commerce.**

1 The provisions of this Chapter shall apply to determine the rights and obligations of
2 a limited liability company organized hereunder in commerce with foreign nations and
3 among the several states, except as prohibited by law.

4 **"§ 57C-10-03. Rules of construction.**

5 (a) The rules that statutes in derogation of the common law are to be strictly
6 construed shall have no application to this Chapter.

7 (b) The law of estoppel shall apply to this Chapter.

8 (c) The law of agency shall apply under this Chapter.

9 (d) This Chapter shall not be construed so as to impair the obligations of any
10 contract existing when this Chapter goes into effect, nor to affect any action or
11 proceedings begun or right accrued before this Chapter takes effect.

12 **"§ 57C-10-04. Jurisdiction of the superior courts.**

13 The superior courts shall have jurisdiction to enforce the provisions of this Chapter.

14 **"§ 57C-10-05. Rules for cases not provided for in this Chapter.**

15 In any case not provided for in this Chapter, the rules of law and equity shall govern.

16 **"§ 57C-10-06. Taxation.**

17 A limited liability company created under this Chapter or doing business in this
18 State or entering the State pursuant to this Chapter and its members shall be taxed on the
19 same basis as domestic and foreign partnerships and partners under the laws of this
20 State and shall make a return in accordance with G.S. 105-154(b) if the limited
21 liability company or foreign limited liability company is classified as a partnership
22 under the Internal Revenue Code (as defined in Chapter 105 of the General Statutes); or
23 on the same basis as domestic and foreign corporations under the laws of this State and
24 shall make a return in accordance with G.S. 55-130.16 if the limited liability company
25 or foreign limited liability company is classified as a corporation under the Internal
26 Revenue Code. If the limited liability company or foreign limited liability company is
27 classified under the Internal Revenue Code as other than a partnership or corporation,
28 the limited liability company or foreign limited liability company and its members shall
29 be subject to taxation in this State in a manner and on a basis consistent with its
30 classification under the Internal Revenue Code. Nothing in this section is intended to
31 require any limited liability company or foreign limited liability company to obtain an
32 administrative ruling on its classification under the Internal Revenue Code.

33 **"§ 57C-10-07. Intent.**

34 It is the intent of the General Assembly that the legal existence of limited liability
35 companies organized under this Chapter be recognized outside the boundaries of this
36 State and that, subject to any reasonable requirement of registration, a domestic limited
37 liability company transacting business outside this State be granted full faith and credit
38 under Section 1 of Article IV of the Constitution of the United States."

39 Sec. 2. G.S. 55B-9 reads as rewritten:

40 **"§ 55B-9. Professional relationship and liability.**

41 Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit or alter
42 the law in this State applicable to the professional relationship and liabilities between
43 the ~~person~~ individual as defined in G.S. 57C-1-03(10) furnishing the professional
44 services and the person receiving such professional service, or the standards of

1 professional conduct applicable to the rendering therein of such services. A
2 shareholder, director, or officer of a professional corporation is not individually liable
3 for the debts and obligations of the professional corporation arising from errors,
4 omissions, negligence, incompetence, or malfeasance committed in the course of the
5 professional corporation's business by another shareholder, director, officer, or a
6 representative of the professional corporation not working under the supervision or
7 direction of the first shareholder, director, or officer at the time the errors, omissions,
8 negligence, incompetence, or malfeasance occurred, unless the first shareholder,
9 director, or officer was directly involved in the specific activity in which the errors,
10 omissions, negligence, incompetence, or malfeasance were committed by the other
11 shareholder, director, officer, or representative."

12 Sec. 3. G.S. 59-32 reads as rewritten:

13 **"§ 59-32. Definition of terms.**

14 In this Article:

- 15 (1) 'Bankrupt' includes bankrupt under the Federal Bankruptcy Act or
16 insolvent under any State insolvent act.
17 (2) 'Business' includes every trade, occupation, or profession.
18 (3) 'Conveyance' includes every assignment, lease, mortgage, or
19 encumbrance.
20 (4) 'Court' includes every court and judge having jurisdiction in the case.
21 (5) 'Person' includes individuals, partnerships, corporations, and other
22 associations.
23 (6) 'Real property' includes land and any interest or estate in land.
24 (7) 'Registered limited liability partnership' means a partnership registered
25 under G.S. 59-84.2 and complying with G.S. 59-84.3."

26 Sec. 4. G.S. 59-45 reads as rewritten:

27 **"§ 59-45. Nature of partner's ~~liability.~~ liability in ordinary partnerships and in**
28 **registered limited liability partnership.**

29 (a) All~~Except as provided by subsection (b) of this section,~~ all partners are
30 jointly and severally liable for the acts and obligations of the partnership.

31 (b) A partner in a registered limited liability partnership is not individually liable
32 for debts and obligations of the partnership arising from errors, omissions, negligence,
33 incompetence, or malfeasance committed in the course of the partnership business by
34 another partner or a representative of the partnership not working under the supervision
35 or direction of the first partner at the time the errors, omissions, negligence,
36 incompetence, or malfeasance occurred, unless the first partner was directly involved in
37 the specific activity in which the errors, omissions, negligence, incompetence, or
38 malfeasance were committed by the other partner or representative.

39 (c) Subsection (b) of this section does not affect the joint and several liability of a
40 partner for debts and obligations of the partnership arising from any cause other than
41 those specified in subsection (b) of this section.

42 (d) Subsection (c) of this section does not affect the liability of partnership assets
43 for partnership debts and obligations."

1 Sec. 5. Article 3 of Chapter 59 of the General Statutes is amended by adding
2 the following new sections to read:

3 **"§ 59-84.2. Registered limited liability partnerships.**

4 (a) To become a registered limited liability partnership, a partnership must file
5 with the Secretary of State an application stating the name of the partnership, the
6 address of its principal office, the number of partners, and a brief statement of the
7 business in which the partnership engages.

8 (b) The application must be executed by a majority in interest of the partners or
9 by one or more partners authorized by a majority in interest of the partners.

10 (c) The application must be accompanied by a fee of one hundred dollars
11 (\$100.00).

12 (d) The Secretary of State shall register or renew any partnership that submits a
13 completed application with the required fee.

14 (e) Registration is effective for one year after the date the registration is filed,
15 unless voluntarily withdrawn by filing with the Secretary of State a written withdrawal
16 notice executed by a majority in interest of the partners or by one or more partners
17 authorized by a majority in interest of the partners.

18 (f) The Secretary of State may provide forms for applications for or renewal of
19 registration.

20 **"§ 59-84.3. Name of registered limited partnerships.**

21 A registered limited liability partnership's name must contain the words 'registered
22 limited liability partnership' or the abbreviation 'L.L.P.' as the last words or letters of its
23 name."

24 Sec. 6. If any provision of this act or its application to any person or
25 circumstance is held invalid, the invalidity does not affect other provisions or
26 applications of this act which can be given effect without the invalid provision or
27 application. To this end, the provisions of this act are severable.

28 Sec. 7. This act becomes effective October 1, 1993.