

SENATE BILL NO. 146

INTRODUCED BY WATERMAN, J. RICE, WHALEN, STANG,
HALLIGAN, MCCULLOCH, FORRESTER, CRIPPEN, FAGG,
STRIZICH, FOSTER, WELDON, BARTLETT, DOHERTY

IN THE SENATE

JANUARY 14, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
JANUARY 25, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 26, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
JANUARY 27, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 47; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 28, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 8, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 4, 1993	SECOND READING, CONCURRED IN.
MARCH 8, 1993	THIRD READING, CONCURRED IN. AYES, 90; NOES, 8.
MARCH 9, 1993	RETURNED TO SENATE.

IN THE SENATE

MARCH 10, 1993	RECEIVED FROM HOUSE.
	SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *SENATE* BILL NO. *146*
 2 INTRODUCED BY *Sen. Whalen*
 3 *Sen. Fagg*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA
 5 LIMITED LIABILITY COMPANY ACT; AND AMENDING SECTIONS
 6 30-13-141, 30-13-202, 30-13-301, 30-13-311, 35-1-308,
 7 35-1-1031, 35-2-305, 35-2-826, 35-4-206, AND 35-12-505,
 8 MCA."
 9

10 STATEMENT OF INTENT

11 A statement of intent is required for this bill because
 12 the secretary of state is authorized to adopt rules
 13 prescribing forms and establishing fees. The legislature
 14 intends that fees be commensurate with the cost of the
 15 services provided. It is further the intent of the
 16 legislature that the secretary of state make the forms
 17 consistent with existing forms used for corporate and other
 18 business entities, when practical and applicable, and that
 19 the new forms be as easy to use as possible.
 20

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 NEW SECTION. Section 1. Short title. [Sections 1
 23 through 78] may be cited as the "Montana Limited Liability
 24 Company Act".

25 NEW SECTION. Section 2. Definitions. As used in

1 [sections 1 through 78], unless the context requires
 2 otherwise, the following definitions apply:

3 (1) "Articles of organization" means articles filed
 4 pursuant to [section 8] and those articles as amended or
 5 restated.

6 (2) "Corporation" means a corporation formed under the
 7 laws of this state or a foreign corporation.

8 (3) "Court" includes every court having jurisdiction in
 9 the case.

10 (4) "Disqualified person" means any person or entity
 11 that for any reason is or becomes ineligible under [sections
 12 1 through 78] to become a member in a professional limited
 13 liability company.

14 (5) "Event of dissociation" means an event that causes
 15 a person to cease to be a member, as provided in [section
 16 45].

17 (6) "Foreign corporation" means a corporation that is
 18 organized under the laws of a state other than Montana or
 19 under the laws of any foreign country.

20 (7) "Foreign limited liability company" means an entity
 21 that is:

22 (a) an unincorporated association;

23 (b) organized under laws of a state other than Montana
 24 or under the laws of any foreign country;

25 (c) organized under a statute pursuant to which an

1 association may be formed that affords to each of its
2 members limited liability with respect to the liabilities of
3 the entity; and

4 (d) not required to be registered or organized under
5 any statute of this state other than [sections 1 through
6 78].

7 (8) "Foreign limited partnership" means a limited
8 partnership formed under the laws of any state other than
9 Montana or under the laws of any foreign country.

10 (9) "Foreign professional limited liability company"
11 means a limited liability company organized for the purpose
12 of rendering professional services under the laws of any
13 state other than Montana.

14 (10) "Licensing authority" means an officer, board,
15 agency, court, or other authority in this state that has the
16 power to issue a license or other legal authorization to
17 render a professional service.

18 (11) "Limited liability company" or "domestic limited
19 liability company" means an organization that is formed
20 under [sections 1 through 78].

21 (12) "Limited liability company interest" or "interest
22 in the limited liability company" means the interest that
23 can be assigned under [section 41] and that is available to
24 creditors under [section 42].

25 (13) "Limited partnership" means a limited partnership

1 formed under the laws of this state or a foreign limited
2 partnership.

3 (14) "Manager" means, with respect to a limited
4 liability company that has set forth in its articles of
5 organization that it is to be managed by managers, the
6 person designated in accordance with [section 21].

7 (15) "Member" means a person who has been admitted to
8 membership in a limited liability company as provided in
9 [section 44] and who has not dissociated from the limited
10 liability company.

11 (16) "Operating agreement" means an agreement, written
12 or oral, as to the conduct of the business and affairs of a
13 limited liability company that is binding upon all of the
14 members.

15 (17) "Person" means an individual, a general
16 partnership, a limited partnership, a domestic or foreign
17 limited liability company, a trust, an estate, an
18 association, a corporation, or any other legal or commercial
19 entity.

20 (18) "Professional limited liability company" means a
21 limited liability company designating itself as a
22 professional limited liability company in its articles of
23 organization.

24 (19) "Professional service" means a service that may
25 lawfully be rendered only by persons licensed under a

licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

(20) "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under [sections 1 through 78] to own shares issued by a professional limited liability company.

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

(22) "Surviving limited liability company" means the constituent entity surviving the merger, as identified in the articles of merger provided for in [section 71].

NEW SECTION. Section 3. Name. (1) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability

company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) Contests over names registered under this section are governed by 35-1-310.

NEW SECTION. Section 4. Reservation of name. (1) The exclusive right to use a name may be reserved by:

(a) a person intending to organize a limited liability company and to adopt that name;

(b) a limited liability company or foreign limited liability company registered in this state that intends to adopt that name;

(c) a foreign limited liability company intending to register in this state and to adopt that name; or

(d) a person intending to organize a foreign limited liability company and to have it registered in this state and to adopt that name.

(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited liability company, the secretary of state shall reserve the name for the exclusive use of the applicant for a nonrenewable period of 120 days from the date the application is filed.

(3) The holder of a reserved limited liability company name may renew the reservation for successive periods of 120 days each from the date of renewal.

(4) The right to the exclusive use of a reserved name may be transferred to another person by filing with the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, and by specifying the name to be transferred and the name and address of the transferee. The transfer may not extend the term during which the name is reserved.

NEW SECTION. Section 5. Registered office and registered agent. (1) A limited liability company shall continuously maintain in this state:

(a) a registered office that may but need not be the same as its place of business; and

(b) a registered agent for service of process (at the registered office) on the limited liability company that is

either an individual resident of this state, a domestic corporation, a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.

(3) A limited liability company may change its registered office or registered agent, or both, by delivering to the secretary of state a statement setting forth:

(a) the name of the limited liability company;

(b) the address of its current registered office;

(c) if the address of its registered office is to be changed, the new address of the registered office;

(d) the name and address of its current registered agent; and

(e) if its registered agent or the agent's address is to be changed, the name and address of the successor registered agent or the current registered agent's new address.

(4) The change of address of the registered office or

registered agent is effective on delivery of the statement to the secretary of state. The appointment of a new registered agent is effective on delivery of the statement to the secretary of state and on receipt by the secretary of state of evidence that the new registered agent has accepted appointment pursuant to subsection (2).

(5) A registered agent of a limited liability company may resign as registered agent by delivering a written notice and 2 copies to the secretary of state. The secretary of state shall mail a copy of the notice to the limited liability company at its registered office and its principal place of business. The appointment of the registered agent terminates 30 days after receipt of the notice by the secretary of state or on the appointment of a new registered agent, whichever occurs first.

(6) If a registered agent changes its address to another place in this state, it may change the address by delivering a statement to the secretary of state as required by subsection (3), except that it need be signed only by the registered agent. The statement must recite that a copy of the statement has been mailed to the limited liability company.

NEW SECTION. Section 6. Purpose. (1) A limited liability company organized under [sections 8 through 18] has the purpose of engaging in any lawful business unless a

more limited purpose is set forth in the articles of organization.

(2) Limited liability companies may be organized under [sections 8 through 18] for any lawful purpose except for the purpose of banking or insurance.

NEW SECTION. Section 7. Powers. A limited liability company may:

(1) sue, be sued, complain, and defend in all courts;

(2) transact its business, carry on its operations, and have and exercise the powers granted by this section in any state; in any territory, district, or possession of the United States; and in any foreign country;

(3) make contracts and guarantees, incur liabilities, and borrow money;

(4) sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any of its assets;

(5) acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located;

(6) issue notes, bonds, and other obligations and secure any of them by mortgage, deed of trust, or security interest of any of its assets;

(7) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and

1 otherwise use and deal in and with stock or other interests
 2 in and obligations of domestic and foreign corporations,
 3 associations, general or limited partnerships, limited
 4 liability companies, business trusts, and individuals;

5 (8) invest its surplus funds, lend money from time to
 6 time in any manner that may be appropriate to enable it to
 7 carry on the operations or fulfill the purposes set forth in
 8 its articles of organization, and take and hold real
 9 property and personal property as security for the payment
 10 of funds loaned or invested;

11 (9) elect or appoint agents and define their duties and
 12 fix their compensation;

13 (10) sell, convey, mortgage, pledge, lease, exchange,
 14 transfer, and otherwise dispose of all or any part of its
 15 property and assets;

16 (11) be a promoter, stockholder, partner, member, or
 17 associate, or agent of any corporation, partnership,
 18 domestic or foreign limited liability company, joint
 19 venture, trust, or other enterprise;

20 (12) indemnify and hold harmless any member, agent, or
 21 employee from and against any claims and demands whatsoever,
 22 except in the case of action or failure to act by the
 23 member, agent, or employee that constitutes willful
 24 misconduct or recklessness, and subject to the standards and
 25 restrictions, if any, set forth in the articles of

1 organization or operating agreement;

2 (13) cease its activities and dissolve;

3 (14) pay pensions and establish pension plans, pension
 4 trusts, profit-sharing plans, share bonus plans, share
 5 option plans, and benefit or incentive plans for any of its
 6 current or former directors, officers, employees, and
 7 agents;

8 (15) make donations for the public welfare or for
 9 charitable, religious, scientific, or educational purposes
 10 and, in time of war, make donations in aid of war
 11 activities; and

12 (16) do every other act not inconsistent with law that
 13 is appropriate to promote and further the business and
 14 affairs of the limited liability company.

15 NEW SECTION. **Section 8. Formation.** One or more persons
 16 may form a limited liability company by signing and filing
 17 articles of organization with the secretary of state. The
 18 person or persons need not be members of the limited
 19 liability company at the time of formation or after
 20 formation has occurred.

21 NEW SECTION. **Section 9. Articles of organization.** (1)
 22 The articles of organization must set forth:

23 (a) the name of the limited liability company that
 24 satisfies the requirements of [section 3];

25 (b) the latest date on which the limited liability

1 company is to dissolve;

2 (c) the address of its principal place of business in
3 this state and, if different, its registered office and the
4 name and address of its resident agent at the registered
5 office in this state;

6 (d) a statement of whether the limited liability
7 company is to be managed by a manager or by its members;

8 (e) (i) if the limited liability company is to be
9 managed by a manager or managers, a statement that the
10 company is to be managed in that fashion and the names and
11 street addresses of managers who are to serve as managers
12 until the first meeting of members or until their successors
13 are elected;

14 (ii) if the management of a limited liability company is
15 reserved to the members, the names and street addresses of
16 the initial members;

17 (f) if the limited liability company is a professional
18 limited liability company, a statement to that effect and a
19 statement of the professional service or services it will
20 render; and

21 (g) any other provision, not inconsistent with law,
22 that the members elect to set out in the articles, including
23 but not limited to a statement of whether there are
24 limitations on the authority of members or management to
25 bind the limited liability company.

1 (2) It is not necessary to set out in the articles of
2 organization any of the powers enumerated in [section 7].

3 NEW SECTION. **Section 10. Amendment of articles of**
4 **organization -- restatement.** (1) The articles of
5 organization of a limited liability company are amended by
6 filing articles of amendment with the secretary of state.
7 The articles of amendment must set forth:

8 (a) the name of the limited liability company;
9 (b) the date the articles of organization were filed;
10 and

11 (c) the amendment to the articles of organization.

12 (2) The articles of organization may be amended as
13 desired, so long as the amended articles of organization
14 contain only provisions that may be lawfully contained in
15 articles of organization at the time of making the
16 amendment.

17 (3) Articles of organization may be restated at any
18 time. Restated articles of organization must be filed with
19 the secretary of state, must be specifically designated as
20 such in the heading, and must state either in the heading or
21 in an introductory paragraph the limited liability company's
22 present name and, if it has been changed, all of its former
23 names and the date of the filing of its articles of
24 organization.

25 (4) An amendment to the articles of organization of a

limited liability company must be in the form and manner designated by the secretary of state.

NEW SECTION. Section 11. Execution of documents. (1)

Unless otherwise specified in [sections 1 through 78], a document required by [sections 1 through 78] to be filed with or delivered to the secretary of state must be executed:

(a) by any manager if management of the limited liability company is vested in one or more managers or by a member if management of the limited liability company is reserved to the members;

(b) if the limited liability company has not been formed, by the person or persons forming the limited liability company; or

(c) if the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(2) The person executing the document shall sign it and state, beneath or opposite the signature, the person's name and the capacity in which the person signs.

(3) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document do not need to be shown to or filed with the secretary of state.

NEW SECTION. Section 12. Filing with secretary of

state. (1) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of the articles of organization or any other document required to be filed pursuant to [sections 1 through 78] must be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of [sections 1 through 78], the secretary of state shall, when all required filing fees have been paid:

(a) endorse on each signed original and duplicate copy the word "filed" and the date and time of its acceptance for filing;

(b) retain the signed original in the secretary of state's files; and

(c) return the duplicate copy to the person who filed it or to the person's representative.

(2) If the secretary of state is unable to make the determination required for filing by subsection (1) at the time any documents are delivered for filing, the documents are considered to have been filed at the time of delivery if the secretary of state subsequently determines that the documents as delivered conform to the filing provisions of [sections 8 through 18].

NEW SECTION. Section 13. Effect of delivery or filing of articles of organization. (1) A limited liability company

1 is formed when the articles of organization are delivered to
2 the secretary of state for filing.

3 (2) Each copy of the articles of organization stamped
4 "filed" and marked with the filing date is conclusive
5 evidence that all conditions precedent required to be
6 performed by the organizers have been complied with and that
7 the limited liability company has been legally organized and
8 formed under [sections 1 through 78].

9 NEW SECTION. Section 14. Filing of facsimile copy. (1)

10 The secretary of state may treat a facsimile copy of a
11 document that is required to be filed under [sections 1
12 through 78] and the signatures on the facsimile copy in the
13 same manner as an original for purposes of [sections 1
14 through 78], provided that the secretary of state receives
15 the original document within 5 working days of the receipt
16 of the facsimile copy. If all other requirements are met,
17 the date of filing relates back to the date of receipt of
18 the facsimile copy. A facsimile copy may be filed under this
19 section if it:

20 (a) is produced by a method of transmission of images
21 in which the image is scanned at the transmitter,
22 reconstructed at the receiving station, and duplicated on
23 paper at the receiving station; and

24 (b) is legible and the same size as the original.

25 (2) During the 5-day period referred to in subsection

1 (1), the recorded facsimile copy constitutes constructive
2 notice for all purposes of the original document.

3 (3) If the original document is not received within 5
4 working days of receipt of the facsimile copy as provided in
5 subsection (1), the filing of the facsimile copy is void.

6 (4) A person who files a false document by facsimile
7 copy is liable to the party aggrieved for three times the
8 amount of damages resulting from the filing of the false
9 document.

10 NEW SECTION. Section 15. Annual report for secretary
11 of state. (1) A limited liability company or a foreign
12 limited liability company authorized to transact business in
13 this state shall deliver to the secretary of state, for
14 filing, an annual report that sets forth:

15 (a) the name of the limited liability company and the
16 state or country under whose law it is organized;

17 (b) the mailing address and, if different, street
18 address of its registered office and the name of its
19 registered agent at that office in this state;

20 (c) the address of its principal office;

21 (d) (i) if the limited liability company is managed by
22 a manager or managers, a statement that the company is
23 managed in that fashion and the names and street addresses
24 of the managers;

25 (ii) if the management of a limited liability company is

reserved to the members, a statement to that effect;

(e) the last date upon which the limited liability company is to be dissolved;

(f) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

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

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction.

(5) The annual report must be executed by at least one member of the limited liability company and must include the

street address of the member.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of [sections 72 through 78] and rules promulgated under [sections 72 through 78]. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

NEW SECTION. Section 16. Administrative dissolution -- rules. (1) A domestic limited liability company may be dissolved involuntarily by order of the secretary of state if the limited liability company has failed:

(a) for 60 days after change of its registered office or registered agent to file in the office of the secretary of state a statement of the change;

(b) for 140 days to file its annual report within the time required by law; or

(c) to remit any fees required by law.

(2) The secretary of state may adopt rules to establish procedures for administrative dissolutions consistent with subsection (1).

NEW SECTION. Section 17. Reinstatement of dissolved limited liability company. (1) The secretary of state may:

(a) reinstate a limited liability company that has been dissolved under the provisions of [section 16];

(b) restore to a reinstated limited liability company its right to carry on business in this state and to exercise all of its privileges and immunities.

(2) A limited liability company applying for reinstatement shall submit to the secretary of state one original and one copy of the application, executed by a person who was a member at the time of dissolution, setting forth:

(a) the name of the limited liability company;

(b) a statement that the assets of the limited liability company have not been liquidated;

(c) a statement that a majority of its members have authorized the application for reinstatement; and

(d) if its name has been legally acquired by another entity prior to its application for reinstatement, the name under which the limited liability company desires to be reinstated.

(3) The limited liability company shall submit with its

application for reinstatement a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid.

(4) When all requirements are met and the secretary of state reinstates the limited liability company to its former rights, the secretary of state shall:

(a) conform and file in the office of the secretary of state reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the reinstated limited liability company a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the limited liability company one or more certified copies of the certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

(6) A restoration of limited liability company rights pursuant to this section relates back to the date the limited liability company was involuntarily dissolved, and the limited liability company is considered to have been an existing legal entity from the date of its original organization.

NEW SECTION. Section 18. Fees for filing, copying, and services -- rules. (1) The secretary of state shall

1 establish by rule fees for filing documents as required by
2 [sections 1 through 78].

3 (2) The secretary of state shall establish by rule fees
4 for copying documents, priority handling, transmitting or
5 filing facsimile copies, and providing computer-generated
6 information.

7 (3) The fees prescribed under this section must be
8 reasonably related to the costs of processing the documents
9 and preparing and providing the services. The secretary of
10 state shall maintain records sufficient to support the fees
11 established under this section.

12 **NEW SECTION. Section 19. License fee.** (1) In addition
13 to the filing fee authorized by [section 18], the secretary
14 of state shall charge and collect from each foreign limited
15 liability company a license fee of \$50 at the time of filing
16 its articles of organization.

17 (2) In addition to the filing fee authorized by
18 [section 18], the secretary of state shall charge and
19 collect from each foreign limited liability company a
20 license fee of \$50 at the time of filing an application for
21 a certificate of authority to transact business.

22 **NEW SECTION. Section 20. Agency power of members and**
23 **managers.** (1) Except as provided in subsection (2), a member
24 is an agent of the limited liability company for the purpose
25 of its business or affairs and the act of a member,

1 including but not limited to the execution of any instrument
2 in the name of the limited liability company for apparently
3 carrying on in the usual way the business or affairs of the
4 limited liability company binds the limited liability
5 company, unless the member so acting has, in fact, no
6 authority to act for the limited liability company in the
7 particular matter and the person with whom the member is
8 dealing has knowledge of the fact that the member has no
9 such authority.

10 (2) If the articles of organization provide that
11 management of the limited liability company is vested in a
12 manager or managers:

13 (a) a member, acting solely in the capacity as a
14 member, may not be an agent of the limited liability
15 company; and

16 (b) a manager is an agent of the limited liability
17 company for the purpose of its business or affairs and the
18 act of a manager, including but not limited to the execution
19 of any instrument in the name of the limited liability
20 company for apparently carrying on in the usual way the
21 business or affairs of the limited liability company binds
22 the limited liability company, unless the manager so acting
23 has, in fact, no authority to act for the limited liability
24 company in the particular matter and the person with whom
25 the manager is dealing has knowledge of the fact that the

1 manager has no such authority.

2 (3) An act of a manager or a member that is not
3 apparently for carrying on in the usual way the business of
4 the limited liability company does not bind the limited
5 liability company, unless authorized in accordance with the
6 articles of organization or the operating agreement, at the
7 time of the transaction or at any other time.

8 (4) An act of a manager or member in contravention of a
9 restriction on authority may not bind the limited liability
10 company to persons having knowledge of the restriction.

11 NEW SECTION. Section 21. Admissions of members and
12 managers. (1) Except as provided in subsection (2), an
13 admission or representation made by a member concerning the
14 business or affairs of a limited liability company within
15 the scope of the member's authority as provided for by
16 [sections 1 through 78] is evidence against the limited
17 liability company.

18 (2) If the articles of organization provide that
19 management of the limited liability company is vested in a
20 manager or managers:

21 (a) an admission or representation made by a manager
22 concerning the business or affairs of a limited liability
23 company within the scope of the manager's authority, as
24 provided for by [sections 1 through 78], is evidence against
25 the limited liability company; and

1 (b) the admission or representation of a member, acting
2 solely in the capacity as a member, may not constitute
3 evidence.

4 NEW SECTION. Section 22. Limited liability company
5 charged with knowledge of or notice to member or manager.
6 (1) Except as provided in subsection (2), notice to a member
7 of any matter relating to the business or affairs of the
8 limited liability company and the knowledge of the member
9 acting in the particular matter, acquired while a member or
10 of which the member had knowledge at the time of becoming a
11 member, and the knowledge of any other member who reasonably
12 could and should have communicated it to the acting member
13 operate as notice to or knowledge of the limited liability
14 company, except in the case of a fraud on the limited
15 liability company committed by or with the consent of that
16 member.

17 (2) If the articles of organization provide that
18 management of the limited liability company is vested in a
19 manager or managers:

20 (a) notice to a manager of any matter relating to the
21 business or affairs of the limited liability company and the
22 knowledge of the manager acting in the particular matter,
23 acquired while a manager or of which the manager had
24 knowledge at the time of becoming a manager, and the
25 knowledge of any other manager who reasonably could and

1 should have communicated it to the acting manager operate as
2 notice to or knowledge of the limited liability company,
3 except in the case of a fraud on the limited liability
4 company committed by or with the consent of that manager;
5 and

6 (b) notice to or knowledge of a member of a limited
7 liability company while the member is acting solely in the
8 capacity as a member is not notice to or knowledge of the
9 limited liability company.

10 NEW SECTION. Section 23. Liability of members to third
11 parties. A person who is a member or manager, or both, of a
12 limited liability company is not liable, solely by reason of
13 being a member or manager, or both, under a judgment, decree
14 or order of a court, or in any other manner, for a debt,
15 obligation, or liability of the limited liability company,
16 whether arising in contract, tort, or otherwise or for the
17 acts or omissions of any other member, manager, agent, or
18 employee of the limited liability company.

19 NEW SECTION. Section 24. Management. (1) Unless the
20 articles of organization vest management of the limited
21 liability company in a manager or managers, management of
22 the business or affairs of the limited liability company is
23 vested in the members. Subject to any provisions in the
24 articles of organization, the operating agreement, or
25 [sections 1 through 78] restricting or enlarging the

1 management rights and duties of any person, group, or class
2 of persons, the members may manage the affairs of the
3 limited liability company and make all necessary decisions.

4 (2) If the articles of organization vest management of
5 the limited liability company in one or more managers, the
6 managers may manage the business or affairs of the limited
7 liability company as provided in the articles of
8 organization or operating agreement. Unless otherwise
9 provided in the articles of organization or an operating
10 agreement, the managers:

11 (a) must be designated, appointed, elected, removed, or
12 replaced by a vote, approval, or consent of more than
13 one-half of the members;

14 (b) need not be members of the limited liability
15 company or natural persons; and

16 (c) unless they have been earlier removed or have
17 earlier resigned, shall hold office until their successors
18 are elected and qualified.

19 NEW SECTION. Section 25. Duties of members and
20 managers. (1) Subject to contrary provision of articles of
21 organization or an operating agreement, a member or manager
22 is not liable, responsible, or accountable in damages or
23 otherwise to the limited liability company or to the members
24 of the limited liability company for any action taken or for
25 failure to act on behalf of the limited liability company

1 unless the act or omission constitutes gross negligence or
2 willful misconduct.

3 (2) Each member and manager shall account to the
4 limited liability company and hold as trustee for it any
5 profit or benefit derived by the member or manager without
6 the consent of a majority of the disinterested members or
7 managers or other persons participating in the management of
8 the business or affairs of the limited liability company
9 from:

10 (a) any transaction connected with the conduct or
11 winding up of the limited liability company; or

12 (b) any use by the member or manager of its property,
13 including but not limited to confidential or proprietary
14 information of the limited liability company or other
15 matters entrusted to the member or manager as a result of
16 the member's or manager's status as member or manager.

17 (3) A member who is not also a manager of a limited
18 liability company in which management is vested in managers
19 under [section 24] has no duty to the limited liability
20 company or to the other members solely by reason of acting
21 in the capacity as a member.

22 NEW SECTION. **Section 26. Voting.** (1) Except as
23 provided in the articles of organization, the operating
24 agreement, or [sections 1 through 78] and subject to
25 subsection (2), the affirmative vote, approval, or consent

1 of more than one-half of the members, if management of the
2 limited liability company is vested in the members, or of
3 the managers or other persons vested with the management of
4 the limited liability company, if the management of the
5 limited liability company is vested in the managers or
6 persons, is required to decide any matter connected with the
7 business.

8 (2) Except as provided in writing in the articles of
9 organization or the operating agreement, the affirmative
10 vote, approval, or consent of all members is required to:

11 (a) amend the articles of organization or a written
12 operating agreement; or

13 (b) authorize a member, manager, or other person to do
14 any act on behalf of the limited liability company that
15 contravenes the articles of organization or a written
16 operating agreement, including any written provision of the
17 articles of organization or a written operating agreement
18 that expressly limits the purpose, business, or affairs of
19 the limited liability company or its conduct.

20 NEW SECTION. **Section 27. Limitation of liability and**
21 **indemnification of members and managers.** (1) Subject to
22 subsection (2), the articles of organization or operating
23 agreement may:

24 (a) eliminate or limit the personal liability of a
25 member or a manager for monetary damages for breach of any

1 duty provided for in [section 25]; and

2 (b) provide for indemnification of the member or the
3 manager for judgments, settlements, penalties, fines, or
4 expenses incurred in a proceeding to which an individual is
5 a party because the individual is or was a member or a
6 manager.

7 (2) A provision permitted under subsection (1) may not
8 limit or eliminate the liability of a member or a manager
9 for:

10 (a) the amount of a financial benefit received by a
11 member or a manager to which the member or the manager is
12 not entitled;

13 (b) an intentional infliction of harm by the member or
14 the manager on the limited liability company or its members;

15 (c) an intentional violation of criminal law by the
16 member or the manager; or

17 (d) an unlawful distribution by the member or the
18 manager.

19 **NEW SECTION. Section 28. Records and information.** (1)
20 Unless otherwise provided in the articles of organization or
21 a written operating agreement, a limited liability company
22 shall keep at its principal place of business the following:

23 (a) a current and past list, setting forth the full
24 name and last-known mailing address of each member and
25 manager, if any, set forth in alphabetical order;

1 (b) a copy of the articles of organization and all
2 amendments to the articles, together with executed copies of
3 any powers of attorney pursuant to which any articles have
4 been executed;

5 (c) copies of the limited liability company's federal,
6 state, and local income tax returns and financial
7 statements, if any, for the 3 most recent years or, if the
8 returns and statements were not prepared for any reason,
9 copies of the information and statements provided to or that
10 should have been provided to the members to enable them to
11 prepare their federal, state, and local tax returns for the
12 period;

13 (d) copies of any effective written operating
14 agreements and all amendments and copies of any written
15 operating agreements no longer in effect;

16 (e) unless provided in writing in an operating
17 agreement:

18 (i) a writing, if any, setting forth the amount of
19 cash, the agreed value of other property or services
20 contributed by each member, and the times or events upon
21 which any additional contributions agreed to by each member
22 are to be made;

23 (ii) a writing, if any, stating events that require the
24 limited liability company to be dissolved and its affairs
25 wound up; and

(iii) other writings, if any, prepared pursuant to a requirement in an operating agreement.

(2) A member may, at the member's own expense, inspect and copy any limited liability company record, wherever the record is located, upon reasonable request during ordinary business hours.

(3) Members, if the management of the limited liability company is vested in the members, or managers, if management of the limited liability company is vested in the managers, shall render, to the extent the circumstances make it just and reasonable, true and full information of all things affecting the members to any member and to the legal representative of any deceased member or of any member under legal disability.

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

NEW SECTION. Section 29. Contributions to capital. An interest in a limited liability company may be issued in exchange for property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

NEW SECTION. Section 30. Liability for contribution.

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

(2) (a) Except as provided in the articles of organization or the operating agreement, a member is obligated to the limited liability company to perform any enforceable promises to contribute cash or property or to perform services even if the member is unable to perform because of death, disability, or other reason.

(b) If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value or the stated contribution that has not been made.

(3) (a) Unless otherwise provided in the articles of organization or the operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of [sections 1 through 78] may be compromised only with the unanimous consent of the members.

(b) Notwithstanding the compromise, the original obligation may be enforced by a creditor of a limited liability company who extends credit or otherwise acts in reliance on the obligation after the member signs a writing that reflects the obligation and before the amendment or

1 compromise.

2 NEW SECTION. Section 31. Sharing of profits and
3 losses. Unless otherwise provided in the articles of
4 organization or a written operating agreement, each member
5 must be repaid that member's contributions to capital and
6 share equally in the profits, losses, and surpluses
7 remaining after all liabilities, including those to members,
8 are satisfied.

9 NEW SECTION. Section 32. Sharing of distributions.
10 Except as provided in [sections 33 and 50], distributions of
11 cash or other assets of a limited liability company must be
12 shared among the members and among classes of members in the
13 manner provided in writing in the articles of organization
14 or the operating agreement. If the articles of organization
15 or the operating agreement does not so provide in writing,
16 each member shall share equally in any distribution. A
17 member is entitled to receive distributions described in
18 this section from a limited liability company to the extent
19 and at the times or upon the happening of the events
20 specified in the articles of organization or the operating
21 agreement or at the times determined by the members or
22 managers pursuant to [section 26].

23 NEW SECTION. Section 33. Distributions on event of
24 dissociation. Upon the occurrence of an event of
25 dissociation under [section 45] that does not cause

1 dissolution, a dissociating member is entitled to receive:

2 (1) any distribution to which the member is entitled
3 under the articles of organization or the operating
4 agreement; and

5 (2) if not otherwise provided in the articles of
6 organization or the operating agreement, within a reasonable
7 time after dissociation, the fair value of the member's
8 interest in the limited liability company as of the date of
9 dissociation based upon the member's right to share in
10 distributions from the limited liability company.

11 NEW SECTION. Section 34. Distribution in kind. Except
12 as provided in the articles of organization or the operating
13 agreement:

14 (1) a member, regardless of the nature of the member's
15 contribution, may not demand or receive any distribution
16 from a limited liability company in any form other than
17 cash; and

18 (2) a member may not be compelled to accept from a
19 limited liability company a distribution of any asset in
20 kind to the extent that the percentage of the asset
21 distributed to the members exceeds a percentage of that
22 asset that is equal to the percentage in which the member
23 shares in distributions from the limited liability company.

24 NEW SECTION. Section 35. Distributions. (1) A
25 distribution may not be made if, after giving effect to the

1 distribution:

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

5 (b) the limited liability company's total assets would
6 be less than the sum of its total liabilities plus, unless
7 the articles of organization or the operating agreement
8 provides otherwise, the amount that would be needed, if the
9 limited liability company were to be dissolved at the time
10 of the distribution, to satisfy the preferential rights of
11 other members upon dissolution that are superior to the
12 rights of the member receiving the distribution.

13 (2) The limited liability company may base a
14 determination that a distribution is not prohibited under
15 subsection (1) on either:

16 (a) financial statements prepared on the basis of
17 accounting practices and principles that are reasonable
18 under the circumstances; or

19 (b) a fair valuation or other method that is reasonable
20 under the circumstances.

21 (3) Except as provided in subsection (5), the effect of
22 a distribution under subsection (1) is measured as of:

23 (a) the date the distribution is authorized if the
24 payment occurs within 120 days after the date of
25 authorization; or

1 (b) the date payment is made if it occurs more than 120
2 days after the date of authorization.

3 (4) A limited liability company's indebtedness to a
4 member incurred by reason of a distribution to be made to
5 that member in accordance with this section is at parity
6 with the limited liability company's indebtedness to its
7 general unsecured creditors, except as otherwise provided by
8 agreement.

9 (5) For purposes of this section:

10 (a) if terms of indebtedness provide that payment of
11 principal and interest is to be made only if and to the
12 extent that payment of a distribution to members could then
13 be made under this section, indebtedness of a limited
14 liability company, including indebtedness issued as a
15 distribution, is not a liability for purposes of
16 determinations made under subsection (2); and

17 (b) if the indebtedness is issued as a distribution,
18 each payment of principal or interest on the indebtedness is
19 treated as a distribution, the effect of which is measured
20 on the date the payment is actually made.

21 **NEW SECTION. Section 36. Liability upon wrongful**
22 **distribution.** (1) A member or manager who votes for or
23 assents to a distribution in violation of the articles of
24 organization, the operating agreement, or [section 35] is
25 personally liable to the limited liability company, but not

to other persons, for the amount of the distribution that exceeds what could have been distributed without violating [section 35] or the articles of organization or the operating agreement if it is established that the member or manager did not act in compliance with [section 35].

(2) A member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution:

(a) from each other member or manager who voted for or assented to the unlawful distribution; and

(b) from each member for the amount the member received, knowing that the distribution was made in violation of [section 35] or the articles of organization or the operating agreement.

NEW SECTION. Section 37. Right to distribution.

Subject to [section 50], when a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

NEW SECTION. Section 38. Ownership of limited liability company property. (1) Property transferred to or otherwise acquired by a limited liability company becomes property of the limited liability company. A member has no interest in specific limited liability company property.

(2) Property may be acquired, held, and conveyed in the

name of the limited liability company. Any estate in real property may be acquired in the name of the limited liability company, and title to any estate acquired must vest in the limited liability company rather than in the members individually.

NEW SECTION. Section 39. Transfer of real property.

(1) Except as provided in subsection (5), title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any member in the name of the limited liability company.

(2) Title to property of the limited liability company that is held in the name of one or more members or managers may be transferred by an instrument of transfer executed by the persons in whose name title is held if there is an indication in the instrument transferring title to the property to them of:

(a) their capacity as members or managers of a limited liability company; or

(b) the existence of a limited liability company, even if the name of the limited liability company is not indicated.

(3) Property transferred under subsection (1) or (2) may be recovered by the limited liability company if it proves that the act of the person executing the instrument

1 of transfer did not bind the limited liability company under
 2 [section 20] unless the property has been transferred by the
 3 initial transferee or a person claiming through the initial
 4 transferee to a subsequent transferee who gives value
 5 without having notice that the person who executed the
 6 instrument of initial transfer lacked authority to bind the
 7 limited liability company.

8 (4) Title to property of the limited liability company
 9 may be transferred free of any claims of the limited
 10 liability company or its members by the persons in whose
 11 name title is held to a transferee who gives value without
 12 having notice that it is property of a limited liability
 13 company if title is held in the name of one or more persons
 14 other than the limited liability company and there is no
 15 indication in the instrument transferring title to the
 16 property to them of:

17 (a) their capacity as members or managers of a limited
 18 liability company; or

19 (b) the existence of a limited liability company.

20 (5) If the articles of organization provide that
 21 management of the limited liability company is vested in a
 22 manager or managers:

23 (a) title to property of the limited liability company
 24 that is held in the name of the limited liability company
 25 may be transferred by an instrument of transfer executed by

1 any manager in the name of the limited liability company;
 2 and

3 (b) a member, acting solely in the capacity of a
 4 member, may not transfer title as provided in subsection
 5 (5)(a).

6 NEW SECTION. Section 40. Nature of membership
 7 interest. A membership interest is personal property.

8 NEW SECTION. Section 41. Assignment of membership
 9 interest. (1) Except as provided in writing in the articles
 10 of organization or an operating agreement:

11 (a) a membership interest is assignable in whole or in
 12 part;

13 (b) an assignment entitles the assignee to receive, to
 14 the extent assigned, only the distributions to which the
 15 assignor would be entitled;

16 (c) an assignment of a membership interest does not of
 17 itself dissolve the limited liability company or entitle the
 18 assignee to participate in the management and affairs of the
 19 limited liability company or to become or to exercise any
 20 rights of a member;

21 (d) until the assignee of a limited liability company
 22 interest becomes a member, the assignor continues to be a
 23 member and to have the power to exercise rights of a member,
 24 subject to the members' right to remove the assignor
 25 pursuant to [section 45(1)(c)(ii)];

(e) until an assignee of a membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

(f) the assignor of a membership interest is not released from liability as a member solely as a result of the assignment.

(2) The articles of organization or an operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company and may also provide for the assignment or transfer of a membership interest represented by a certificate and make other provisions with respect to the certificates.

(3) Unless otherwise provided in the articles of organization or an operating agreement, the pledge or granting of a security interest, lien, or other encumbrance in or against any of the membership interest of a member is not an assignment and may not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

NEW SECTION. Section 42. Rights of judgment creditor.

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the unsatisfied amount of judgment, with interest. To the extent

charged, the judgment creditor has only the rights of an assignee of the membership interest. [Sections 1 through 78] does not deprive a member of the benefit of any exemption laws applicable to a membership interest.

NEW SECTION. Section 43. Right of assignee to become member. (1) Except as otherwise provided in the articles of organization or a written operating agreement, an assignee of an interest in a limited liability company may become a member only if the other members unanimously consent.

(2) An assignee who becomes a member has, to the extent assigned, the rights and powers of and is subject to the restrictions and liabilities of a member under the articles of organization, an operating agreement, and [sections 1 through 78]. An assignee who becomes a member is liable for obligations of the assignor to make contributions and to return distributions under [section 30]; however, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time the assignee became a member and that could not be ascertained from the articles of organization or a written operating agreement.

(3) Whether or not an assignee of a membership interest becomes a member, the assignor is not released from liability to the limited liability company under [section 30].

(4) Except as otherwise provided in writing in the

articles of organization or the operating agreement, a member who assigns the member's entire interest in the limited liability company ceases to be a member and to have the power to exercise any rights of a member when the assignee becomes a member with respect to the assigned interest.

NEW SECTION. Section 44. Admission of members. (1)

Subject to subsection (2), a person may become a member in a limited liability company:

(a) in the case of a person acquiring a limited liability company interest directly from the limited liability company, upon compliance with the articles of organization or the operating agreement or, if the articles of organization or the operating agreement does not so provide in writing, upon the written consent of all members; and

(b) in the case of an assignee of a limited liability company interest, as provided in [section 41].

(2) The effective time of admission of a member to a limited liability company is the later of:

(a) the date the limited liability company is formed; or

(b) the time provided in the articles of organization or the operating agreement or, if no time is provided, when the person's admission is reflected in the records of the

limited liability company.

NEW SECTION. Section 45. Events of dissociation. (1) A

person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(a) the member withdraws by voluntary act from the limited liability company as provided in subsection (3);

(b) the member ceases to be a member of the limited liability company as provided in [section 43];

(c) the member is removed as a member:

(i) in accordance with the articles of organization or the operating agreement; or

(ii) subject to contrary written provisions in the articles of organization or the operating agreement, by an affirmative vote of a majority of the members who have not assigned their interests when the member assigns all the member's interest in the limited liability company;

(d) subject to contrary written provisions in the articles of organization or the operating agreement or written consent of all members at the time, the member:

(i) makes an assignment for the benefit of creditors;

(ii) files a voluntary petition in bankruptcy;

(iii) is adjudicated as bankrupt or insolvent;

(iv) files a petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or

1 regulation;

2 (v) files an answer or other pleading admitting or
3 failing to contest the material allegations of a petition
4 filed against the member in any proceeding under subsection
5 (1)(d); or

6 (vi) seeks, consents to, or acquiesces in the
7 appointment of a trustee, receiver, or liquidator of the
8 member or of any substantial part of the member's
9 properties;

10 (e) subject to contrary written provisions in the
11 articles of organization or the operating agreement or
12 written consent of all members at the time if:

13 (i) 120 days after the commencement of any proceeding
14 against the member seeking reorganization, arrangement,
15 composition, readjustment, liquidation, dissolution, or
16 similar relief under any statute, law, or regulation, the
17 proceeding has not been dismissed;

18 (ii) within 90 days after the appointment without the
19 member's consent or acquiescence of a trustee, receiver, or
20 liquidator of the member or of any substantial part of the
21 member's properties, the appointment is not vacated or
22 stayed; or

23 (iii) within 90 days after the expiration of any stay,
24 the appointment is not vacated;

25 (f) subject to contrary written provisions in the

1 articles of organization or the operating agreement or
2 written consent of all members at the time, in the case of a
3 member who is an individual:

4 (i) the member's death; or

5 (ii) the entry of an order by a court of competent
6 jurisdiction adjudicating the member incompetent to manage
7 the member's person or estate;

8 (g) subject to contrary written provisions in the
9 articles of organization or the operating agreement or
10 written consent of all members at the time, in the case of a
11 member who is a trustee or is acting as a member by virtue
12 of being a trustee of a trust, the termination of the trust
13 but not merely the substitution of a new trustee;

14 (h) subject to contrary written provisions in the
15 articles of organization or the operating agreement or
16 written consent of all members at the time, in the case of a
17 member that is a separate limited liability company, the
18 dissolution and commencement of winding up of the separate
19 limited liability company;

20 (i) subject to contrary written provisions in the
21 articles of organization or the operating agreement or
22 written consent of all members at the time, in the case of a
23 member that is a corporation, the filing of articles of
24 dissolution, or the equivalent for the corporation, or
25 involuntary dissolution and the lapse of 90 days after

1 notice to the corporation of revocation without a
2 reinstatement of its charter;

3 (j) subject to contrary written provisions in the
4 articles of organization or the operating agreement or
5 written consent of all members at the time, in the case of
6 an estate, the distribution by the fiduciary of the estate's
7 entire interest in the limited liability company; or

8 (k) if the limited liability company is a professional
9 limited liability company, a member becomes a disqualified
10 person.

11 (2) The members may provide in writing in the articles
12 of organization or the operating agreement for other events
13 that result in a person ceasing to be a member of the
14 limited liability company.

15 (3) Unless the articles of organization or the
16 operating agreement provides in writing that a member may
17 not withdraw by voluntary act from a limited liability
18 company, the member may withdraw at any time by giving 30
19 days' written notice to the other members or other notice
20 required in the articles of organization or the operating
21 agreement. Unless otherwise provided in the articles of
22 organization or the operating agreement, in the case of a
23 limited liability company for a definite term or particular
24 undertaking, a withdrawal by a member before the expiration
25 of that term is a breach of the articles of organization or

1 the operating agreement. If a member has the power to
2 withdraw but the withdrawal violates a provision of the
3 articles of organization or is a breach of the operating
4 agreement or the withdrawal occurs as a result of otherwise
5 wrongful conduct of the member, the limited liability
6 company may:

7 (a) recover from the withdrawing member damages for
8 violation of the articles of organization or for breach of
9 the operating agreement, including the reasonable cost of
10 obtaining replacement of the services the withdrawn member
11 was obligated to perform;

12 (b) offset the damages against the amount otherwise
13 distributable to the member; and

14 (c) pursue any other remedies provided for in the
15 articles of organization or the operating agreement or
16 otherwise available under applicable law.

17 **NEW SECTION. Section 46.** Dissolution. A limited
18 liability company is dissolved and its affairs must be wound
19 up when one of the following occurs:

20 (1) at the time or upon the occurrence of events
21 specified in writing in the articles of organization or
22 operating agreement;

23 (2) the written consent of all members;

24 (3) an event of dissociation of a member, unless the
25 business of the limited liability company is continued by

1 the consent of all the remaining members within 90 days
 2 following the occurrence of an event of dissociation or as
 3 otherwise provided in writing in the articles of
 4 organization or operating agreement; or

5 (4) entry of a decree of judicial dissolution under
 6 [section 47].

7 NEW SECTION. **Section 47. Judicial dissolution.** On
 8 application by or for a member, a district court may order
 9 dissolution of a limited liability company, or other
 10 appropriate relief, when it is not reasonably practicable to
 11 carry on the business in conformity with the articles of
 12 organization or operating agreement.

13 NEW SECTION. **Section 48. Winding up.** (1) Except as
 14 otherwise provided in the articles of organization or the
 15 operating agreement, the business or affairs of the limited
 16 liability company may be wound up:

17 (a) by the members or managers who have authority under
 18 [section 23] to manage the limited liability company prior
 19 to dissolution; or

20 (b) if one or more of the members or managers have
 21 engaged in wrongful conduct or upon other cause shown, by
 22 the district court on application of any member or any
 23 member's legal representative or assignee.

24 (2) The persons winding up the business or affairs of
 25 the limited liability company may, in the name of and for

1 and on behalf of the limited liability company:

2 (a) prosecute and defend suits;

3 (b) settle and close the business of the limited
 4 liability company;

5 (c) dispose of and transfer the property of the limited
 6 liability company;

7 (d) discharge the liabilities of the limited liability
 8 company; and

9 (e) distribute to the members any remaining assets of
 10 the limited liability company.

11 NEW SECTION. **Section 49. Agency power of members or**
 12 **managers after dissolution.** (1) Except as provided in
 13 subsections (3) through (5), after an event causing
 14 dissolution of the limited liability company, a member may
 15 bind the limited liability company:

16 (a) by an act appropriate for winding up the limited
 17 liability company's affairs or completing transactions
 18 unfinished at dissolution; and

19 (b) by any transaction that would have bound the
 20 limited liability company, if it had not been dissolved, if
 21 the other party to the transaction does not have notice of
 22 the dissolution.

23 (2) The filing of the articles of dissolution is
 24 presumed to constitute notice of dissolution for purposes of
 25 subsection (1)(b).

(3) An act of a member that would not otherwise be binding on the limited liability company under subsection (1) is binding if it is authorized by the limited liability company.

(4) An act of a member that would be binding under subsection (1) or would be otherwise authorized and that is in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

(5) If the articles of organization vest management of the limited liability company in managers, a manager may exercise the authority of a member under subsection (1) and a member may not exercise the authority if the member is acting solely in the capacity of a member.

NEW SECTION. Section 50. Distribution of assets. Upon the winding up of a limited liability company, the assets must be distributed as follows:

(1) to creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company, whether by payment or the making of reasonable provision for payment, other than liabilities to members for distributions under [section 33 or 34];

(2) unless otherwise provided in the articles of organization or an operating agreement, to members and

former members in satisfaction of liabilities for distributions under [section 33 or 34]; and

(3) unless otherwise provided in the articles of organization or an operating agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

NEW SECTION. Section 51. Articles of dissolution. Upon the dissolution and the commencement of winding up of the limited liability company, articles of dissolution must be filed in the office of the secretary of state and must set forth:

(1) the name of the limited liability company;

(2) the date of filing of its articles of organization and all amendments to the articles;

(3) the reason for filing the articles of dissolution;

(4) the effective date of the articles of dissolution, which must be a date certain, if they are not to be effective upon the filing;

(5) any other information that the members or managers filing the articles determine necessary;

(6) the name of the agent or agents authorized to receive service of process after dissolution of the limited liability company; and

(7) the name of the person or persons authorized to

1 wind up the business and authorized to execute documents on
2 behalf of the limited liability company.

3 **NEW SECTION. Section 52.** Revocation of dissolution.

4 (1) A foreign limited liability company may revoke its
5 dissolution within 120 days of the effective date of the
6 articles of dissolution.

7 (2) Revocation of dissolution must be authorized in the
8 same manner as the dissolution was authorized unless that
9 authorization permitted revocation by action of the board of
10 directors alone, in which event the board of directors may
11 revoke the dissolution without shareholders' action.

12 (3) After the revocation of dissolution is authorized,
13 the foreign limited liability company may revoke the
14 dissolution by delivering to the secretary of state, for
15 filing, articles of revocation of dissolution, together with
16 a copy of its articles of dissolution, that set forth:

17 (a) the name of the foreign limited liability company;

18 (b) the effective date of the dissolution that was
19 revoked;

20 (c) the date that the revocation of dissolution was
21 authorized; and

22 (d) a statement of the action that was taken to revoke
23 the dissolution.

24 (4) Unless a delayed effective date is specified,
25 revocation of dissolution is effective when the articles of

1 revocation of dissolution are filed.

2 (5) When the revocation of dissolution is effective, it
3 relates back to and takes effect as of the effective date of
4 the dissolution, and the foreign limited liability company
5 resumes carrying on its business as if dissolution had never
6 occurred.

7 **NEW SECTION. Section 53.** Known claims against
8 dissolved limited liability companies. (1) A dissolved
9 limited liability company may dispose of the known claims
10 against it by filing articles of dissolution pursuant to
11 [section 53] and following the procedure described in this
12 section.

13 (2) The dissolved limited liability company shall
14 notify its known claimants in writing of the dissolution at
15 any time after the effective date of the dissolution. The
16 written notice must:

17 (a) describe information that must be included in a
18 claim;

19 (b) provide a mailing address where a claim may be
20 sent;

21 (c) state the deadline, which may not be less than 120
22 days from the later of the effective date of the written
23 notice or the filing of the articles of dissolution pursuant
24 to [section 51], by which the dissolved limited liability
25 company must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

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

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved limited liability company by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

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

NEW SECTION. Section 54. Unknown claims against dissolved limited liability companies. (1) Subject to [section 53], the dissolution of a limited liability company, including dissolution by the expiration of its term, does not take away or impair any remedy available to or against the limited liability company or its members or managers for any claim or right, whether or not the claim or right existed or accrued prior to dissolution. A proceeding by or against the limited liability company may be prosecuted or defended by the limited liability company in its name. The members and managers have power to take action

as appropriate to protect the remedy, right, or claim.

(2) A claim may be enforced under [section 53] or this section:

(a) against the dissolved limited liability company, to the extent of the undistributed assets; or

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

(3) Subsections (1) and (2) apply to foreign limited liability companies and their members transacting business in this state for any claims otherwise arising or accruing under Montana law.

NEW SECTION. Section 55. Authority to transact business required. (1) A foreign limited liability company may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) maintaining, defending, or settling any proceeding;

(b) holding meetings of the members or managers or

1 carrying on other activities concerning internal affairs of
2 the limited liability company;

3 (c) maintaining bank accounts;

4 (d) maintaining offices or agencies for the transfer,
5 exchange, and registration of the limited liability
6 company's own securities or maintaining trustees or
7 depositaries with respect to those securities;

8 (e) selling through independent contractors;

9 (f) soliciting or obtaining orders, whether by mail or
10 through employees or agents or otherwise, if the orders
11 require acceptance outside this state before they become
12 contracts;

13 (g) creating or acquiring indebtedness, mortgages, and
14 security interests in real or personal property;

15 (h) securing or collecting debts or enforcing mortgages
16 and security interests in property securing the debts;

17 (i) owning real or personal property that is acquired
18 incident to activities described in subsection (2)(h) if the
19 property is disposed of within 5 years after the date of
20 acquisition, does not produce income, or is not used in the
21 performance of a function of the limited liability company;

22 (j) conducting an isolated transaction that is
23 completed within 30 days and that is not a transaction in
24 the course of repeated transactions of a similar nature; or

25 (k) transacting business in interstate commerce.

1 (3) The list of activities in subsection (2) is not
2 exhaustive.

3 NEW SECTION. Section 56. Consequences of transacting
4 business without authority. (1) A foreign limited liability
5 company transacting business in this state without a
6 certificate of authority may not maintain a proceeding in
7 any court in this state until it obtains a certificate of
8 authority.

9 (2) The successor to a foreign limited liability
10 company that transacted business in this state without a
11 certificate of authority and the assignee of a cause of
12 action arising out of that business may not maintain a
13 proceeding based on that cause of action in any court in
14 this state until the foreign limited liability company or
15 its successor obtains a certificate of authority.

16 (3) A court may stay a proceeding commenced by a
17 foreign limited liability company or its successor or
18 assignee until it determines whether the foreign corporation
19 or its successor or assignee requires a certificate of
20 authority. If it determines that a certificate is required,
21 the court may further stay the proceeding until the foreign
22 limited liability company or its successor obtains the
23 certificate.

24 (4) A foreign limited liability company is liable for a
25 civil penalty of \$5 for each day, but not to exceed a total

of \$1,000 for each year, that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection and deposit them to the general fund.

(5) Notwithstanding the provisions of subsections (1) and (2), the failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding in this state.

NEW SECTION. Section 57. Application for certificate of authority. (1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign limited liability company or, if its name is unavailable for use in this state, a name that satisfies the requirements of [section 63];

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

(c) its date of organization and period of duration;

(d) the street address of its principal office;

(e) the address of its registered office in this state and the name of its registered agent at that office; and

(f) the names and usual business addresses of its current managers, if different from its members.

(2) A foreign limited liability company shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign limited liability company is organized.

NEW SECTION. Section 58. Registered office and registered agent of foreign limited liability company. Each foreign limited liability company authorized to transact business in this state shall continuously maintain in this state:

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

(2) a registered agent who may be:

(a) an individual who resides in this state and whose business office is identical with the registered office; or

(b) a domestic corporation, a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state.

NEW SECTION. Section 59. Resignation of registered agent of foreign limited liability company. (1) The registered agent of a foreign limited liability company may resign the agency appointment by signing and delivering to the secretary of state for filing the original and two

1 copies of a statement of resignation. The statement of
2 resignation may include a statement that the registered
3 office is also discontinued.

4 (2) After filing the statement, the secretary of state
5 shall attach the filing receipt to one copy and mail the
6 copy and receipt to the registered office if the office has
7 not been discontinued. The secretary of state shall mail the
8 other copy to the foreign limited liability company at its
9 principal office address shown in its most recent annual
10 report.

11 (3) The agency appointment is terminated and the
12 registered office discontinued, if provided in the
13 statement, 30 days after the date on which the statement was
14 filed.

15 NEW SECTION. Section 60. Change of registered office
16 or registered agent of foreign limited liability company.

17 (1) A foreign limited liability company authorized to
18 transact business in this state may change its registered
19 office or registered agent, or both, by delivering to the
20 secretary of state, for filing, a statement of change
21 setting forth:

- 22 (a) the foreign limited liability company's name;
- 23 (b) the street address of its current registered
24 office;
- 25 (c) if the address of its registered office is to be

1 changed, the new address of the registered office;

2 (d) the name and address of its current registered
3 agent;

4 (e) if its registered agent or the agent's address is
5 to be changed, the name and address of the successor
6 registered agent or the current registered agent's new
7 address; and

8 (f) the fact that after the change or changes are made,
9 the street addresses of its registered office and the
10 business office of its registered agent are identical.

11 (2) If a registered agent changes the street address of
12 the registered agent's business office, the registered agent
13 may change the street address of the registered office of
14 any foreign limited liability company for which the
15 registered agent is the registered agent by notifying the
16 foreign limited liability company in writing of the change
17 and signing, either manually or in facsimile, and delivering
18 to the secretary of state, for filing, a statement of change
19 that complies with the requirements of subsection (1) and
20 that states that the foreign limited liability company has
21 been notified of the change.

22 NEW SECTION. Section 61. Amended certificate of
23 authority. (1) A foreign limited liability company
24 authorized to transact business in this state shall obtain
25 an amended certificate of authority from the secretary of

1 state if it changes:

2 (a) its name;

3 (b) the period of its duration; or

4 (c) the state or country of its organization.

5 (2) The requirements of [section 57] for obtaining an
6 original certificate of authority apply to obtaining an
7 amended certificate under this section.

8 **NEW SECTION. Section 62.** Effect of certificate of
9 authority. (1) A certificate of authority issued by the
10 secretary of state authorizes a foreign limited liability
11 company to transact business in this state subject to the
12 right of the state to revoke the certificate as provided in
13 [sections 55 through 68].

14 (2) A foreign limited liability company with a valid
15 certificate of authority has the same rights and privileges
16 as a domestic company of similar character and, except as
17 otherwise provided by [sections 55 through 68], is subject
18 to the same duties, restrictions, penalties, and liabilities
19 imposed on a domestic limited liability company of similar
20 character.

21 (3) [Sections 55 through 68] do not authorize the state
22 to regulate the organization or internal affairs of a
23 foreign limited liability company authorized to transact
24 business in the state.

25 **NEW SECTION. Section 63.** Name. A certificate of

1 authority may not be issued to a foreign limited liability
2 company unless the name of the company satisfies the
3 requirements of [section 3]. If the name of a foreign
4 limited liability company does not satisfy the requirements
5 of [section 3], to obtain or maintain a certificate of
6 authority:

7 (1) the foreign limited liability company may add the
8 words "limited company", the abbreviation "l.l.c.", or the
9 abbreviation "l.c." to its name for use in this state; or

10 (2) if its real name is unavailable, the foreign
11 limited liability company may use an assumed business name
12 that is available and that satisfies the requirements of
13 [section 15] if it files the assumed business name with the
14 secretary of state.

15 **NEW SECTION. Section 64.** Withdrawal of foreign limited
16 liability company. (1) A foreign limited liability company
17 authorized to transact business in this state may not
18 withdraw from this state until it obtains a certificate of
19 withdrawal from the secretary of state.

20 (2) A foreign limited liability company authorized to
21 transact business in this state may apply for a certificate
22 of withdrawal by delivering an application to the secretary
23 of state for filing. The application must set forth:

24 (a) the name of the foreign limited liability company
25 and the name of the state or country under whose law it is

1 organized;

2 (b) that it is not transacting business in this state
3 and that it surrenders its authority to transact business in
4 this state;

5 (c) that it revokes the authority of its registered
6 agent to accept service on its behalf and appoints the
7 secretary of state as its agent for service of process in
8 any proceeding based on a cause of action arising during the
9 time it was authorized to transact business in this state;

10 (d) a mailing address to which the secretary of state
11 may mail a copy of any process served on the secretary of
12 state under subsection (3);

13 (e) a commitment to notify the secretary of state in
14 the future of any change in its mailing address;

15 (f) that all taxes imposed on the foreign limited
16 liability company by Title 15 have been paid, supported by a
17 certificate by the department of revenue to be attached to
18 the application to the effect that the department is
19 satisfied from the available evidence that all taxes imposed
20 have been paid. The issuance of the certificate does not
21 relieve the corporation from liability for any taxes,
22 penalties, or interest due the state of Montana.

23 (g) additional information as may be necessary or
24 appropriate to enable the secretary of state to determine
25 and assess any unpaid fees or taxes payable by the foreign

1 limited liability company.

2 (3) After the withdrawal of the foreign limited
3 liability company is effective, service of process on the
4 secretary of state under this section is service on the
5 foreign limited liability company. Upon receipt of process,
6 the secretary of state shall mail a copy of the process to
7 the foreign limited liability company at the mailing address
8 set forth under subsection (2).

9 NEW SECTION. **Section 65.** Grounds for revocation. The
10 secretary of state may commence a proceeding under [section
11 66] to revoke the certificate of authority of a foreign
12 limited liability company authorized to transact business in
13 this state if:

14 (1) the foreign limited liability company does not
15 deliver its annual report to the secretary of state within
16 140 days after it is due;

17 (2) the foreign limited liability company is without a
18 registered agent or registered office in this state for 60
19 days or more;

20 (3) the foreign limited liability company does not
21 inform the secretary of state under [section 5] that its
22 registered agent or registered office has changed, that its
23 registered agent has resigned, or that its registered office
24 has been discontinued within 60 days of the change,
25 resignation, or discontinuance; or

(4) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of company records in the state or country under whose law the foreign limited liability company is organized, stating that it has been dissolved or disappeared as the result of a merger.

NEW SECTION. Section 66. Procedure for and effect of revocation. (1) If the secretary of state determines that one or more grounds exist under [section 65] for revocation of a certificate of authority, the secretary of state shall serve the foreign limited liability company with written notice of the secretary of state's determination.

(2) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after service of the notice is mailed, the secretary of state may revoke the foreign limited liability company's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and mail a copy to the foreign limited liability company.

(3) The authority of a foreign limited liability

company to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign limited liability company's certificate of authority appoints the secretary of state as the foreign limited liability company's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign limited liability company was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign limited liability company at its principal office shown in its most recent annual report or in any subsequent communication received from the foreign limited liability company, stating the current mailing address of its principal office or, if no report or communication is on file, in its application for a certificate of authority.

(5) Revocation of a foreign limited liability company's certificate of authority does not terminate the authority of the registered agent of the foreign limited liability company.

NEW SECTION. Section 67. Appeal from revocation. (1) A

1 foreign limited liability company may appeal the secretary
2 of state's revocation of its certificate of authority to the
3 district court within 30 days after service of the
4 certificate of revocation is mailed. The foreign limited
5 liability company may appeal by petitioning the court to set
6 aside the revocation and by attaching to the petition copies
7 of its certificate of authority and the secretary of state's
8 certificate of revocation.

9 (2) The court may summarily order the secretary of
10 state to reinstate the certificate of authority or may take
11 any other action the court considers appropriate.

12 (3) The court's final decision may be appealed as in
13 other civil proceedings.

14 NEW SECTION. Section 68. Admission of foreign
15 professional limited liability companies -- application --
16 revocation. (1) A foreign professional limited liability
17 company is entitled to a certificate of authority to
18 transact business in this state only if:

19 (a) the name of the foreign professional limited
20 liability company meets the requirements of [section 73];

21 (b) the foreign professional limited liability company
22 is organized only for purposes for which a professional
23 limited liability company may be organized under [sections
24 72 through 78]; and

25 (c) all the members and not less than one-half of the

1 managers of the foreign professional limited liability
2 company are qualified persons with respect to the foreign
3 professional limited liability company.

4 (2) Notwithstanding [section 55], a foreign
5 professional limited liability company may not be required
6 to obtain a certificate of authority to transact business in
7 this state unless it maintains an office in this state for
8 the conduct of business or professional practice.

9 (3) The application for a certificate of authority must
10 include a statement that all the members and not less than
11 one-half of the managers are licensed in at least one state
12 or territory or the District of Columbia to render a
13 professional service described in the statement of purposes
14 of the foreign professional limited liability company.

15 (4) The certificate of authority may be revoked by the
16 secretary of state if the foreign professional limited
17 liability company fails to comply with any provision of
18 [sections 72 through 78]. The licensing authority shall
19 certify to the secretary of state, from time to time, the
20 names of all foreign professional limited liability
21 companies that have given cause for revocation, together
22 with the pertinent facts, and shall concurrently mail to
23 each foreign professional limited liability company at its
24 registered office in this state a notice that the
25 certification has been made. A certificate of authority of a

foreign professional limited liability company may not be revoked unless there have been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during the 60 days.

(5) A foreign professional limited liability company is subject to all other provisions of [sections 72 through 78] not inconsistent with this section.

NEW SECTION. Section 69. Suits by and against limited liability company. Suit may be brought by or against a limited liability company in its own name.

NEW SECTION. Section 70. Authority to sue on behalf of limited liability company. Except as otherwise provided in the articles of organization or the operating agreement, suit on behalf of the limited liability company may be brought in the name of the limited liability company by:

(1) any member or members of a limited liability company, whether or not the articles of organization vest management of the limited liability company in one or more managers who are authorized to sue by the vote of more than one-half of the members, unless the vote of all members is required under [section 26(2)], provided that in determining the vote required under [section 26], the vote of a member who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company must be excluded; or

(2) any manager or managers of a limited liability company, if the articles of organization vest management of the limited liability company in one or more managers, who are authorized to bring suit on behalf of the limited liability company by the vote required pursuant to [section 26], provided that in determining the required vote, the vote of a manager who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company must be excluded.

NEW SECTION. Section 71. Merger. (1) Pursuant to any agreement, a domestic limited liability company may merge with or into one or more limited liability companies formed under the laws of this state or any other state. The surviving limited liability company is as provided in the merger agreement.

(2) A domestic limited liability company that is not the surviving limited liability company in the merger shall file articles of dissolution that must have an effective date not later than the effective date of the merger.

(3) If, following a merger of one or more domestic limited liability companies or one or more limited liability companies formed under the laws of any other state, the surviving limited liability company is not a domestic limited liability company, there must be attached to the articles of dissolution for each domestic limited liability

company articles of merger executed by the surviving limited liability company:

(a) stating that the surviving limited liability company may be served with process in the state of Montana in any action, suit, or proceeding for the enforcement of any obligation of the domestic limited liability company;

(b) irrevocably appointing the secretary of state as the surviving limited liability company's agent to accept service of process in any action, suit, or proceeding; and

(c) specifying the address to which a copy of process must be mailed to the surviving limited liability company by the secretary of state.

(4) When the articles of dissolution required by subsection (2) have become effective, the following must be vested in and enforced against the surviving limited liability company as they were in each of the limited liability companies that merged:

(a) all of the rights, privileges, and powers of each of the limited liability companies that merged;

(b) all property, real, personal, and mixed;

(c) all debts due to any of the limited liability companies; and

(d) all other things and causes of action belonging to each of the limited liability companies.

NEW SECTION. Section 72. Purposes of professional

limited liability companies. Professional limited liability companies may be organized under [sections 72 through 78] only for the purpose of rendering professional services and services ancillary to professional services within a single profession, except that a professional limited liability company may be organized for the purpose of rendering professional services within two or more professions and for any purpose or purposes for which companies may be organized under [sections 1 through 78] to the extent that the combination of professional purposes or professional and business purposes is permitted by the licensing laws and rules of this state applicable to the professions.

NEW SECTION. Section 73. Professional limited liability company name. The name of a domestic or foreign professional limited liability company:

(1) must contain the words "professional limited liability company", "professional l.l.c.", or "p.l.l.c."; and

(2) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of organization.

NEW SECTION. Section 74. Professional limited liability company managers. At least one-half of the managers of a professional limited liability company must be qualified persons with respect to the limited liability

1 company.

2 **NEW SECTION. Section 75. Membership in professional**
3 **limited liability company.** (1) Only the following persons
4 may be members of a professional limited liability company:

5 (a) natural persons authorized by law of this or any
6 other state, a territory of the United States, or the
7 District of Columbia to render a professional service
8 permitted by the articles of organization of the
9 professional limited liability company;

10 (b) general partnerships in which all the partners are
11 authorized by law of this or any other state, a territory of
12 the United States, or the District of Columbia to render a
13 professional service permitted by the articles of
14 incorporation and in which at least one partner is
15 authorized by law in this state to render a professional
16 service permitted by the articles of organization of the
17 professional limited liability company; and

18 (c) domestic or foreign professional corporations and
19 domestic or foreign professional limited liability companies
20 authorized by law in this state to render a professional
21 service permitted by the articles of organization of the
22 professional limited liability company.

23 (2) The licensing authority may by rule further
24 restrict or condition the issuance of membership interests
25 in order to preserve ethical standards, but a rule may not

1 cause a member at the time the rule becomes effective to
2 become a disqualified person.

3 **NEW SECTION. Section 76. Rendering services.** A
4 domestic or foreign professional limited liability company
5 may render professional services in this state only through
6 natural persons permitted to render the services in this
7 state; however, nothing in [sections 72 through 78] requires
8 any person employed by a professional limited liability
9 company to be licensed to perform services for which a
10 license is not otherwise required or prohibits the rendering
11 of professional services by a licensed natural person acting
12 in that person's individual capacity, even if the person is
13 a member or manager of a professional limited liability
14 company.

15 **NEW SECTION. Section 77. Responsibility for services.**
16 (1) An individual who renders professional services as an
17 employee of a domestic or foreign professional limited
18 liability company is liable for any negligent or wrongful
19 act or omission in which the individual personally
20 participates to the same extent as if the individual had
21 rendered the services as a sole practitioner. An employee of
22 a professional limited liability company is not liable for
23 the conduct of other employees unless the employee is at
24 fault in appointing, supervising, or cooperating with them.

25 (2) A domestic or foreign professional limited

1 liability company whose employee performs professional
2 services within the scope of the employee's employment or
3 apparent authority to act for the company is liable to the
4 same extent as the employee.

5 (3) Except as otherwise provided by statute, the
6 personal liability of a member of a domestic or foreign
7 professional limited liability company is no greater in any
8 respect than that of a member of a limited liability company
9 otherwise organized under [sections 72 through 78].

10 NEW SECTION. **Section 78.** Relationship to clients and
11 patients. (1) The relationship between an individual
12 performing professional services as an employee of a
13 domestic or foreign professional limited liability company
14 and a client or patient is the same as if the individual
15 performed the services as a sole practitioner.

16 (2) The relationship between a domestic or foreign
17 professional limited liability company performing
18 professional services and the client or patient is the same
19 as between the client or patient and the individual
20 performing the services.

21 (3) Any privilege applicable to communications between
22 a person rendering professional services and the person
23 receiving the services recognized under the statutory or
24 common law of this state extends to a domestic or foreign
25 professional limited liability company and its employees.

1 **Section 79.** Section 30-13-141, MCA, is amended to read:

2 **"30-13-141. Definitions.** As used in 30-13-141 through
3 30-13-147, the following definitions apply:

4 (1) "Owner" means the person who owns the original
5 fixation of sounds embodied in a master phonograph record,
6 master disc, master tape, master film, or other device used
7 for reproducing sounds on phonograph records, discs, tapes,
8 films, or other articles upon which sound is recorded and
9 from which the transferred recorded sounds are directly
10 derived.

11 (2) "Performer" means the person or persons appearing
12 in a performance.

13 (3) "Person" means any individual, firm, partnership,
14 limited liability company, corporation, or association.

15 (4) "Sound recording" means a phonograph record, disc,
16 wire, tape, film, or other article on which sound is
17 recorded."

18 **Section 80.** Section 30-13-202, MCA, is amended to read:

19 **"30-13-202. Registration of assumed business name --**
20 **when prohibited.** (1) When an application for registration or
21 amendment to the registration of an assumed business name
22 contains an assumed business name which is the same as or
23 deceptively similar to an assumed business name already
24 registered or to any corporate name, limited partnership
25 name, limited liability company name, trademark, or service

mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) When the applicant is other than a corporation, or limited partnership, or limited liability company, the secretary of state may not register the assumed business name for which application is made if the name applied for contains or there is added at the end of the name the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such the words."

Section 81. Section 30-13-301, MCA, is amended to read:

"30-13-301. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Applicant" means the person filing an application for registration of a trademark under this part or his the person's legal representatives, successors, or assigns.

(2) "Mark" means any trademark or service mark entitled to registration under this part whether registered or not.

(3) "Person" means any individual, firm, partnership, limited liability company, corporation, association, union, or other organization.

(4) "Registrant" means the person to whom the registration of a trademark under this part is issued or his the person's legal representatives, successors, or assigns.

(5) "Service mark" means a mark used in the sale or

advertising of services to identify the services of one person and distinguish them from the services of others.

(6) "Trade name" means a word, name, symbol, device, or any combination thereof used by a person to identify his the person's business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others.

(7) "Trademark" means any word, name, symbol, device, or any combination thereof adopted and used by a person to identify goods made or sold by him the person and to distinguish them from goods made or sold by others."

Section 82. Section 30-13-311, MCA, is amended to read:

"30-13-311. Application for registration. (1) Subject to the limitations set forth in this part, a person who adopts and uses a mark in this state may file in the office of secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth information including but not limited to the following:

(a) the name and business address of the person applying for such registration and, if a corporation, the state of incorporation or, if a limited liability company, the state of organization;

(b) the essential feature of the mark to be registered;

(c) the goods or services in connection with which the mark is used and the mode or manner in which the mark is

used in connection with ~~such~~ the goods or services and the class in which ~~such~~ the goods or services fall;

(d) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or ~~his~~ the applicant's predecessor in business;

(e) a statement that the mark is presently in use in this state by the applicant; and

(f) a statement that the applicant is the owner of the mark and that no other person has the right to use the mark in this state either in the identical form thereof or in a form that so nearly resembles it that it might be calculated to deceive or might be mistaken for it.

(2) The application must be signed by the applicant or a member of the firm or limited liability company or an officer of the corporation or association applying.

(3) The application must be accompanied by two copies of a specimen or facsimile of ~~such~~ the mark.

(4) The application for registration must be accompanied by a filing fee as provided for in 30-13-320."

Section 83. Section 35-1-308, MCA, is amended to read:

"35-1-308. **Corporate name.** (1) A corporate name:

(a) must contain the word "corporation", "incorporated", "company", or "limited"; the abbreviation "corp.", "inc.", "co.", or "ltd."; or words or abbreviations of similar meaning in another language; and

(b) may not contain language that states or implies that the corporation is organized for a purpose or purposes other than those permitted by 35-1-114 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of another corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only distinguishable for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state

for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

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

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) This chapter does not control the use of fictitious

names."

Section 84. Section 35-1-1031, MCA, is amended to read:

"35-1-1031. Corporate name of foreign corporation. (1)

If the corporate name of a foreign corporation does not satisfy the requirements of 35-1-308, to obtain or maintain a certificate of authority to transact business in this state the foreign corporation shall:

(a) add the word "corporation", "incorporated", "company", or "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd." to its corporate name for use in this state; or

(b) use a fictitious name to transact business in this state if its real name is unavailable and deliver to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name of a foreign corporation, including a fictitious name, must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name of another foreign corporation

1 authorized to transact business in this state;

2 (d) the corporate name of a not-for-profit corporation
3 incorporated or authorized to transact business in this
4 state;

5 (e) the corporate name of a domestic corporation that
6 has dissolved, but only for a period of 120 days after the
7 effective date of its dissolution; and

8 (f) any assumed business name, limited partnership
9 name, limited liability company name, trademark, or service
10 mark registered or reserved with the secretary of state.

11 (3) A foreign corporation may apply to the secretary of
12 state for authorization to use in this state the name of
13 another corporation, incorporated or authorized to transact
14 business in this state, that is not distinguishable in the
15 secretary of state's records from the name applied for. The
16 secretary of state shall authorize use of the name applied
17 for if:

18 (a) the other corporation consents to the use in
19 writing and submits an undertaking in a form satisfactory to
20 the secretary of state to change its name to a name that is
21 distinguishable in the records of the secretary of state
22 from the name of the applying corporation; or

23 (b) the applicant delivers to the secretary of state a
24 certified copy of a final judgment of a court of competent
25 jurisdiction establishing the applicant's right to use the

1 name applied for in this state.

2 (4) A foreign corporation may use in this state the
3 name of another domestic or foreign corporation, including
4 the fictitious name, that is used in this state if the other
5 corporation is incorporated or authorized to transact
6 business in this state and the foreign corporation:

7 (a) has merged with the other corporation;

8 (b) has been formed by reorganization of the other
9 corporation; or

10 (c) has acquired all or substantially all of the
11 assets, including the corporate name, of the other
12 corporation.

13 (5) If a foreign corporation authorized to transact
14 business in this state changes its corporate name to one
15 that does not satisfy the requirements of 35-1-308, it may
16 not transact business in this state under the changed name
17 until it adopts a name satisfying the requirements of
18 35-1-308 and obtains an amended certificate of authority
19 under 35-1-1029."

20 **Section 85.** Section 35-2-305, MCA, is amended to read:

21 "35-2-305. **Corporate name.** (1) A corporate name may not
22 contain language stating or implying that the corporation is
23 organized for a purpose other than that permitted by
24 35-2-117 and its articles of incorporation.

25 (2) Except as authorized by subsections (3) and (4), a

1 corporate name must be distinguishable in the records of the
2 secretary of state from:

3 (a) the corporate name of a nonprofit or business
4 corporation incorporated or authorized to do business in
5 this state;

6 (b) a corporate name reserved or registered under Title
7 35, chapter 1, 35-2-306, or 35-2-307;

8 (c) the fictitious name of a foreign business or
9 nonprofit corporation authorized to transact business in
10 this state because its real name is unavailable;

11 (d) the corporate name of a domestic business or
12 nonprofit corporation that has been dissolved, but only
13 distinguishable for a period of 120 days after the effective
14 date of the dissolution; or

15 (e) any assumed business name, limited partnership
16 name, limited liability company name, trademark, or service
17 mark registered or reserved with the secretary of state.

18 (3) A corporation may apply to the secretary of state
19 for authorization to use a name that is not distinguishable
20 in the secretary of state's records from one or more of the
21 names described in subsection (2). The secretary of state
22 shall authorize use of the name applied for if:

23 (a) the other corporation consents to the use in
24 writing and submits an undertaking in a form satisfactory to
25 the secretary of state to change its name to a name that is

1 distinguishable in the records of the secretary of state
2 from the name of the applying corporation; or

3 (b) the applicant delivers to the secretary of state a
4 certified copy of a final judgment of a court of competent
5 jurisdiction establishing the applicant's right to use the
6 name applied for in this state.

7 (4) A corporation may use the name, including the
8 fictitious name, of another domestic or foreign business or
9 nonprofit corporation that is used in this state if the
10 other corporation is incorporated or authorized to do
11 business in this state and the proposed user corporation:

12 (a) has merged with the other corporation;

13 (b) has been formed by reorganization of the other
14 corporation; or

15 (c) has acquired all or substantially all of the
16 assets, including the corporate name, of the other
17 corporation.

18 (5) This chapter does not control the use of fictitious
19 names."

20 **Section 86.** Section 35-2-826, MCA, is amended to read:

21 **"35-2-826. Corporate name of foreign corporation. (1)**

22 If the corporate name of a foreign corporation does not
23 satisfy the requirements of 35-2-305, the foreign
24 corporation, to obtain or maintain a certificate of
25 authority to transact business in this state, may use a

1 fictitious name to transact business in this state if:

2 (a) its real name is unavailable; and

3 (b) it delivers to the secretary of state, for filing,
4 a copy of the resolution of its board of directors,
5 certified by its secretary, adopting the fictitious name.

6 (2) Except as authorized by subsections (3) and (4),
7 the corporate name, including a fictitious name, of a
8 foreign corporation must be distinguishable in the records
9 of the secretary of state from:

10 (a) the corporate name of a nonprofit or business
11 corporation incorporated or authorized to transact business
12 in this state;

13 (b) a corporate name reserved or registered under
14 35-1-309, 35-1-311, 35-2-306, or 35-2-307;

15 (c) the fictitious name of another foreign business or
16 nonprofit corporation authorized to transact business in
17 this state;

18 (d) the corporate name of a domestic corporation that
19 has dissolved, but distinguishable only for a period of 120
20 days after the effective date of dissolution; and

21 (e) any assumed business name, limited partnership
22 name, limited liability company name, trademark, or service
23 mark registered or reserved with the secretary of state.

24 (3) A foreign corporation may apply to the secretary of
25 state for authorization to use in this state the name of

1 another corporation, incorporated or authorized to transact
2 business in this state, that is not distinguishable in the
3 records of the secretary of state from the name applied for.
4 The secretary of state shall authorize use of the name
5 applied for if:

6 (a) the other corporation consents to the use in
7 writing and submits an undertaking in a form satisfactory to
8 the secretary of state to change its name to a name that is
9 distinguishable in the records of the secretary of state
10 from the name of the applying corporation; or

11 (b) the applicant delivers to the secretary of state a
12 certified copy of a final judgment of a court of competent
13 jurisdiction establishing the applicant's right to use the
14 name applied for in this state.

15 (4) A foreign corporation may use in this state the
16 name, including the fictitious name, of another domestic or
17 foreign business or nonprofit corporation that is used in
18 this state if the other corporation is incorporated or
19 authorized to transact business in this state and the
20 foreign corporation:

21 (a) has merged with the other corporation;

22 (b) has been formed by reorganization of the other
23 corporation; or

24 (c) has acquired all or substantially all of the
25 assets, including the corporate name, of the other

1 corporation.

2 (5) If a foreign corporation authorized to transact
3 business in this state changes its corporate name to one
4 that does not satisfy the requirements of 35-2-305, it may
5 not transact business in this state under the changed name
6 until it adopts a name satisfying the requirements of
7 35-2-305 and obtains an amended certificate of authority
8 under 35-2-823."

9 **Section 87.** Section 35-4-206, MCA, is amended to read:

10 "35-4-206. **Corporate name.** The name of a domestic or
11 foreign professional corporation:

12 (1) must contain the words "professional corporation"
13 or the abbreviation "P.C.";

14 (2) may not contain any word or phrase that indicates
15 or implies that the corporation is organized for any purpose
16 other than the purposes contained in its articles of
17 incorporation;

18 (3) may not be the same as or deceptively similar to
19 any assumed business name, limited partnership name, limited
20 liability company name, trademark, or service mark
21 registered or reserved with the secretary of state or to the
22 name of any domestic corporation existing under the laws of
23 this state, any foreign corporation authorized to transact
24 business in this state, a name the exclusive right to which
25 is reserved in the manner provided in the Montana Business

1 Corporation Act, or the name of a corporation that has in
2 effect a registration of its corporate name as provided in
3 the Montana Business Corporation Act. This subsection does
4 not apply if:

5 (a) the similarity results from the use in the
6 corporate name of personal names of shareholders or former
7 shareholders or of natural persons who were associated with
8 a predecessor entity; or

9 (b) the corporation files with the secretary of state
10 either the written consent of such other corporation or
11 holder of a reserved or registered name to use the same or a
12 deceptively similar name and one or more words are added to
13 make such name distinguishable from such other name or a
14 certified copy of a final decree of a court of competent
15 jurisdiction establishing the prior right of the corporation
16 to the use of the name in this state; and

17 (4) must conform to rules promulgated by a licensing
18 authority having jurisdiction of a professional service
19 described in the articles of incorporation of the
20 corporation."

21 **Section 88.** Section 35-12-505, MCA, is amended to read:

22 "35-12-505. **Name.** The name of each limited partnership
23 as set forth in its certificate of limited partnership:

24 (1) shall contain the words "limited partnership" in
25 full;

1 (2) may not contain the name of a limited partner
2 unless:

3 (a) it is also the name of a general partner; or

4 (b) the business of the limited partnership had been
5 carried on under that name before the admission of that
6 limited partner;

7 (3) may not contain any word or phrase indicating or
8 implying that it is organized other than for a purpose
9 stated in its certificate of limited partnership; and

10 (4) may not be the same as or deceptively similar to
11 the name of any corporation, or limited partnership, or
12 limited liability company organized under the laws of this
13 state or licensed or registered as a foreign corporation or
14 limited partnership in this state."

15 NEW SECTION. **Section 89.** Codification instruction.
16 [Sections 1 through 78] are intended to be codified as an
17 integral part of Title 35, and the provisions of Title 35
18 apply to [sections 1 through 78].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0146, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: Creates the Montana Limited Liability Company Act.

ASSUMPTIONS:

1. An additional 2.50 FTE will be necessary in FY94 (1.00 FTE Grade 10 and 1.50 FTE Grade 7) based upon the estimated increased number of document filings. It is assumed that the peak increase will occur in FY94 and that the additional staff will be reduced to 1.50 FTE in FY95 (1.00 Grade 10 and 0.50 Grade 7).
2. \$61,300 for computer system changes necessary to implement the legislation is estimated for FY94. This amount is based upon estimates provided by the Department of Administration, Information Services Division.
3. 5% of currently filed corporations will dissolve and reorganize as Limited Liability Companies (LLCs) in FY 94 (30,000 x 5% = 1500). The corporation dissolution fee is \$15, the license fee for LLCs is \$50 under the proposed bill, and the registration fee for LLCs is assumed to be \$20.
4. 2% of currently filed corporations will dissolve and reorganize as LLCs in FY 95 (30,000 x 2% = 600).

FISCAL IMPACT:

Secretary of State's Office-Business and Government Services program:

Expenditures:

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	21.25	23.75	2.50	21.25	22.75	1.50
Personal Services	552,725	607,007	54,282	554,103	585,720	31,617
Operating Expenses	366,117	431,117	65,000	419,394	423,394	4,000
Equipment	13,770	13,770	0	7,057	7,057	0
Total	932,612	1,051,894	119,282	980,554	1,016,171	35,617

Funding:

General Fund	932,612	1,051,894	119,282	980,554	1,016,171	35,617
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Revenues:

Corporate Dissolutions (General Fund)	22,500	9,000
LLC License/registrations (General Fund)	105,000	42,000
Total	127,500	51,000

Net general fund impact	8,218	15,383
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LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: As the availability of LLCs in Montana becomes known, there is potential for the workload within the Secretary of State's Office to increase. This long-term impact is not included in the revenue estimates for the 1995 biennium.

David Lewis 2-1-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Mignon Waterman 2/2/93

MIGNON WATERMAN, PRIMARY SPONSOR DATE
Fiscal Note for SB0146, as introduced

SB 146

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 146

INTRODUCED BY WATERMAN, J. RICE, WHALEN, STANG,
HALLIGAN, MCCULLOCH, FORRESTER, CRIPPEN, FAGG,
STRIZICH, POSTER, WELDON, BARTLETT, DOHERTY

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA
LIMITED LIABILITY COMPANY ACT; AND AMENDING SECTIONS
30-13-141, 30-13-202, 30-13-301, 30-13-311, 35-1-308,
35-1-1031, 35-2-305, 35-2-826, 35-4-206, AND 35-12-505,
MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because
the secretary of state is authorized to adopt rules
prescribing forms and establishing fees. The legislature
intends that fees be commensurate with the cost of the
services provided. It is further the intent of the
legislature that the secretary of state make the forms
consistent with existing forms used for corporate and other
business entities, when practical and applicable, and that
the new forms be as easy to use as possible.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [Sections 1
through 78] may be cited as the "Montana Limited Liability

Company Act".

NEW SECTION. **Section 2. Definitions.** As used in
[sections 1 through 78], unless the context requires
otherwise, the following definitions apply:

(1) "Articles of organization" means articles filed
pursuant to [section 8] and those articles as amended or
restated.

(2) "Corporation" means a corporation formed under the
laws of this state or a foreign corporation.

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

(4) "Disqualified person" means any person or entity
that for any reason is or becomes ineligible under [sections
1 through 78] to become a member in a professional limited
liability company.

(5) "Event of dissociation" means an event that causes
a person to cease to be a member, as provided in [section
45].

(6) "Foreign corporation" means a corporation that is
organized under the laws of a state other than Montana or
under the laws of any foreign country.

(7) "Foreign limited liability company" means an entity
that is:

(a) an unincorporated association;

(b) organized under laws of a state other than Montana

1 or under the laws of any foreign country;

2 (c) organized under a statute pursuant to which an
3 association may be formed that affords to each of its
4 members limited liability with respect to the liabilities of
5 the entity; and

6 (d) not required to be registered or organized under
7 any statute of this state other than [sections 1 through
8 78].

9 (8) "Foreign limited partnership" means a limited
10 partnership formed under the laws of any state other than
11 Montana or under the laws of any foreign country.

12 (9) "Foreign professional limited liability company"
13 means a limited liability company organized for the purpose
14 of rendering professional services under the laws of any
15 state other than Montana.

16 (10) "Licensing authority" means an officer, board,
17 agency, court, or other authority in this state that has the
18 power to issue a license or other legal authorization to
19 render a professional service.

20 (11) "Limited liability company" or "domestic limited
21 liability company" means an organization that is formed
22 under [sections 1 through 78].

23 (12) "Limited liability company interest" or "interest
24 in the limited liability company" means the interest that
25 can be assigned under [section 41] and that is available to

1 creditors under [section 42].

2 (13) "Limited partnership" means a limited partnership
3 formed under the laws of this state or a foreign limited
4 partnership.

5 (14) "Manager" means, with respect to a limited
6 liability company that has set forth in its articles of
7 organization that it is to be managed by managers, the
8 person designated in accordance with [section 21].

9 (15) "Member" means a person who has been admitted to
10 membership in a limited liability company as provided in
11 [section 44] and who has not dissociated from the limited
12 liability company.

13 (16) "Operating agreement" means an agreement, written
14 or oral, as to the conduct of the business and affairs of a
15 limited liability company that is binding upon all of the
16 members.

17 (17) "Person" means an individual, a general
18 partnership, a limited partnership, a domestic or foreign
19 limited liability company, a trust, an estate, an
20 association, a corporation, or any other legal or commercial
21 entity.

22 (18) "Professional limited liability company" means a
23 limited liability company designating itself as a
24 professional limited liability company in its articles of
25 organization.

(19) "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

(20) "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under [sections 1 through 78] to own shares issued by a professional limited liability company.

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

(22) "Surviving limited liability company" means the constituent entity surviving the merger, as identified in the articles of merger provided for in [section 71].

NEW SECTION. Section 3. Name. (1) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) Contests over names registered under this section are governed by 35-1-310.

NEW SECTION. Section 4. Reservation of name. (1) The exclusive right to use a name may be reserved by:

(a) a person intending to organize a limited liability company and to adopt that name;

(b) a limited liability company or foreign limited liability company registered in this state that intends to adopt that name;

(c) a foreign limited liability company intending to register in this state and to adopt that name; or

(d) a person intending to organize a foreign limited

liability company and to have it registered in this state and to adopt that name.

(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited liability company, the secretary of state shall reserve the name for the exclusive use of the applicant for a nonrenewable period of 120 days from the date the application is filed.

(3) The holder of a reserved limited liability company name may renew the reservation for successive periods of 120 days each from the date of renewal.

(4) The right to the exclusive use of a reserved name may be transferred to another person by filing with the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, and by specifying the name to be transferred and the name and address of the transferee. The transfer may not extend the term during which the name is reserved.

NEW SECTION. Section 5. Registered office and registered agent. (1) A limited liability company shall continuously maintain in this state:

(a) a registered office that may but need not be the same as its place of business; and

(b) a registered agent for service of process (at the registered office) on the limited liability company that is either an individual resident of this state, a domestic corporation, a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.

(3) A limited liability company may change its registered office or registered agent, or both, by delivering to the secretary of state a statement setting forth:

(a) the name of the limited liability company;

(b) the address of its current registered office;

(c) if the address of its registered office is to be changed, the new address of the registered office;

(d) the name and address of its current registered agent; and

(e) if its registered agent or the agent's address is to be changed, the name and address of the successor registered agent or the current registered agent's new

1 address.

2 (4) The change of address of the registered office or
3 registered agent is effective on delivery of the statement
4 to the secretary of state. The appointment of a new
5 registered agent is effective on delivery of the statement
6 to the secretary of state and on receipt by the secretary of
7 state of evidence that the new registered agent has accepted
8 appointment pursuant to subsection (2).

9 (5) A registered agent of a limited liability company
10 may resign as registered agent by delivering a written
11 notice and 2 copies to the secretary of state. The secretary
12 of state shall mail a copy of the notice to the limited
13 liability company at its registered office and its principal
14 place of business. The appointment of the registered agent
15 terminates 30 days after receipt of the notice by the
16 secretary of state or on the appointment of a new registered
17 agent, whichever occurs first.

18 (6) If a registered agent changes its address to
19 another place in this state, it may change the address by
20 delivering a statement to the secretary of state as required
21 by subsection (3), except that it need be signed only by the
22 registered agent. The statement must recite that a copy of
23 the statement has been mailed to the limited liability
24 company.

25 NEW SECTION. **Section 6. Purpose.** (1) A limited

1 liability company organized under [sections 8 through 18]
2 has the purpose of engaging in any lawful business unless a
3 more limited purpose is set forth in the articles of
4 organization.

5 (2) Limited liability companies may be organized under
6 [sections 8 through 18] for any lawful purpose except for
7 the purpose of banking or insurance.

8 NEW SECTION. **Section 7. Powers.** A limited liability
9 company may:

- 10 (1) sue, be sued, complain, and defend in all courts;
- 11 (2) transact its business, carry on its operations, and
12 have and exercise the powers granted by this section in any
13 state; in any territory, district, or possession of the
14 United States; and in any foreign country;
- 15 (3) make contracts and guarantees, incur liabilities,
16 and borrow money;
- 17 (4) sell, lease, exchange, transfer, convey, mortgage,
18 pledge, and otherwise dispose of any of its assets;
- 19 (5) acquire by purchase or in any other manner, take,
20 receive, own, hold, improve, and otherwise deal with any
21 interest in real or personal property, wherever located;
- 22 (6) issue notes, bonds, and other obligations and
23 secure any of them by mortgage, deed of trust, or security
24 interest of any of its assets;
- 25 (7) purchase, take, receive, subscribe for, or

1 otherwise acquire, own, hold, vote, use, employ, sell,
 2 mortgage, loan, pledge, or otherwise dispose of and
 3 otherwise use and deal in and with stock or other interests
 4 in and obligations of domestic and foreign corporations,
 5 associations, general or limited partnerships, limited
 6 liability companies, business trusts, and individuals;

7 (8) invest its surplus funds, lend money from time to
 8 time in any manner that may be appropriate to enable it to
 9 carry on the operations or fulfill the purposes set forth in
 10 its articles of organization, and take and hold real
 11 property and personal property as security for the payment
 12 of funds loaned or invested;

13 (9) elect or appoint agents and define their duties and
 14 fix their compensation;

15 (10) sell, convey, mortgage, pledge, lease, exchange,
 16 transfer, and otherwise dispose of all or any part of its
 17 property and assets;

18 (11) be a promoter, stockholder, partner, member,
 19 associate, or agent of any corporation, partnership,
 20 domestic or foreign limited liability company, joint
 21 venture, trust, or other enterprise;

22 (12) indemnify and hold harmless any member, agent, or
 23 employee from and against any claims and demands whatsoever,
 24 except in the case of action or failure to act by the
 25 member, agent, or employee that constitutes willful

1 misconduct or recklessness, and subject to the standards and
 2 restrictions, if any, set forth in the articles of
 3 organization or operating agreement;

4 (13) cease its activities and dissolve;

5 (14) pay pensions and establish pension plans, pension
 6 trusts, profit-sharing plans, share bonus plans, share
 7 option plans, and benefit or incentive plans for any of its
 8 current or former directors, officers, employees, and
 9 agents;

10 (15) make donations for the public welfare or for
 11 charitable, religious, scientific, or educational purposes
 12 and, in time of war, make donations in aid of war
 13 activities; and

14 (16) do every other act not inconsistent with law that
 15 is appropriate to promote and further the business and
 16 affairs of the limited liability company.

17 **NEW SECTION. Section 8. Formation.** One or more persons
 18 may form a limited liability company by signing and filing
 19 articles of organization with the secretary of state. The
 20 person or persons need not be members of the limited
 21 liability company at the time of formation or after
 22 formation has occurred.

23 **NEW SECTION. Section 9. Articles of organization.** (1)
 24 The articles of organization must set forth:

25 (a) the name of the limited liability company that

1 satisfies the requirements of [section 3];

2 (b) the latest date on which the limited liability
3 company is to dissolve;

4 (c) the address of its principal place of business in
5 this state and, if different, its registered office and the
6 name and address of its resident agent at the registered
7 office in this state;

8 (d) a statement of whether the limited liability
9 company is to be managed by a manager or by its members;

10 (e) (i) if the limited liability company is to be
11 managed by a manager or managers, a statement that the
12 company is to be managed in that fashion and the names and
13 street addresses of managers who are to serve as managers
14 until the first meeting of members or until their successors
15 are elected;

16 (ii) if the management of a limited liability company is
17 reserved to the members, the names and street addresses of
18 the initial members;

19 (f) if the limited liability company is a professional
20 limited liability company, a statement to that effect and a
21 statement of the professional service or services it will
22 render; and

23 (g) any other provision, not inconsistent with law,
24 that the members elect to set out in the articles, including
25 but not limited to a statement of whether there are

1 limitations on the authority of members or management to
2 bind the limited liability company.

3 (2) It is not necessary to set out in the articles of
4 organization any of the powers enumerated in [section 7].

5 NEW SECTION. **Section 10. Amendment of articles of**
6 **organization -- restatement.** (1) The articles of
7 organization of a limited liability company are amended by
8 filing articles of amendment with the secretary of state.
9 The articles of amendment must set forth:

10 (a) the name of the limited liability company;

11 (b) the date the articles of organization were filed;
12 and

13 (c) the amendment to the articles of organization.

14 (2) The articles of organization may be amended as
15 desired, so long as the amended articles of organization
16 contain only provisions that may be lawfully contained in
17 articles of organization at the time of making the
18 amendment.

19 (3) Articles of organization may be restated at any
20 time. Restated articles of organization must be filed with
21 the secretary of state, must be specifically designated as
22 such in the heading, and must state either in the heading or
23 in an introductory paragraph the limited liability company's
24 present name and, if it has been changed, all of its former
25 names and the date of the filing of its articles of

1 organization.

2 (4) An amendment to the articles of organization of a
3 limited liability company must be in the form and manner
4 designated by the secretary of state.

5 NEW SECTION. Section 11. Execution of documents. (1)
6 Unless otherwise specified in [sections 1 through 78], a
7 document required by [sections 1 through 78] to be filed
8 with or delivered to the secretary of state must be
9 executed:

10 (a) by any manager if management of the limited
11 liability company is vested in one or more managers or by a
12 member if management of the limited liability company is
13 reserved to the members;

14 (b) if the limited liability company has not been
15 formed, by the person or persons forming the limited
16 liability company; or

17 (c) if the limited liability company is in the hands of
18 a receiver, trustee, or other court-appointed fiduciary, by
19 that fiduciary.

20 (2) The person executing the document shall sign it and
21 state, beneath or opposite the signature, the person's name
22 and the capacity in which the person signs.

23 (3) The person executing the document may do so as an
24 attorney-in-fact. Powers of attorney relating to the
25 execution of the document do not need to be shown to or

1 filed with the secretary of state.

2 NEW SECTION. Section 12. Filing with secretary of
3 state. (1) The original signed copy, together with a
4 duplicate copy that may be either a signed, photocopied, or
5 confirmed copy, of the articles of organization or any other
6 document required to be filed pursuant to [sections 1
7 through 78] must be delivered to the secretary of state. If
8 the secretary of state determines that the documents conform
9 to the filing provisions of [sections 1 through 78], the
10 secretary of state shall, when all required filing fees have
11 been paid:

12 (a) endorse on each signed original and duplicate copy
13 the word "filed" and the date and time of its acceptance for
14 filing;

15 (b) retain the signed original in the secretary of
16 state's files; and

17 (c) return the duplicate copy to the person who filed
18 it or to the person's representative.

19 (2) If the secretary of state is unable to make the
20 determination required for filing by subsection (1) at the
21 time any documents are delivered for filing, the documents
22 are considered to have been filed at the time of delivery if
23 the secretary of state subsequently determines that the
24 documents as delivered conform to the filing provisions of
25 [sections 8 through 18].

NEW SECTION. Section 13. Effect of delivery or filing of articles of organization. (1) A limited liability company is formed when the articles of organization are delivered to the secretary of state for filing.

(2) Each copy of the articles of organization stamped "filed" and marked with the filing date is conclusive evidence that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been legally organized and formed under [sections 1 through 78].

NEW SECTION. Section 14. Filing of facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under [sections 1 through 78] and the signatures on the facsimile copy in the same manner as an original for purposes of [sections 1 through 78], provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(4) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

NEW SECTION. Section 15. Annual report for secretary of state. (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the state or country under whose law it is organized;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and street addresses

1 of the managers;

2 (ii) if the management of a limited liability company is
3 reserved to the members, a statement to that effect;

4 (e) the last date upon which the limited liability
5 company is to be dissolved;

6 (f) if the limited liability company is a professional
7 limited liability company, a statement that all of its
8 members and not less than one-half of its managers are
9 qualified persons with respect to the limited liability
10 company.

11 (2) Information in the annual report must be current as
12 of the date the annual report is executed on behalf of the
13 limited liability company.

14 (3) The first annual report must be delivered to the
15 secretary of state between January 1 and April 15 of the
16 year following the calendar year in which a domestic limited
17 liability company is organized or a foreign limited
18 liability company is authorized to transact business.
19 Subsequent annual reports must be delivered to the secretary
20 of state between January 1 and April 15.

21 (4) If an annual report does not contain the
22 information required by this section, the secretary of state
23 shall promptly notify the reporting domestic or foreign
24 limited liability company in writing and return the report
25 to it for correction.

1 (5) The annual report must be executed by at least one
2 member of the limited liability company and must include the
3 street address of the member.

4 (6) A domestic professional limited liability company
5 or a foreign professional limited liability company
6 authorized to transact business in this state shall annually
7 file before April 15, with each licensing authority having
8 jurisdiction over a professional service of a type described
9 in its articles of organization, a statement of
10 qualification setting forth the names and addresses of the
11 members and managers of the company and additional
12 information that the licensing authority may by rule
13 prescribe as appropriate in determining whether the company
14 is complying with the provisions of [sections 72 through 78]
15 and rules promulgated under [sections 72 through 78]. The
16 licensing authority may charge a fee to cover the cost of
17 filing a statement of qualification.

18 NEW SECTION. **Section 16. Administrative dissolution --**
19 **rules.** (1) A domestic limited liability company may be
20 dissolved involuntarily by order of the secretary of state
21 if the limited liability company has failed:

22 (a) for 60 days after change of its registered office
23 or registered agent to file in the office of the secretary
24 of state a statement of the change;

25 (b) for 140 days to file its annual report within the

time required by law; or

(c) to remit any fees required by law.

(2) The secretary of state may adopt rules to establish procedures for administrative dissolutions consistent with subsection (1).

NEW SECTION. Section 17. Reinstatement of dissolved limited liability company. (1) The secretary of state may:

(a) reinstate a limited liability company that has been dissolved under the provisions of [section 16];

(b) restore to a reinstated limited liability company its right to carry on business in this state and to exercise all of its privileges and immunities.

(2) A limited liability company applying for reinstatement shall submit to the secretary of state one original and one copy of the application, executed by a person who was a member at the time of dissolution, setting forth:

(a) the name of the limited liability company;

(b) a statement that the assets of the limited liability company have not been liquidated;

(c) a statement that a majority of its members have authorized the application for reinstatement; and

(d) if its name has been legally acquired by another entity prior to its application for reinstatement, the name under which the limited liability company desires to be

reinstated.

(3) The limited liability company shall submit with its application for reinstatement a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid.

(4) When all requirements are met and the secretary of state reinstates the limited liability company to its former rights, the secretary of state shall:

(a) conform and file in the office of the secretary of state reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the reinstated limited liability company a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the limited liability company one or more certified copies of the certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

(6) A restoration of limited liability company rights pursuant to this section relates back to the date the limited liability company was involuntarily dissolved, and the limited liability company is considered to have been an existing legal entity from the date of its original organization.

NEW SECTION. Section 18. Fees for filing, copying, and services -- rules. (1) The secretary of state shall establish by rule fees for filing documents as required by [sections 1 through 78].

(2) The secretary of state shall establish by rule fees for copying documents, priority handling, transmitting or filing facsimile copies, and providing computer-generated information.

(3) The fees prescribed under this section must be reasonably related to the costs of processing the documents and preparing and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section.

NEW SECTION. Section 19. License fee. (1) In addition to the filing fee authorized by [section 18], the secretary of state shall charge and collect from each foreign limited liability company a license fee of \$50 at the time of filing its articles of organization.

(2) In addition to the filing fee authorized by [section 18], the secretary of state shall charge and collect from each foreign limited liability company a license fee of \$50 at the time of filing an application for a certificate of authority to transact business.

NEW SECTION. Section 20. Agency power of members and managers. (1) Except as provided in subsection (2), a member

is an agent of the limited liability company for the purpose of its business or affairs and the act of a member, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) a member, acting solely in the capacity as a member, may not be an agent of the limited liability company; and

(b) a manager is an agent of the limited liability company for the purpose of its business or affairs and the act of a manager, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability

company in the particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

(3) An act of a manager or a member that is not apparently for carrying on in the usual way the business of the limited liability company does not bind the limited liability company, unless authorized in accordance with the articles of organization or the operating agreement, at the time of the transaction or at any other time.

(4) An act of a manager or member in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

NEW SECTION. Section 21. Admissions of members and managers. (1) Except as provided in subsection (2), an admission or representation made by a member concerning the business or affairs of a limited liability company within the scope of the member's authority as provided for by [sections 1 through 78] is evidence against the limited liability company.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) an admission or representation made by a manager concerning the business or affairs of a limited liability company within the scope of the manager's authority, as

provided for by [sections 1 through 78], is evidence against the limited liability company; and

(b) the admission or representation of a member, acting solely in the capacity as a member, may not constitute evidence.

NEW SECTION. Section 22. Limited liability company charged with knowledge of or notice to member or manager.

(1) Except as provided in subsection (2), notice to a member of any matter relating to the business or affairs of the limited liability company and the knowledge of the member acting in the particular matter, acquired while a member or of which the member had knowledge at the time of becoming a member, and the knowledge of any other member who reasonably could and should have communicated it to the acting member operate as notice to or knowledge of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that member.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) notice to a manager of any matter relating to the business or affairs of the limited liability company and the knowledge of the manager acting in the particular matter, acquired while a manager or of which the manager had

1 knowledge at the time of becoming a manager, and the
 2 knowledge of any other manager who reasonably could and
 3 should have communicated it to the acting manager operate as
 4 notice to or knowledge of the limited liability company,
 5 except in the case of a fraud on the limited liability
 6 company committed by or with the consent of that manager;
 7 and

8 (b) notice to or knowledge of a member of a limited
 9 liability company while the member is acting solely in the
 10 capacity as a member is not notice to or knowledge of the
 11 limited liability company.

12 NEW SECTION. Section 23. Liability of members to third
 13 parties. A person who is a member or manager, or both, of a
 14 limited liability company is not liable, solely by reason of
 15 being a member or manager, or both, under a judgment, decree
 16 or order of a court, or in any other manner, for a debt,
 17 obligation, or liability of the limited liability company,
 18 whether arising in contract, tort, or otherwise or for the
 19 acts or omissions of any other member, manager, agent, or
 20 employee of the limited liability company.

21 NEW SECTION. Section 24. Management. (1) Unless the
 22 articles of organization vest management of the limited
 23 liability company in a manager or managers, management of
 24 the business or affairs of the limited liability company is
 25 vested in the members. Subject to any provisions in the

1 articles of organization, the operating agreement, or
 2 [sections 1 through 78] restricting or enlarging the
 3 management rights and duties of any person, group, or class
 4 of persons, the members may manage the affairs of the
 5 limited liability company and make all necessary decisions.

6 (2) If the articles of organization vest management of
 7 the limited liability company in one or more managers, the
 8 managers may manage the business or affairs of the limited
 9 liability company as provided in the articles of
 10 organization or operating agreement. Unless otherwise
 11 provided in the articles of organization or an operating
 12 agreement, the managers:

13 (a) must be designated, appointed, elected, removed, or
 14 replaced by a vote, approval, or consent of more than
 15 one-half of the members;

16 (b) need not be members of the limited liability
 17 company or natural persons; and

18 (c) unless they have been earlier removed or have
 19 earlier resigned, shall hold office until their successors
 20 are elected and qualified.

21 NEW SECTION. Section 25. Duties of members and
 22 managers. (1) Subject to contrary provision of articles of
 23 organization or an operating agreement, a member or manager
 24 is not liable, responsible, or accountable in damages or
 25 otherwise to the limited liability company or to the members

of the limited liability company for any action taken or for failure to act on behalf of the limited liability company unless the act or omission constitutes gross negligence or willful misconduct.

(2) Each member and manager shall account to the limited liability company and hold as trustee for it any profit or benefit derived by the member or manager without the consent of a majority of the disinterested members or managers or other persons participating in the management of the business or affairs of the limited liability company from:

(a) any transaction connected with the conduct or winding up of the limited liability company; or

(b) any use by the member or manager of its property, including but not limited to confidential or proprietary information of the limited liability company or other matters entrusted to the member or manager as a result of the member's or manager's status as member or manager.

(3) A member who is not also a manager of a limited liability company in which management is vested in managers under [section 24] has no duty to the limited liability company or to the other members solely by reason of acting in the capacity as a member.

NEW SECTION. Section 26. Voting. (1) Except as provided in the articles of organization, the operating

agreement, or [sections 1 through 78] and subject to subsection (2), the affirmative vote, approval, or consent of more than one-half of the members, if management of the limited liability company is vested in the members, or of the managers or other persons vested with the management of the limited liability company, if the management of the limited liability company is vested in the managers or persons, is required to decide any matter connected with the business.

(2) Except as provided in writing in the articles of organization or the operating agreement, the affirmative vote, approval, or consent of all members is required to:

(a) amend the articles of organization or a written operating agreement; or

(b) authorize a member, manager, or other person to do any act on behalf of the limited liability company that contravenes the articles of organization or a written operating agreement, including any written provision of the articles of organization or a written operating agreement that expressly limits the purpose, business, or affairs of the limited liability company or its conduct.

NEW SECTION. Section 27. Limitation of liability and indemnification of members and managers. (1) Subject to subsection (2), the articles of organization or operating agreement may:

(a) eliminate or limit the personal liability of a member or a manager for monetary damages for breach of any duty provided for in [section 25]; and

(b) provide for indemnification of the member or the manager for judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which an individual is a party because the individual is or was a member or a manager.

(2) A provision permitted under subsection (1) may not limit or eliminate the liability of a member or a manager for:

(a) the amount of a financial benefit received by a member or a manager to which the member or the manager is not entitled;

(b) an intentional infliction of harm by the member or the manager on the limited liability company or its members;

(c) an intentional violation of criminal law by the member or the manager; or

(d) an unlawful distribution by the member or the manager.

NEW SECTION. Section 28. Records and information. (1) Unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall keep at its principal place of business the following:

(a) a current and past list, setting forth the full

name and last-known mailing address of each member and manager, if any, set forth in alphabetical order;

(b) a copy of the articles of organization and all amendments to the articles, together with executed copies of any powers of attorney pursuant to which any articles have been executed;

(c) copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the 3 most recent years or, if the returns and statements were not prepared for any reason, copies of the information and statements provided to or that should have been provided to the members to enable them to prepare their federal, state, and local tax returns for the period;

(d) copies of any effective written operating agreements and all amendments and copies of any written operating agreements no longer in effect;

(e) unless provided in writing in an operating agreement:

(i) a writing, if any, setting forth the amount of cash, the agreed value of other property or services contributed by each member, and the times or events upon which any additional contributions agreed to by each member are to be made;

(ii) a writing, if any, stating events that require the

1 limited liability company to be dissolved and its affairs
2 wound up; and

3 (iii) other writings, if any, prepared pursuant to a
4 requirement in an operating agreement.

5 (2) A member may, at the member's own expense, inspect
6 and copy any limited liability company record, wherever the
7 record is located, upon reasonable request during ordinary
8 business hours.

9 (3) Members, if the management of the limited liability
10 company is vested in the members, or managers, if management
11 of the limited liability company is vested in the managers,
12 shall render, to the extent the circumstances make it just
13 and reasonable, true and full information of all things
14 affecting the members to any member and to the legal
15 representative of any deceased member or of any member under
16 legal disability.

17 (4) Failure of the limited liability company to keep or
18 maintain any of the records or information required pursuant
19 to this section may not be grounds for imposing liability on
20 any person for the debts and obligations of the limited
21 liability company.

22 NEW SECTION. Section 29. Contributions to capital. An
23 interest in a limited liability company may be issued in
24 exchange for property, services rendered, or a promissory
25 note or other obligation to contribute cash or property or

1 to perform services.

2 NEW SECTION. Section 30. Liability for contribution.

3 (1) A promise by a member to contribute to the limited
4 liability company is not enforceable unless set out in a
5 writing signed by the member.

6 (2) (a) Except as provided in the articles of
7 organization or the operating agreement, a member is
8 obligated to the limited liability company to perform any
9 enforceable promises to contribute cash or property or to
10 perform services even if the member is unable to perform
11 because of death, disability, or other reason.

12 (b) If a member does not make the required contribution
13 of property or services, the member is obligated, at the
14 option of the limited liability company, to contribute cash
15 equal to that portion of value or the stated contribution
16 that has not been made.

17 (3) (a) Unless otherwise provided in the articles of
18 organization or the operating agreement, the obligation of a
19 member to make a contribution or return money or other
20 property paid or distributed in violation of [sections 1
21 through 78] may be compromised only with the unanimous
22 consent of the members.

23 (b) Notwithstanding the compromise, the original
24 obligation may be enforced by a creditor of a limited
25 liability company who extends credit or otherwise acts in

1 reliance on the obligation after the member signs a writing
2 that reflects the obligation and before the amendment or
3 compromise.

4 NEW SECTION. **Section 31.** Sharing of profits and
5 losses. Unless otherwise provided in the articles of
6 organization or a written operating agreement, each member
7 must be repaid that member's contributions to capital and
8 share equally in the profits, losses, and surpluses
9 remaining after all liabilities, including those to members,
10 are satisfied.

11 NEW SECTION. **Section 32.** Sharing of distributions.
12 Except as provided in [sections 33 and 50], distributions of
13 cash or other assets of a limited liability company must be
14 shared among the members and among classes of members in the
15 manner provided in writing in the articles of organization
16 or the operating agreement. If the articles of organization
17 or the operating agreement does not so provide in writing,
18 each member shall share equally in any distribution. A
19 member is entitled to receive distributions described in
20 this section from a limited liability company to the extent
21 and at the times or upon the happening of the events
22 specified in the articles of organization or the operating
23 agreement or at the times determined by the members or
24 managers pursuant to [section 26].

25 NEW SECTION. **Section 33.** Distributions on event of

1 dissociation. Upon the occurrence of an event of
2 dissociation under [section 45] that does not cause
3 dissolution, a dissociating member is entitled to receive:

4 (1) any distribution to which the member is entitled
5 under the articles of organization or the operating
6 agreement; and

7 (2) if not otherwise provided in the articles of
8 organization or the operating agreement, within a reasonable
9 time after dissociation, the fair value of the member's
10 interest in the limited liability company as of the date of
11 dissociation based upon the member's right to share in
12 distributions from the limited liability company.

13 NEW SECTION. **Section 34.** Distribution in kind. Except
14 as provided in the articles of organization or the operating
15 agreement:

16 (1) a member, regardless of the nature of the member's
17 contribution, may not demand or receive any distribution
18 from a limited liability company in any form other than
19 cash; and

20 (2) a member may not be compelled to accept from a
21 limited liability company a distribution of any asset in
22 kind to the extent that the percentage of the asset
23 distributed to the members exceeds a percentage of that
24 asset that is equal to the percentage in which the member
25 shares in distributions from the limited liability company.

1 **NEW SECTION. Section 35. Distributions.** (1) A
2 distribution may not be made if, after giving effect to the
3 distribution:
4 (a) the limited liability company would not be able to
5 pay its debts as they become due in the usual course of
6 business; or
7 (b) the limited liability company's total assets would
8 be less than the sum of its total liabilities plus, unless
9 the articles of organization or the operating agreement
10 provides otherwise, the amount that would be needed, if the
11 limited liability company were to be dissolved at the time
12 of the distribution, to satisfy the preferential rights of
13 other members upon dissolution that are superior to the
14 rights of the member receiving the distribution.
15 (2) The limited liability company may base a
16 determination that a distribution is not prohibited under
17 subsection (1) on either:
18 (a) financial statements prepared on the basis of
19 accounting practices and principles that are reasonable
20 under the circumstances; or
21 (b) a fair valuation or other method that is reasonable
22 under the circumstances.
23 (3) Except as provided in subsection (5), the effect of
24 a distribution under subsection (1) is measured as of:
25 (a) the date the distribution is authorized if the

1 payment occurs within 120 days after the date of
2 authorization; or
3 (b) the date payment is made if it occurs more than 120
4 days after the date of authorization.
5 (4) A limited liability company's indebtedness to a
6 member incurred by reason of a distribution to be made to
7 that member in accordance with this section is at parity
8 with the limited liability company's indebtedness to its
9 general unsecured creditors, except as otherwise provided by
10 agreement.
11 (5) For purposes of this section:
12 (a) if terms of indebtedness provide that payment of
13 principal and interest is to be made only if and to the
14 extent that payment of a distribution to members could then
15 be made under this section, indebtedness of a limited
16 liability company, including indebtedness issued as a
17 distribution, is not a liability for purposes of
18 determinations made under subsection (2); and
19 (b) if the indebtedness is issued as a distribution,
20 each payment of principal or interest on the indebtedness is
21 treated as a distribution, the effect of which is measured
22 on the date the payment is actually made.
23 **NEW SECTION. Section 36. Liability upon wrongful**
24 **distribution.** (1) A member or manager who votes for or
25 assents to a distribution in violation of the articles of

organization, the operating agreement, or [section 35] is personally liable to the limited liability company, but not to other persons, for the amount of the distribution that exceeds what could have been distributed without violating [section 35] or the articles of organization or the operating agreement if it is established that the member or manager did not act in compliance with [section 35].

(2) A member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution:

(a) from each other member or manager who voted for or assented to the unlawful distribution; and

(b) from each member for the amount the member received, knowing that the distribution was made in violation of [section 35] or the articles of organization or the operating agreement.

NEW SECTION. Section 37. Right to distribution.

Subject to [section 50], when a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

NEW SECTION. Section 38. Ownership of limited

liability company property. (1) Property transferred to or otherwise acquired by a limited liability company becomes property of the limited liability company. A member has no

interest in specific limited liability company property.

(2) Property may be acquired, held, and conveyed in the name of the limited liability company. Any estate in real property may be acquired in the name of the limited liability company, and title to any estate acquired must vest in the limited liability company rather than in the members individually.

NEW SECTION. Section 39. Transfer of real property.

(1) Except as provided in subsection (5), title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any member in the name of the limited liability company.

(2) Title to property of the limited liability company that is held in the name of one or more members or managers may be transferred by an instrument of transfer executed by the persons in whose name title is held if there is an indication in the instrument transferring title to the property to them of:

(a) their capacity as members or managers of a limited liability company; or

(b) the existence of a limited liability company, even if the name of the limited liability company is not indicated.

(3) Property transferred under subsection (1) or (2)

1 may be recovered by the limited liability company if it
 2 proves that the act of the person executing the instrument
 3 of transfer did not bind the limited liability company under
 4 [section 20] unless the property has been transferred by the
 5 initial transferee or a person claiming through the initial
 6 transferee to a subsequent transferee who gives value
 7 without having notice that the person who executed the
 8 instrument of initial transfer lacked authority to bind the
 9 limited liability company.

10 (4) Title to property of the limited liability company
 11 may be transferred free of any claims of the limited
 12 liability company or its members by the persons in whose
 13 name title is held to a transferee who gives value without
 14 having notice that it is property of a limited liability
 15 company if title is held in the name of one or more persons
 16 other than the limited liability company and there is no
 17 indication in the instrument transferring title to the
 18 property to them of:

19 (a) their capacity as members or managers of a limited
 20 liability company; or

21 (b) the existence of a limited liability company.

22 (5) If the articles of organization provide that
 23 management of the limited liability company is vested in a
 24 manager or managers:

25 (a) title to property of the limited liability company

1 that is held in the name of the limited liability company
 2 may be transferred by an instrument of transfer executed by
 3 any manager in the name of the limited liability company;
 4 and

5 (b) a member, acting solely in the capacity of a
 6 member, may not transfer title as provided in subsection
 7 (5)(a).

8 NEW SECTION. **Section 40. Nature of membership**
 9 interest. A membership interest is personal property.

10 NEW SECTION. **Section 41. Assignment of membership**
 11 interest. (1) Except as provided in writing in the articles
 12 of organization or an operating agreement:

13 (a) a membership interest is assignable in whole or in
 14 part;

15 (b) an assignment entitles the assignee to receive, to
 16 the extent assigned, only the distributions to which the
 17 assignor would be entitled;

18 (c) an assignment of a membership interest does not of
 19 itself dissolve the limited liability company or entitle the
 20 assignee to participate in the management and affairs of the
 21 limited liability company or to become or to exercise any
 22 rights of a member;

23 (d) until the assignee of a limited liability company
 24 interest becomes a member, the assignor continues to be a
 25 member and to have the power to exercise rights of a member,

1 subject to the members' right to remove the assignor
2 pursuant to [section 45(1)(c)(ii)];

3 (e) until an assignee of a membership interest becomes
4 a member, the assignee has no liability as a member solely
5 as a result of the assignment; and

6 (f) the assignor of a membership interest is not
7 released from liability as a member solely as a result of
8 the assignment.

9 (2) The articles of organization or an operating
10 agreement may provide that a member's interest in a limited
11 liability company may be evidenced by a certificate of
12 membership interest issued by the limited liability company
13 and may also provide for the assignment or transfer of a
14 membership interest represented by a certificate and make
15 other provisions with respect to the certificates.

16 (3) Unless otherwise provided in the articles of
17 organization or an operating agreement, the pledge or
18 granting of a security interest, lien, or other encumbrance
19 in or against any of the membership interest of a member is
20 not an assignment and may not cause the member to cease to
21 be a member or to cease to have the power to exercise any
22 rights or powers of a member.

23 NEW SECTION. Section 42. Rights of judgment creditor.
24 On application to a court of competent jurisdiction by any
25 judgment creditor of a member, the court may charge the

1 membership interest of the member with payment of the
2 unsatisfied amount of judgment, with interest. To the extent
3 charged, the judgment creditor has only the rights of an
4 assignee of the membership interest. [Sections 1 through 78]
5 does not deprive a member of the benefit of any exemption
6 laws applicable to a membership interest.

7 NEW SECTION. Section 43. Right of assignee to become
8 member. (1) Except as otherwise provided in the articles of
9 organization or a written operating agreement, an assignee
10 of an interest in a limited liability company may become a
11 member only if the other members unanimously consent.

12 (2) An assignee who becomes a member has, to the extent
13 assigned, the rights and powers of and is subject to the
14 restrictions and liabilities of a member under the articles
15 of organization, an operating agreement, and [sections 1
16 through 78]. An assignee who becomes a member is liable for
17 obligations of the assignor to make contributions and to
18 return distributions under [section 30]; however, the
19 assignee is not obligated for liabilities of which the
20 assignee had no knowledge at the time the assignee became a
21 member and that could not be ascertained from the articles
22 of organization or a written operating agreement.

23 (3) Whether or not an assignee of a membership interest
24 becomes a member, the assignor is not released from
25 liability to the limited liability company under [section

1 30].

2 (4) Except as otherwise provided in writing in the
3 articles of organization or the operating agreement, a
4 member who assigns the member's entire interest in the
5 limited liability company ceases to be a member and to have
6 the power to exercise any rights of a member when the
7 assignee becomes a member with respect to the assigned
8 interest.

9 **NEW SECTION. Section 44. Admission of members.** (1)

10 Subject to subsection (2), a person may become a member in a
11 limited liability company:

12 (a) in the case of a person acquiring a limited
13 liability company interest directly from the limited
14 liability company, upon compliance with the articles of
15 organization or the operating agreement or, if the articles
16 of organization or the operating agreement does not so
17 provide in writing, upon the written consent of all members;
18 and

19 (b) in the case of an assignee of a limited liability
20 company interest, as provided in [section 41].

21 (2) The effective time of admission of a member to a
22 limited liability company is the later of:

23 (a) the date the limited liability company is formed;
24 or

25 (b) the time provided in the articles of organization

1 or the operating agreement or, if no time is provided, when
2 the person's admission is reflected in the records of the
3 limited liability company.

4 **NEW SECTION. Section 45. Events of dissociation.** (1) A

5 person ceases to be a member of a limited liability company
6 upon the occurrence of one or more of the following events:

7 (a) the member withdraws by voluntary act from the
8 limited liability company as provided in subsection (3);

9 (b) the member ceases to be a member of the limited
10 liability company as provided in [section 43];

11 (c) the member is removed as a member:

12 (i) in accordance with the articles of organization or
13 the operating agreement; or

14 (ii) subject to contrary written provisions in the
15 articles of organization or the operating agreement, by an
16 affirmative vote of a majority of the members who have not
17 assigned their interests when the member assigns all the
18 member's interest in the limited liability company;

19 (d) subject to contrary written provisions in the
20 articles of organization or the operating agreement or
21 written consent of all members at the time, the member:

22 (i) makes an assignment for the benefit of creditors;

23 (ii) files a voluntary petition in bankruptcy;

24 (iii) is adjudicated as bankrupt or insolvent;

25 (iv) files a petition or answer seeking reorganization,

1 arrangement, composition, readjustment, liquidation,
2 dissolution, or similar relief under any statute, law, or
3 regulation;

4 (v) files an answer or other pleading admitting or
5 failing to contest the material allegations of a petition
6 filed against the member in any proceeding under subsection
7 (1)(d); or

8 (vi) seeks, consents to, or acquiesces in the
9 appointment of a trustee, receiver, or liquidator of the
10 member or of any substantial part of the member's
11 properties;

12 (e) subject to contrary written provisions in the
13 articles of organization or the operating agreement or
14 written consent of all members at the time if:

15 (i) 120 days after the commencement of any proceeding
16 against the member seeking reorganization, arrangement,
17 composition, readjustment, liquidation, dissolution, or
18 similar relief under any statute, law, or regulation, the
19 proceeding has not been dismissed;

20 (ii) within 90 days after the appointment without the
21 member's consent or acquiescence of a trustee, receiver, or
22 liquidator of the member or of any substantial part of the
23 member's properties, the appointment is not vacated or
24 stayed; or

25 (iii) within 90 days after the expiration of any stay,

1 the appointment is not vacated;

2 (f) subject to contrary written provisions in the
3 articles of organization or the operating agreement or
4 written consent of all members at the time, in the case of a
5 member who is an individual:

6 (i) the member's death; or

7 (ii) the entry of an order by a court of competent
8 jurisdiction adjudicating the member incompetent to manage
9 the member's person or estate;

10 (g) subject to contrary written provisions in the
11 articles of organization or the operating agreement or
12 written consent of all members at the time, in the case of a
13 member who is a trustee or is acting as a member by virtue
14 of being a trustee of a trust, the termination of the trust
15 but not merely the substitution of a new trustee;

16 (h) subject to contrary written provisions in the
17 articles of organization or the operating agreement or
18 written consent of all members at the time, in the case of a
19 member that is a separate limited liability company, the
20 dissolution and commencement of winding up of the separate
21 limited liability company;

22 (i) subject to contrary written provisions in the
23 articles of organization or the operating agreement or
24 written consent of all members at the time, in the case of a
25 member that is a corporation, the filing of articles of

dissolution, or the equivalent for the corporation, or involuntary dissolution and the lapse of 90 days after notice to the corporation of revocation without a reinstatement of its charter;

(j) subject to contrary written provisions in the articles of organization or the operating agreement or written consent of all members at the time, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company; or

(k) if the limited liability company is a professional limited liability company, a member becomes a disqualified person.

(2) The members may provide in writing in the articles of organization or the operating agreement for other events that result in a person ceasing to be a member of the limited liability company.

(3) Unless the articles of organization or the operating agreement provides in writing that a member may not withdraw by voluntary act from a limited liability company, the member may withdraw at any time by giving 30 days' written notice to the other members or other notice required in the articles of organization or the operating agreement. Unless otherwise provided in the articles of organization or the operating agreement, in the case of a limited liability company for a definite term or particular

undertaking, a withdrawal by a member before the expiration of that term is a breach of the articles of organization or the operating agreement. If a member has the power to withdraw but the withdrawal violates a provision of the articles of organization or is a breach of the operating agreement or the withdrawal occurs as a result of otherwise wrongful conduct of the member, the limited liability company may:

(a) recover from the withdrawing member damages for violation of the articles of organization or for breach of the operating agreement, including the reasonable cost of obtaining replacement of the services the withdrawn member was obligated to perform;

(b) offset the damages against the amount otherwise distributable to the member; and

(c) pursue any other remedies provided for in the articles of organization or the operating agreement or otherwise available under applicable law.

NEW SECTION. Section 46. Dissolution. A limited liability company is dissolved and its affairs must be wound up when one of the following occurs:

(1) at the time or upon the occurrence of events specified in writing in the articles of organization or operating agreement;

(2) the written consent of all members;

(3) an event of dissociation of a member, unless the business of the limited liability company is continued by the consent of all the remaining members within 90 days following the occurrence of an event of dissociation or as otherwise provided in writing in the articles of organization or operating agreement; or

(4) entry of a decree of judicial dissolution under [section 47].

NEW SECTION. Section 47. Judicial dissolution. On application by or for a member, a district court may order dissolution of a limited liability company, or other appropriate relief, when it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.

NEW SECTION. Section 48. Winding up. (1) Except as otherwise provided in the articles of organization or the operating agreement, the business or affairs of the limited liability company may be wound up:

(a) by the members or managers who have authority under [section 23] to manage the limited liability company prior to dissolution; or

(b) if one or more of the members or managers have engaged in wrongful conduct or upon other cause shown, by the district court on application of any member or any member's legal representative or assignee.

(2) The persons winding up the business or affairs of the limited liability company may, in the name of and for and on behalf of the limited liability company:

(a) prosecute and defend suits;

(b) settle and close the business of the limited liability company;

(c) dispose of and transfer the property of the limited liability company;

(d) discharge the liabilities of the limited liability company; and

(e) distribute to the members any remaining assets of the limited liability company.

NEW SECTION. Section 49. Agency power of members or managers after dissolution. (1) Except as provided in subsections (3) through (5), after an event causing dissolution of the limited liability company, a member may bind the limited liability company:

(a) by an act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) by any transaction that would have bound the limited liability company, if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the articles of dissolution is

presumed to constitute notice of dissolution for purposes of subsection (1)(b).

(3) An act of a member that would not otherwise be binding on the limited liability company under subsection (1) is binding if it is authorized by the limited liability company.

(4) An act of a member that would be binding under subsection (1) or would be otherwise authorized and that is in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

(5) If the articles of organization vest management of the limited liability company in managers, a manager may exercise the authority of a member under subsection (1) and a member may not exercise the authority if the member is acting solely in the capacity of a member.

NEW SECTION. Section 50. Distribution of assets. Upon the winding up of a limited liability company, the assets must be distributed as follows:

(1) to creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company, whether by payment or the making of reasonable provision for payment, other than liabilities to members for distributions under [section 33 or 34];

(2) unless otherwise provided in the articles of organization or an operating agreement, to members and former members in satisfaction of liabilities for distributions under [section 33 or 34]; and

(3) unless otherwise provided in the articles of organization or an operating agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

NEW SECTION. Section 51. Articles of dissolution. Upon the dissolution and the commencement of winding up of the limited liability company, articles of dissolution must be filed in the office of the secretary of state and must set forth:

- (1) the name of the limited liability company;
- (2) the date of filing of its articles of organization and all amendments to the articles;
- (3) the reason for filing the articles of dissolution;
- (4) the effective date of the articles of dissolution, which must be a date certain, if they are not to be effective upon the filing;
- (5) any other information that the members or managers filing the articles determine necessary;
- (6) the name of the agent or agents authorized to receive service of process after dissolution of the limited

1 liability company; and

2 (7) the name of the person or persons authorized to
3 wind up the business and authorized to execute documents on
4 behalf of the limited liability company.

5 NEW SECTION. **Section 52.** Revocation of dissolution.

6 (1) A foreign limited liability company may revoke its
7 dissolution within 120 days of the effective date of the
8 articles of dissolution.

9 (2) Revocation of dissolution must be authorized in the
10 same manner as the dissolution was authorized unless that
11 authorization permitted revocation by action of the board of
12 directors alone, in which event the board of directors may
13 revoke the dissolution without shareholders' action.

14 (3) After the revocation of dissolution is authorized,
15 the foreign limited liability company may revoke the
16 dissolution by delivering to the secretary of state, for
17 filing, articles of revocation of dissolution, together with
18 a copy of its articles of dissolution, that set forth:

19 (a) the name of the foreign limited liability company;

20 (b) the effective date of the dissolution that was
21 revoked;

22 (c) the date that the revocation of dissolution was
23 authorized; and

24 (d) a statement of the action that was taken to revoke
25 the dissolution.

1 (4) Unless a delayed effective date is specified,
2 revocation of dissolution is effective when the articles of
3 revocation of dissolution are filed.

4 (5) When the revocation of dissolution is effective, it
5 relates back to and takes effect as of the effective date of
6 the dissolution, and the foreign limited liability company
7 resumes carrying on its business as if dissolution had never
8 occurred.

9 NEW SECTION. **Section 53.** Known claims against
10 dissolved limited liability companies. (1) A dissolved
11 limited liability company may dispose of the known claims
12 against it by filing articles of dissolution pursuant to
13 [section 53] and following the procedure described in this
14 section.

15 (2) The dissolved limited liability company shall
16 notify its known claimants in writing of the dissolution at
17 any time after the effective date of the dissolution. The
18 written notice must:

19 (a) describe information that must be included in a
20 claim;

21 (b) provide a mailing address where a claim may be
22 sent;

23 (c) state the deadline, which may not be less than 120
24 days from the later of the effective date of the written
25 notice or the filing of the articles of dissolution pursuant

to [section 51], by which the dissolved limited liability company must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

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

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved limited liability company by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

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

NEW SECTION. Section 54. Unknown claims against dissolved limited liability companies. (1) Subject to [section 53], the dissolution of a limited liability company, including dissolution by the expiration of its term, does not take away or impair any remedy available to or against the limited liability company or its members or managers for any claim or right, whether or not the claim or right existed or accrued prior to dissolution. A proceeding by or against the limited liability company may be

prosecuted or defended by the limited liability company in its name. The members and managers have power to take action as appropriate to protect the remedy, right, or claim.

(2) A claim may be enforced under [section 53] or this section:

(a) against the dissolved limited liability company, to the extent of the undistributed assets; or

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

(3) Subsections (1) and (2) apply to foreign limited liability companies and their members transacting business in this state for any claims otherwise arising or accruing under Montana law.

NEW SECTION. Section 55. Authority to transact business required. (1) A foreign limited liability company may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

1 (a) maintaining, defending, or settling any proceeding;
 2 (b) holding meetings of the members or managers or
 3 carrying on other activities concerning internal affairs of
 4 the limited liability company;
 5 (c) maintaining bank accounts;
 6 (d) maintaining offices or agencies for the transfer,
 7 exchange, and registration of the limited liability
 8 company's own securities or maintaining trustees or
 9 depositaries with respect to those securities;
 10 (e) selling through independent contractors;
 11 (f) soliciting or obtaining orders, whether by mail or
 12 through employees or agents or otherwise, if the orders
 13 require acceptance outside this state before they become
 14 contracts;
 15 (g) creating or acquiring indebtedness, mortgages, and
 16 security interests in real or personal property;
 17 (h) securing or collecting debts or enforcing mortgages
 18 and security interests in property securing the debts;
 19 (i) owning real or personal property that is acquired
 20 incident to activities described in subsection (2)(h) if the
 21 property is disposed of within 5 years after the date of
 22 acquisition, does not produce income, or is not used in the
 23 performance of a function of the limited liability company;
 24 (j) conducting an isolated transaction that is
 25 completed within 30 days and that is not a transaction in

1 the course of repeated transactions of a similar nature; or
 2 (k) transacting business in interstate commerce.
 3 (3) The list of activities in subsection (2) is not
 4 exhaustive.
 5 NEW SECTION. Section 56. Consequences of transacting
 6 business without authority. (1) A foreign limited liability
 7 company transacting business in this state without a
 8 certificate of authority may not maintain a proceeding in
 9 any court in this state until it obtains a certificate of
 10 authority.
 11 (2) The successor to a foreign limited liability
 12 company that transacted business in this state without a
 13 certificate of authority and the assignee of a cause of
 14 action arising out of that business may not maintain a
 15 proceeding based on that cause of action in any court in
 16 this state until the foreign limited liability company or
 17 its successor obtains a certificate of authority.
 18 (3) A court may stay a proceeding commenced by a
 19 foreign limited liability company or its successor or
 20 assignee until it determines whether the foreign corporation
 21 or its successor or assignee requires a certificate of
 22 authority. If it determines that a certificate is required,
 23 the court may further stay the proceeding until the foreign
 24 limited liability company or its successor obtains the
 25 certificate.

(4) A foreign limited liability company is liable for a civil penalty of \$5 for each day, but not to exceed a total of \$1,000 for each year, that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection and deposit them to the general fund.

(5) Notwithstanding the provisions of subsections (1) and (2), the failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding in this state.

NEW SECTION. Section 57. Application for certificate of authority. (1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign limited liability company or, if its name is unavailable for use in this state, a name that satisfies the requirements of [section 63];

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

(c) its date of organization and period of duration;

(d) the street address of its principal office;

(e) the address of its registered office in this state and the name of its registered agent at that office; and

(f) the names and usual business addresses of its current managers, if different from its members.

(2) A foreign limited liability company shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign limited liability company is organized.

NEW SECTION. Section 58. Registered office and registered agent of foreign limited liability company. Each foreign limited liability company authorized to transact business in this state shall continuously maintain in this state:

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

(2) a registered agent who may be:

(a) an individual who resides in this state and whose business office is identical with the registered office; or

(b) a domestic corporation, a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state.

NEW SECTION. Section 59. Resignation of registered agent of foreign limited liability company. (1) The registered agent of a foreign limited liability company may

1 resign the agency appointment by signing and delivering to
2 the secretary of state for filing the original and two
3 copies of a statement of resignation. The statement of
4 resignation may include a statement that the registered
5 office is also discontinued.

6 (2) After filing the statement, the secretary of state
7 shall attach the filing receipt to one copy and mail the
8 copy and receipt to the registered office if the office has
9 not been discontinued. The secretary of state shall mail the
10 other copy to the foreign limited liability company at its
11 principal office address shown in its most recent annual
12 report.

13 (3) The agency appointment is terminated and the
14 registered office discontinued, if provided in the
15 statement, 30 days after the date on which the statement was
16 filed.

17 **NEW SECTION. Section 60. Change of registered office**
18 **or registered agent of foreign limited liability company.**

19 (1) A foreign limited liability company authorized to
20 transact business in this state may change its registered
21 office or registered agent, or both, by delivering to the
22 secretary of state, for filing, a statement of change
23 setting forth:

24 (a) the foreign limited liability company's name;

25 (b) the street address of its current registered

1 office;

2 (c) if the address of its registered office is to be
3 changed, the new address of the registered office;

4 (d) the name and address of its current registered
5 agent;

6 (e) if its registered agent or the agent's address is
7 to be changed, the name and address of the successor
8 registered agent or the current registered agent's new
9 address; and

10 (f) the fact that after the change or changes are made,
11 the street addresses of its registered office and the
12 business office of its registered agent are identical.

13 (2) If a registered agent changes the street address of
14 the registered agent's business office, the registered agent
15 may change the street address of the registered office of
16 any foreign limited liability company for which the
17 registered agent is the registered agent by notifying the
18 foreign limited liability company in writing of the change
19 and signing, either manually or in facsimile, and delivering
20 to the secretary of state, for filing, a statement of change
21 that complies with the requirements of subsection (1) and
22 that states that the foreign limited liability company has
23 been notified of the change.

24 **NEW SECTION. Section 61. Amended certificate of**
25 **authority.** (1) A foreign limited liability company

authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

- (a) its name;
- (b) the period of its duration; or
- (c) the state or country of its organization.

(2) The requirements of [section 57] for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

NEW SECTION. Section 62. Effect of certificate of authority. (1) A certificate of authority issued by the secretary of state authorizes a foreign limited liability company to transact business in this state subject to the right of the state to revoke the certificate as provided in [sections 55 through 68].

(2) A foreign limited liability company with a valid certificate of authority has the same rights and privileges as a domestic company of similar character and, except as otherwise provided by [sections 55 through 68], is subject to the same duties, restrictions, penalties, and liabilities imposed on a domestic limited liability company of similar character.

(3) [Sections 55 through 68] do not authorize the state to regulate the organization or internal affairs of a foreign limited liability company authorized to transact

business in the state.

NEW SECTION. Section 63. Name. A certificate of authority may not be issued to a foreign limited liability company unless the name of the company satisfies the requirements of [section 3]. If the name of a foreign limited liability company does not satisfy the requirements of [section 3], to obtain or maintain a certificate of authority:

- (1) the foreign limited liability company may add the words "limited company", the abbreviation "l.l.c.", or the abbreviation "l.c." to its name for use in this state; or
- (2) if its real name is unavailable, the foreign limited liability company may use an assumed business name that is available and that satisfies the requirements of [section 15] if it files the assumed business name with the secretary of state.

NEW SECTION. Section 64. Withdrawal of foreign limited liability company. (1) A foreign limited liability company authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign limited liability company authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

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

(b) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (3);

(e) a commitment to notify the secretary of state in the future of any change in its mailing address;

(f) that all taxes imposed on the foreign limited liability company by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(g) additional information as may be necessary or

appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign limited liability company.

(3) After the withdrawal of the foreign limited liability company is effective, service of process on the secretary of state under this section is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign limited liability company at the mailing address set forth under subsection (2).

NEW SECTION. Section 65. Grounds for revocation. The secretary of state may commence a proceeding under [section 66] to revoke the certificate of authority of a foreign limited liability company authorized to transact business in this state if:

(1) the foreign limited liability company does not deliver its annual report to the secretary of state within 140 days after it is due;

(2) the foreign limited liability company is without a registered agent or registered office in this state for 60 days or more;

(3) the foreign limited liability company does not inform the secretary of state under [section 5] that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office

has been discontinued within 60 days of the change, resignation, or discontinuance; or

(4) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of company records in the state or country under whose law the foreign limited liability company is organized, stating that it has been dissolved or disappeared as the result of a merger.

NEW SECTION. Section 66. Procedure for and effect of revocation. (1) If the secretary of state determines that one or more grounds exist under [section 65] for revocation of a certificate of authority, the secretary of state shall serve the foreign limited liability company with written notice of the secretary of state's determination.

(2) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after service of the notice is mailed, the secretary of state may revoke the foreign limited liability company's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and mail a copy to the foreign limited liability

company.

(3) The authority of a foreign limited liability company to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign limited liability company's certificate of authority appoints the secretary of state as the foreign limited liability company's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign limited liability company was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign limited liability company at its principal office shown in its most recent annual report or in any subsequent communication received from the foreign limited liability company, stating the current mailing address of its principal office or, if no report or communication is on file, in its application for a certificate of authority.

(5) Revocation of a foreign limited liability company's certificate of authority does not terminate the authority of the registered agent of the foreign limited liability

1 company.

2 **NEW SECTION. Section 67. Appeal from revocation.** (1) A
3 foreign limited liability company may appeal the secretary
4 of state's revocation of its certificate of authority to the
5 district court within 30 days after service of the
6 certificate of revocation is mailed. The foreign limited
7 liability company may appeal by petitioning the court to set
8 aside the revocation and by attaching to the petition copies
9 of its certificate of authority and the secretary of state's
10 certificate of revocation.

11 (2) The court may summarily order the secretary of
12 state to reinstate the certificate of authority or may take
13 any other action the court considers appropriate.

14 (3) The court's final decision may be appealed as in
15 other civil proceedings.

16 **NEW SECTION. Section 68. Admission of foreign**
17 **professional limited liability companies -- application --**
18 **revocation.** (1) A foreign professional limited liability
19 company is entitled to a certificate of authority to
20 transact business in this state only if:

21 (a) the name of the foreign professional limited
22 liability company meets the requirements of [section 73];

23 (b) the foreign professional limited liability company
24 is organized only for purposes for which a professional
25 limited liability company may be organized under [sections

1 72 through 78]; and

2 (c) all the members and not less than one-half of the
3 managers of the foreign professional limited liability
4 company are qualified persons with respect to the foreign
5 professional limited liability company.

6 (2) Notwithstanding [section 55], a foreign
7 professional limited liability company may not be required
8 to obtain a certificate of authority to transact business in
9 this state unless it maintains an office in this state for
10 the conduct of business or professional practice.

11 (3) The application for a certificate of authority must
12 include a statement that all the members and not less than
13 one-half of the managers are licensed in at least one state
14 or territory or the District of Columbia to render a
15 professional service described in the statement of purposes
16 of the foreign professional limited liability company.

17 (4) The certificate of authority may be revoked by the
18 secretary of state if the foreign professional limited
19 liability company fails to comply with any provision of
20 [sections 72 through 78]. The licensing authority shall
21 certify to the secretary of state, from time to time, the
22 names of all foreign professional limited liability
23 companies that have given cause for revocation, together
24 with the pertinent facts, and shall concurrently mail to
25 each foreign professional limited liability company at its

1 registered office in this state a notice that the
2 certification has been made. A certificate of authority of a
3 foreign professional limited liability company may not be
4 revoked unless there have been both 60 days' notice of
5 intent to revoke and a failure to correct the noncompliance
6 during the 60 days.

7 (5) A foreign professional limited liability company is
8 subject to all other provisions of [sections 72 through 78]
9 not inconsistent with this section.

10 **NEW SECTION. Section 69. Suits by and against limited**
11 **liability company.** Suit may be brought by or against a
12 limited liability company in its own name.

13 **NEW SECTION. Section 70. Authority to sue on behalf of**
14 **limited liability company.** Except as otherwise provided in
15 the articles of organization or the operating agreement,
16 suit on behalf of the limited liability company may be
17 brought in the name of the limited liability company by:

18 (1) any member or members of a limited liability
19 company, whether or not the articles of organization vest
20 management of the limited liability company in one or more
21 managers who are authorized to sue by the vote of more than
22 one-half of the members, unless the vote of all members is
23 required under [section 26(2)], provided that in determining
24 the vote required under [section 26], the vote of a member
25 who has an interest in the outcome of the suit that is

1 adverse to the interest of the limited liability company
2 must be excluded; or

3 (2) any manager or managers of a limited liability
4 company, if the articles of organization vest management of
5 the limited liability company in one or more managers, who
6 are authorized to bring suit on behalf of the limited
7 liability company by the vote required pursuant to [section
8 26], provided that in determining the required vote, the
9 vote of a manager who has an interest in the outcome of the
10 suit that is adverse to the interest of the limited
11 liability company must be excluded.

12 **NEW SECTION. Section 71. Merger.** (1) Pursuant to any
13 agreement, a domestic limited liability company may merge
14 with or into one or more limited liability companies formed
15 under the laws of this state or any other state. The
16 surviving limited liability company is as provided in the
17 merger agreement.

18 (2) A domestic limited liability company that is not
19 the surviving limited liability company in the merger shall
20 file articles of dissolution that must have an effective
21 date not later than the effective date of the merger.

22 (3) If, following a merger of one or more domestic
23 limited liability companies or one or more limited liability
24 companies formed under the laws of any other state, the
25 surviving limited liability company is not a domestic

1 limited liability company, there must be attached to the
2 articles of dissolution for each domestic limited liability
3 company articles of merger executed by the surviving limited
4 liability company:

5 (a) stating that the surviving limited liability
6 company may be served with process in the state of Montana
7 in any action, suit, or proceeding for the enforcement of
8 any obligation of the domestic limited liability company;

9 (b) irrevocably appointing the secretary of state as
10 the surviving limited liability company's agent to accept
11 service of process in any action, suit, or proceeding; and

12 (c) specifying the address to which a copy of process
13 must be mailed to the surviving limited liability company by
14 the secretary of state.

15 (4) When the articles of dissolution required by
16 subsection (2) have become effective, the following must be
17 vested in and enforced against the surviving limited
18 liability company as they were in each of the limited
19 liability companies that merged:

20 (a) all of the rights, privileges, and powers of each
21 of the limited liability companies that merged;

22 (b) all property, real, personal, and mixed;

23 (c) all debts due to any of the limited liability
24 companies; and

25 (d) all other things and causes of action belonging to

1 each of the limited liability companies.

2 **NEW SECTION. Section 72. Purposes of professional**
3 **limited liability companies.** Professional limited liability
4 companies may be organized under [sections 72 through 78]
5 only for the purpose of rendering professional services and
6 services ancillary to professional services within a single
7 profession, except that a professional limited liability
8 company may be organized for the purpose of rendering
9 professional services within two or more professions and for
10 any purpose or purposes for which companies may be organized
11 under [sections 1 through 78] to the extent that the
12 combination of professional purposes or professional and
13 business purposes is permitted by the licensing laws and
14 rules of this state applicable to the professions.

15 **NEW SECTION. Section 73. Professional limited**
16 **liability company name.** The name of a domestic or foreign
17 professional limited liability company:

18 (1) must contain the words "professional limited
19 liability company", "professional l.l.c.", or "p.l.l.c.";
20 and

21 (2) must conform to rules promulgated by a licensing
22 authority having jurisdiction of a professional service
23 described in the articles of organization.

24 **NEW SECTION. Section 74. Professional limited**
25 **liability company managers.** At least one-half of the

1 managers of a professional limited liability company must be
2 qualified persons with respect to the limited liability
3 company.

4 NEW SECTION. Section 75. Membership in professional
5 limited liability company. (1) Only the following persons
6 may be members of a professional limited liability company:

7 (a) natural persons authorized by law of this or any
8 other state, a territory of the United States, or the
9 District of Columbia to render a professional service
10 permitted by the articles of organization of the
11 professional limited liability company;

12 (b) general partnerships in which all the partners are
13 authorized by law of this or any other state, a territory of
14 the United States, or the District of Columbia to render a
15 professional service permitted by the articles of
16 incorporation and in which at least one partner is
17 authorized by law in this state to render a professional
18 service permitted by the articles of organization of the
19 professional limited liability company; and

20 (c) domestic or foreign professional corporations and
21 domestic or foreign professional limited liability companies
22 authorized by law in this state to render a professional
23 service permitted by the articles of organization of the
24 professional limited liability company.

25 (2) The licensing authority may by rule further

1 restrict or condition the issuance of membership interests
2 in order to preserve ethical standards, but a rule may not
3 cause a member at the time the rule becomes effective to
4 become a disqualified person.

5 NEW SECTION. Section 76. Rendering services. A
6 domestic or foreign professional limited liability company
7 may render professional services in this state only through
8 natural persons permitted to render the services in this
9 state; however, nothing in [sections 72 through 78] requires
10 any person employed by a professional limited liability
11 company to be licensed to perform services for which a
12 license is not otherwise required or prohibits the rendering
13 of professional services by a licensed natural person acting
14 in that person's individual capacity, even if the person is
15 a member or manager of a professional limited liability
16 company.

17 NEW SECTION. Section 77. Responsibility for services.
18 (1) An individual who renders professional services as an
19 employee of a domestic or foreign professional limited
20 liability company is liable for any negligent or wrongful
21 act or omission in which the individual personally
22 participates to the same extent as if the individual had
23 rendered the services as a sole practitioner. An employee of
24 a professional limited liability company is not liable for
25 the conduct of other employees unless the employee is at

1 fault in appointing, supervising, or cooperating with them.

2 (2) A domestic or foreign professional limited
3 liability company whose employee performs professional
4 services within the scope of the employee's employment or
5 apparent authority to act for the company is liable to the
6 same extent as the employee.

7 (3) Except as otherwise provided by statute, the
8 personal liability of a member of a domestic or foreign
9 professional limited liability company is no greater in any
10 respect than that of a member of a limited liability company
11 otherwise organized under [sections 72 through 78].

12 NEW SECTION. **Section 78. Relationship to clients and**
13 **patients.** (1) The relationship between an individual
14 performing professional services as an employee of a
15 domestic or foreign professional limited liability company
16 and a client or patient is the same as if the individual
17 performed the services as a sole practitioner.

18 (2) The relationship between a domestic or foreign
19 professional limited liability company performing
20 professional services and the client or patient is the same
21 as between the client or patient and the individual
22 performing the services.

23 (3) Any privilege applicable to communications between
24 a person rendering professional services and the person
25 receiving the services recognized under the statutory or

1 common law of this state extends to a domestic or foreign
2 professional limited liability company and its employees.

3 **Section 79.** Section 30-13-141, MCA, is amended to read:

4 **"30-13-141. Definitions.** As used in 30-13-141 through
5 30-13-147, the following definitions apply:

6 (1) "Owner" means the person who owns the original
7 fixation of sounds embodied in a master phonograph record,
8 master disc, master tape, master film, or other device used
9 for reproducing sounds on phonograph records, discs, tapes,
10 films, or other articles upon which sound is recorded and
11 from which the transferred recorded sounds are directly
12 derived.

13 (2) "Performer" means the person or persons appearing
14 in a performance.

15 (3) "Person" means any individual, firm, partnership,
16 limited liability company, corporation, or association.

17 (4) "Sound recording" means a phonograph record, disc,
18 wire, tape, film, or other article on which sound is
19 recorded."

20 **Section 80.** Section 30-13-202, MCA, is amended to read:

21 **"30-13-202. Registration of assumed business name --**
22 **when prohibited.** (1) When an application for registration or
23 amendment to the registration of an assumed business name
24 contains an assumed business name which is the same as or
25 deceptively similar to an assumed business name already

registered or to any corporate name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) When the applicant is other than a corporation, or limited partnership, or limited liability company, the secretary of state may not register the assumed business name for which application is made if the name applied for contains or there is added at the end of the name the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such the words."

Section 81. Section 30-13-301, MCA, is amended to read:

"30-13-301. **Definitions.** In this part, unless the context requires otherwise, the following definitions apply:

(1) "Applicant" means the person filing an application for registration of a trademark under this part or his the person's legal representatives, successors, or assigns.

(2) "Mark" means any trademark or service mark entitled to registration under this part whether registered or not.

(3) "Person" means any individual, firm, partnership, limited liability company, corporation, association, union, or other organization.

(4) "Registrant" means the person to whom the registration of a trademark under this part is issued or his

the person's legal representatives, successors, or assigns.

(5) "Service mark" means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others.

(6) "Trade name" means a word, name, symbol, device, or any combination thereof used by a person to identify his the person's business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others.

(7) "Trademark" means any word, name, symbol, device, or any combination thereof adopted and used by a person to identify goods made or sold by him the person and to distinguish them from goods made or sold by others."

Section 82. Section 30-13-311, MCA, is amended to read:

"30-13-311. **Application for registration.** (1) Subject to the limitations set forth in this part, a person who adopts and uses a mark in this state may file in the office of secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth information including but not limited to the following:

(a) the name and business address of the person applying for such registration and, if a corporation, the state of incorporation or, if a limited liability company, the state of organization;

(b) the essential feature of the mark to be registered;

1 (c) the goods or services in connection with which the
2 mark is used and the mode or manner in which the mark is
3 used in connection with such the goods or services and the
4 class in which such the goods or services fall;

5 (d) the date when the mark was first used anywhere and
6 the date when it was first used in this state by the
7 applicant or his the applicant's predecessor in business;

8 (e) a statement that the mark is presently in use in
9 this state by the applicant; and

10 (f) a statement that the applicant is the owner of the
11 mark and that no other person has the right to use the mark
12 in this state either in the identical form thereof or in a
13 form that so nearly resembles it that it might be calculated
14 to deceive or might be mistaken for it.

15 (2) The application must be signed by the applicant or
16 a member of the firm or limited liability company or an
17 officer of the corporation or association applying.

18 (3) The application must be accompanied by two copies
19 of a specimen or facsimile of such the mark.

20 (4) The application for registration must be
21 accompanied by a filing fee as provided for in 30-13-320."

22 **Section 83.** Section 35-1-308, MCA, is amended to read:

23 "35-1-308. Corporate name. (1) A corporate name:

24 (a) must contain the word "corporation",
25 "incorporated", "company", or "limited"; the abbreviation

1 "corp.", "inc.", "co.", or "ltd."; or words or abbreviations
2 of similar meaning in another language; and

3 (b) may not contain language that states or implies
4 that the corporation is organized for a purpose or purposes
5 other than those permitted by 35-1-114 and its articles of
6 incorporation.

7 (2) Except as authorized by subsections (3) and (4), a
8 corporate name must be distinguishable in the records of the
9 secretary of state from:

10 (a) the corporate name of another corporation
11 incorporated or authorized to transact business in this
12 state;

13 (b) a corporate name reserved or registered under
14 35-1-309 or 35-1-311;

15 (c) the fictitious name adopted by a foreign
16 corporation authorized to transact business in this state
17 because its real name is unavailable;

18 (d) the corporate name of a not-for-profit corporation
19 incorporated or authorized to transact business in this
20 state;

21 (e) the corporate name of a domestic corporation that
22 has dissolved, but only distinguishable for a period of 120
23 days after the effective date of its dissolution; and

24 (f) any assumed business name, limited partnership
25 name, limited liability company name, trademark, or service

1 mark registered or reserved with the secretary of state.

2 (3) A corporation may apply to the secretary of state
3 for authorization to use a name that is not distinguishable
4 in the secretary of state's records from one or more of the
5 names described in subsection (2). The secretary of state
6 shall authorize use of the name applied for if:

7 (a) the other corporation consents to the use in
8 writing and submits an undertaking in a form satisfactory to
9 the secretary of state to change its name to a name that is
10 distinguishable in the records of the secretary of state
11 from the name of the applying corporation; or

12 (b) the applicant delivers to the secretary of state a
13 certified copy of the final judgment of a court of competent
14 jurisdiction establishing the applicant's right to use the
15 name applied for in the state.

16 (4) A corporation may use the name, including the
17 fictitious name, of another domestic or foreign corporation
18 that is used in this state if the other corporation is
19 incorporated or authorized to transact business in this
20 state and the proposed user corporation:

21 (a) has merged with the other corporation;

22 (b) has been formed by reorganization of the other
23 corporation; or

24 (c) has acquired all or substantially all of the
25 assets, including the corporate name, of the other

1 corporation.

2 (5) This chapter does not control the use of fictitious
3 names."

4 **Section 84.** Section 35-1-1031, MCA, is amended to read:

5 "35-1-1031. Corporate name of foreign corporation. (1)
6 If the corporate name of a foreign corporation does not
7 satisfy the requirements of 35-1-308, to obtain or maintain
8 a certificate of authority to transact business in this
9 state the foreign corporation shall:

10 (a) add the word "corporation", "incorporated",
11 "company", or "limited" or the abbreviation "corp.", "inc.",
12 "co.", or "ltd." to its corporate name for use in this
13 state; or

14 (b) use a fictitious name to transact business in this
15 state if its real name is unavailable and deliver to the
16 secretary of state, for filing, a copy of the resolution of
17 its board of directors, certified by its secretary, adopting
18 the fictitious name.

19 (2) Except as authorized by subsections (3) and (4),
20 the corporate name of a foreign corporation, including a
21 fictitious name, must be distinguishable in the records of
22 the secretary of state from:

23 (a) the corporate name of a corporation incorporated or
24 authorized to transact business in this state;

25 (b) a corporate name reserved or registered under

1 35-1-309 or 35-1-311;

2 (c) the fictitious name of another foreign corporation

3 authorized to transact business in this state;

4 (d) the corporate name of a not-for-profit corporation

5 incorporated or authorized to transact business in this

6 state;

7 (e) the corporate name of a domestic corporation that

8 has dissolved, but only for a period of 120 days after the

9 effective date of its dissolution; and

10 (f) any assumed business name, limited partnership

11 name, limited liability company name, trademark, or service

12 mark registered or reserved with the secretary of state.

13 (3) A foreign corporation may apply to the secretary of

14 state for authorization to use in this state the name of

15 another corporation, incorporated or authorized to transact

16 business in this state, that is not distinguishable in the

17 secretary of state's records from the name applied for. The

18 secretary of state shall authorize use of the name applied

19 for if:

20 (a) the other corporation consents to the use in

21 writing and submits an undertaking in a form satisfactory to

22 the secretary of state to change its name to a name that is

23 distinguishable in the records of the secretary of state

24 from the name of the applying corporation; or

25 (b) the applicant delivers to the secretary of state a

1 certified copy of a final judgment of a court of competent

2 jurisdiction establishing the applicant's right to use the

3 name applied for in this state.

4 (4) A foreign corporation may use in this state the

5 name of another domestic or foreign corporation, including

6 the fictitious name, that is used in this state if the other

7 corporation is incorporated or authorized to transact

8 business in this state and the foreign corporation:

9 (a) has merged with the other corporation;

10 (b) has been formed by reorganization of the other

11 corporation; or

12 (c) has acquired all or substantially all of the

13 assets, including the corporate name, of the other

14 corporation.

15 (5) If a foreign corporation authorized to transact

16 business in this state changes its corporate name to one

17 that does not satisfy the requirements of 35-1-308, it may

18 not transact business in this state under the changed name

19 until it adopts a name satisfying the requirements of

20 35-1-308 and obtains an amended certificate of authority

21 under 35-1-1029."

22 **Section 85.** Section 35-2-305, MCA, is amended to read:

23 "35-2-305. Corporate name. (1) A corporate name may not

24 contain language stating or implying that the corporation is

25 organized for a purpose other than that permitted by

1 35-2-117 and its articles of incorporation.

2 (2) Except as authorized by subsections (3) and (4), a
3 corporate name must be distinguishable in the records of the
4 secretary of state from:

5 (a) the corporate name of a nonprofit or business
6 corporation incorporated or authorized to do business in
7 this state;

8 (b) a corporate name reserved or registered under Title
9 35, chapter 1, 35-2-306, or 35-2-307;

10 (c) the fictitious name of a foreign business or
11 nonprofit corporation authorized to transact business in
12 this state because its real name is unavailable;

13 (d) the corporate name of a domestic business or
14 nonprofit corporation that has been dissolved, but only
15 distinguishable for a period of 120 days after the effective
16 date of the dissolution; or

17 (e) any assumed business name, limited partnership
18 name, limited liability company name, trademark, or service
19 mark registered or reserved with the secretary of state.

20 (3) A corporation may apply to the secretary of state
21 for authorization to use a name that is not distinguishable
22 in the secretary of state's records from one or more of the
23 names described in subsection (2). The secretary of state
24 shall authorize use of the name applied for if:

25 (a) the other corporation consents to the use in

1 writing and submits an undertaking in a form satisfactory to
2 the secretary of state to change its name to a name that is
3 distinguishable in the records of the secretary of state
4 from the name of the applying corporation; or

5 (b) the applicant delivers to the secretary of state a
6 certified copy of a final judgment of a court of competent
7 jurisdiction establishing the applicant's right to use the
8 name applied for in this state.

9 (4) A corporation may use the name, including the
10 fictitious name, of another domestic or foreign business or
11 nonprofit corporation that is used in this state if the
12 other corporation is incorporated or authorized to do
13 business in this state and the proposed user corporation:

14 (a) has merged with the other corporation;

15 (b) has been formed by reorganization of the other
16 corporation; or

17 (c) has acquired all or substantially all of the
18 assets, including the corporate name, of the other
19 corporation.

20 (5) This chapter does not control the use of fictitious
21 names."

22 **Section 86.** Section 35-2-826, MCA, is amended to read:

23 "35-2-826. Corporate name of foreign corporation. (1)
24 If the corporate name of a foreign corporation does not
25 satisfy the requirements of 35-2-305, the foreign

1 corporation, to obtain or maintain a certificate of
2 authority to transact business in this state, may use a
3 fictitious name to transact business in this state if:

4 (a) its real name is unavailable; and

5 (b) it delivers to the secretary of state, for filing,
6 a copy of the resolution of its board of directors,
7 certified by its secretary, adopting the fictitious name.

8 (2) Except as authorized by subsections (3) and (4),
9 the corporate name, including a fictitious name, of a
10 foreign corporation must be distinguishable in the records
11 of the secretary of state from:

12 (a) the corporate name of a nonprofit or business
13 corporation incorporated or authorized to transact business
14 in this state;

15 (b) a corporate name reserved or registered under
16 35-1-309, 35-1-311, 35-2-306, or 35-2-307;

17 (c) the fictitious name of another foreign business or
18 nonprofit corporation authorized to transact business in
19 this state;

20 (d) the corporate name of a domestic corporation that
21 has dissolved, but distinguishable only for a period of 120
22 days after the effective date of dissolution; and

23 (e) any assumed business name, limited partnership
24 name, limited liability company name, trademark, or service
25 mark registered or reserved with the secretary of state.

1 (3) A foreign corporation may apply to the secretary of
2 state for authorization to use in this state the name of
3 another corporation, incorporated or authorized to transact
4 business in this state, that is not distinguishable in the
5 records of the secretary of state from the name applied for.
6 The secretary of state shall authorize use of the name
7 applied for if:

8 (a) the other corporation consents to the use in
9 writing and submits an undertaking in a form satisfactory to
10 the secretary of state to change its name to a name that is
11 distinguishable in the records of the secretary of state
12 from the name of the applying corporation; or

13 (b) the applicant delivers to the secretary of state a
14 certified copy of a final judgment of a court of competent
15 jurisdiction establishing the applicant's right to use the
16 name applied for in this state.

17 (4) A foreign corporation may use in this state the
18 name, including the fictitious name, of another domestic or
19 foreign business or nonprofit corporation that is used in
20 this state if the other corporation is incorporated or
21 authorized to transact business in this state and the
22 foreign corporation:

23 (a) has merged with the other corporation;

24 (b) has been formed by reorganization of the other
25 corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-2-305, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-2-305 and obtains an amended certificate of authority under 35-2-823."

Section 87. Section 35-4-206, MCA, is amended to read:

"35-4-206. Corporate name. The name of a domestic or foreign professional corporation:

(1) must contain the words "professional corporation" or the abbreviation "P.C.";

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact

business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of such other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state; and

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation."

Section 88. Section 35-12-505, MCA, is amended to read:

"35-12-505. Name. The name of each limited partnership as set forth in its certificate of limited partnership:

1 (1) shall contain the words "limited partnership" in
2 full;

3 (2) may not contain the name of a limited partner
4 unless:

5 (a) it is also the name of a general partner; or

6 (b) the business of the limited partnership had been
7 carried on under that name before the admission of that
8 limited partner;

9 (3) may not contain any word or phrase indicating or
10 implying that it is organized other than for a purpose
11 stated in its certificate of limited partnership; and

12 (4) may not be the same as or deceptively similar to
13 the name of any corporation, or limited partnership, or
14 limited liability company organized under the laws of this
15 state or licensed or registered as a foreign corporation or
16 limited partnership in this state."

17 NEW SECTION. Section 89. Codification instruction.
18 [Sections 1 through 78] are intended to be codified as an
19 integral part of Title 35, and the provisions of Title 35
20 apply to [sections 1 through 78].

-End-

SENATE BILL NO. 146

INTRODUCED BY WATERMAN, J. RICE, WHALEN, STANG,
HALLIGAN, MCCULLOCH, FORRESTER, CRIPPEN, PAGG,
STRIZICH, FOSTER, WELDON, BARTLETT, DOHERTY

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA
LIMITED LIABILITY COMPANY ACT; AND AMENDING SECTIONS
30-13-141, 30-13-202, 30-13-301, 30-13-311, 35-1-308,
35-1-1031, 35-2-305, 35-2-826, 35-4-206, AND 35-12-505,
MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because
the secretary of state is authorized to adopt rules
prescribing forms and establishing fees. The legislature
intends that fees be commensurate with the cost of the
services provided. It is further the intent of the
legislature that the secretary of state make the forms
consistent with existing forms used for corporate and other
business entities, when practical and applicable, and that
the new forms be as easy to use as possible.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [Sections 1
through 78] may be cited as the "Montana Limited Liability

Company Act".

NEW SECTION. **Section 2.** Definitions. As used in
[sections 1 through 78], unless the context requires
otherwise, the following definitions apply:

(1) "Articles of organization" means articles filed
pursuant to [section 8] and those articles as amended or
restated.

(2) "Corporation" means a corporation formed under the
laws of this state or a foreign corporation.

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

(4) "Disqualified person" means any person or entity
that for any reason is or becomes ineligible under [sections
1 through 78] to become a member in a professional limited
liability company.

(5) "Event of dissociation" means an event that causes
a person to cease to be a member, as provided in [section
45].

(6) "Foreign corporation" means a corporation that is
organized under the laws of a state other than Montana or

THERE ARE NO CHANGES IN THIS BILL
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REFER TO YELLOW COPY FOR COMPLETE TEXT.

SENATE BILL NO. 146

INTRODUCED BY WATERMAN, J. RICE, WHALEN, STANG,
HALLIGAN, MCCULLOCH, FORRESTER, CRIPPEN, FAGG,
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that for any reason is or becomes ineligible under [sections
1 through 78] to become a member in a professional limited
liability company.

(5) "Event of dissociation" means an event that causes
a person to cease to be a member, as provided in [section
45].

(6) "Foreign corporation" means a corporation that is
organized under the laws of a state other than Montana or
under the laws of any foreign country.

(7) "Foreign limited liability company" means an entity
that is:

(a) an unincorporated association;

(b) organized under laws of a state other than Montana



1 or under the laws of any foreign country;

2 (c) organized under a statute pursuant to which an
3 association may be formed that affords to each of its
4 members limited liability with respect to the liabilities of
5 the entity; and

6 (d) not required to be registered or organized under
7 any statute of this state other than [sections 1 through
8 78].

9 (8) "Foreign limited partnership" means a limited
10 partnership formed under the laws of any state other than
11 Montana or under the laws of any foreign country.

12 (9) "Foreign professional limited liability company"
13 means a limited liability company organized for the purpose
14 of rendering professional services under the laws of any
15 state other than Montana.

16 (10) "Licensing authority" means an officer, board,
17 agency, court, or other authority in this state that has the
18 power to issue a license or other legal authorization to
19 render a professional service.

20 (11) "Limited liability company" or "domestic limited
21 liability company" means an organization that is formed
22 under [sections 1 through 78].

23 (12) "Limited liability company interest" or "interest
24 in the limited liability company" means the interest that
25 can be assigned under [section 41] and that is available to

1 creditors under [section 42].

2 (13) "Limited partnership" means a limited partnership
3 formed under the laws of this state or a foreign limited
4 partnership.

5 (14) "Manager" means, with respect to a limited
6 liability company that has set forth in its articles of
7 organization that it is to be managed by managers, the
8 person designated in accordance with [section 21].

9 (15) "Member" means a person who has been admitted to
10 membership in a limited liability company as provided in
11 [section 44] and who has not dissociated from the limited
12 liability company.

13 (16) "Operating agreement" means an agreement, written
14 or oral, as to the conduct of the business and affairs of a
15 limited liability company that is binding upon all of the
16 members.

17 (17) "Person" means an individual, a general
18 partnership, a limited partnership, a domestic or foreign
19 limited liability company, a trust, an estate, an
20 association, a corporation, or any other legal or commercial
21 entity.

22 (18) "Professional limited liability company" means a
23 limited liability company designating itself as a
24 professional limited liability company in its articles of
25 organization.

(19) "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

(20) "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under [sections 1 through 78] to own shares issued by a professional limited liability company.

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

(22) "Surviving limited liability company" means the constituent entity surviving the merger, as identified in the articles of merger provided for in [section 71].

NEW SECTION. Section 3. Name. (1) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) Contests over names registered under this section are governed by 35-1-310.

NEW SECTION. Section 4. Reservation of name. (1) The exclusive right to use a name may be reserved by:

(a) a person intending to organize a limited liability company and to adopt that name;

(b) a limited liability company or foreign limited liability company registered in this state that intends to adopt that name;

(c) a foreign limited liability company intending to register in this state and to adopt that name; or

(d) a person intending to organize a foreign limited

liability company and to have it registered in this state and to adopt that name.

(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited liability company, the secretary of state shall reserve the name for the exclusive use of the applicant for a nonrenewable period of 120 days from the date the application is filed.

(3) The holder of a reserved limited liability company name may renew the reservation for successive periods of 120 days each from the date of renewal.

(4) The right to the exclusive use of a reserved name may be transferred to another person by filing with the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, and by specifying the name to be transferred and the name and address of the transferee. The transfer may not extend the term during which the name is reserved.

NEW SECTION. Section 5. Registered office and registered agent. (1) A limited liability company shall continuously maintain in this state:

(a) a registered office that may but need not be the same as its place of business; and

(b) a registered agent for service of process (at the registered office) on the limited liability company that is either an individual resident of this state, a domestic corporation, a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.

(3) A limited liability company may change its registered office or registered agent, or both, by delivering to the secretary of state a statement setting forth:

(a) the name of the limited liability company;

(b) the address of its current registered office;

(c) if the address of its registered office is to be changed, the new address of the registered office;

(d) the name and address of its current registered agent; and

(e) if its registered agent or the agent's address is to be changed, the name and address of the successor registered agent or the current registered agent's new

1 address.

2 (4) The change of address of the registered office or
3 registered agent is effective on delivery of the statement
4 to the secretary of state. The appointment of a new
5 registered agent is effective on delivery of the statement
6 to the secretary of state and on receipt by the secretary of
7 state of evidence that the new registered agent has accepted
8 appointment pursuant to subsection (2).

9 (5) A registered agent of a limited liability company
10 may resign as registered agent by delivering a written
11 notice and 2 copies to the secretary of state. The secretary
12 of state shall mail a copy of the notice to the limited
13 liability company at its registered office and its principal
14 place of business. The appointment of the registered agent
15 terminates 30 days after receipt of the notice by the
16 secretary of state or on the appointment of a new registered
17 agent, whichever occurs first.

18 (6) If a registered agent changes its address to
19 another place in this state, it may change the address by
20 delivering a statement to the secretary of state as required
21 by subsection (3), except that it need be signed only by the
22 registered agent. The statement must recite that a copy of
23 the statement has been mailed to the limited liability
24 company.

25 NEW SECTION. **Section 6. Purpose.** (1) A limited

1 liability company organized under [sections 8 through 18]
2 has the purpose of engaging in any lawful business unless a
3 more limited purpose is set forth in the articles of
4 organization.

5 (2) Limited liability companies may be organized under
6 [sections 8 through 18] for any lawful purpose except for
7 the purpose of banking or insurance.

8 NEW SECTION. **Section 7. Powers.** A limited liability
9 company may:

10 (1) sue, be sued, complain, and defend in all courts;

11 (2) transact its business, carry on its operations, and
12 have and exercise the powers granted by this section in any
13 state; in any territory, district, or possession of the
14 United States; and in any foreign country;

15 (3) make contracts and guarantees, incur liabilities,
16 and borrow money;

17 (4) sell, lease, exchange, transfer, convey, mortgage,
18 pledge, and otherwise dispose of any of its assets;

19 (5) acquire by purchase or in any other manner, take,
20 receive, own, hold, improve, and otherwise deal with any
21 interest in real or personal property, wherever located;

22 (6) issue notes, bonds, and other obligations and
23 secure any of them by mortgage, deed of trust, or security
24 interest of any of its assets;

25 (7) purchase, take, receive, subscribe for, or

1 otherwise acquire, own, hold, vote, use, employ, sell,
 2 mortgage, loan, pledge, or otherwise dispose of and
 3 otherwise use and deal in and with stock or other interests
 4 in and obligations of domestic and foreign corporations,
 5 associations, general or limited partnerships, limited
 6 liability companies, business trusts, and individuals;

7 (8) invest its surplus funds, lend money from time to
 8 time in any manner that may be appropriate to enable it to
 9 carry on the operations or fulfill the purposes set forth in
 10 its articles of organization, and take and hold real
 11 property and personal property as security for the payment
 12 of funds loaned or invested;

13 (9) elect or appoint agents and define their duties and
 14 fix their compensation;

15 (10) sell, convey, mortgage, pledge, lease, exchange,
 16 transfer, and otherwise dispose of all or any part of its
 17 property and assets;

18 (11) be a promoter, stockholder, partner, member,
 19 associate, or agent of any corporation, partnership,
 20 domestic or foreign limited liability company, joint
 21 venture, trust, or other enterprise;

22 (12) indemnify and hold harmless any member, agent, or
 23 employee from and against any claims and demands whatsoever,
 24 except in the case of action or failure to act by the
 25 member, agent, or employee that constitutes willful

1 misconduct or recklessness, and subject to the standards and
 2 restrictions, if any, set forth in the articles of
 3 organization or operating agreement;

4 (13) cease its activities and dissolve;

5 (14) pay pensions and establish pension plans, pension
 6 trusts, profit-sharing plans, share bonus plans, share
 7 option plans, and benefit or incentive plans for any of its
 8 current or former directors, officers, employees, and
 9 agents;

10 (15) make donations for the public welfare or for
 11 charitable, religious, scientific, or educational purposes
 12 and, in time of war, make donations in aid of war
 13 activities; and

14 (16) do every other act not inconsistent with law that
 15 is appropriate to promote and further the business and
 16 affairs of the limited liability company.

17 NEW SECTION. Section 8. Formation. One or more persons
 18 may form a limited liability company by signing and filing
 19 articles of organization with the secretary of state. The
 20 person or persons need not be members of the limited
 21 liability company at the time of formation or after
 22 formation has occurred.

23 NEW SECTION. Section 9. Articles of organization. (1)
 24 The articles of organization must set forth:

25 (a) the name of the limited liability company that

1 satisfies the requirements of [section 3];

2 (b) the latest date on which the limited liability

3 company is to dissolve;

4 (c) the address of its principal place of business in

5 this state and, if different, its registered office and the

6 name and address of its resident agent at the registered

7 office in this state;

8 (d) a statement of whether the limited liability

9 company is to be managed by a manager or by its members;

10 (e) (i) if the limited liability company is to be

11 managed by a manager or managers, a statement that the

12 company is to be managed in that fashion and the names and

13 street addresses of managers who are to serve as managers

14 until the first meeting of members or until their successors

15 are elected;

16 (ii) if the management of a limited liability company is

17 reserved to the members, the names and street addresses of

18 the initial members;

19 (f) if the limited liability company is a professional

20 limited liability company, a statement to that effect and a

21 statement of the professional service or services it will

22 render; and

23 (g) any other provision, not inconsistent with law,

24 that the members elect to set out in the articles, including

25 but not limited to a statement of whether there are

1 limitations on the authority of members or management to

2 bind the limited liability company.

3 (2) It is not necessary to set out in the articles of

4 organization any of the powers enumerated in [section 7].

5 NEW SECTION. **Section 10. Amendment of articles of**

6 **organization -- restatement.** (1) The articles of

7 organization of a limited liability company are amended by

8 filing articles of amendment with the secretary of state.

9 The articles of amendment must set forth:

10 (a) the name of the limited liability company;

11 (b) the date the articles of organization were filed;

12 and

13 (c) the amendment to the articles of organization.

14 (2) The articles of organization may be amended as

15 desired, so long as the amended articles of organization

16 contain only provisions that may be lawfully contained in

17 articles of organization at the time of making the

18 amendment.

19 (3) Articles of organization may be restated at any

20 time. Restated articles of organization must be filed with

21 the secretary of state, must be specifically designated as

22 such in the heading, and must state either in the heading or

23 in an introductory paragraph the limited liability company's

24 present name and, if it has been changed, all of its former

25 names and the date of the filing of its articles of

1 organization.

2 (4) An amendment to the articles of organization of a
3 limited liability company must be in the form and manner
4 designated by the secretary of state.

5 NEW SECTION. Section 11. Execution of documents. (1)
6 Unless otherwise specified in [sections 1 through 78], a
7 document required by [sections 1 through 78] to be filed
8 with or delivered to the secretary of state must be
9 executed:

10 (a) by any manager if management of the limited
11 liability company is vested in one or more managers or by a
12 member if management of the limited liability company is
13 reserved to the members;

14 (b) if the limited liability company has not been
15 formed, by the person or persons forming the limited
16 liability company; or

17 (c) if the limited liability company is in the hands of
18 a receiver, trustee, or other court-appointed fiduciary, by
19 that fiduciary.

20 (2) The person executing the document shall sign it and
21 state, beneath or opposite the signature, the person's name
22 and the capacity in which the person signs.

23 (3) The person executing the document may do so as an
24 attorney-in-fact. Powers of attorney relating to the
25 execution of the document do not need to be shown to or

1 filed with the secretary of state.

2 NEW SECTION. Section 12. Filing with secretary of
3 state. (1) The original signed copy, together with a
4 duplicate copy that may be either a signed, photocopied, or
5 confirmed copy, of the articles of organization or any other
6 document required to be filed pursuant to [sections 1
7 through 78] must be delivered to the secretary of state. If
8 the secretary of state determines that the documents conform
9 to the filing provisions of [sections 1 through 78], the
10 secretary of state shall, when all required filing fees have
11 been paid:

12 (a) endorse on each signed original and duplicate copy
13 the word "filed" and the date and time of its acceptance for
14 filing;

15 (b) retain the signed original in the secretary of
16 state's files; and

17 (c) return the duplicate copy to the person who filed
18 it or to the person's representative.

19 (2) If the secretary of state is unable to make the
20 determination required for filing by subsection (1) at the
21 time any documents are delivered for filing, the documents
22 are considered to have been filed at the time of delivery if
23 the secretary of state subsequently determines that the
24 documents as delivered conform to the filing provisions of
25 [sections 8 through 18].

NEW SECTION. Section 13. Effect of delivery or filing of articles of organization. (1) A limited liability company is formed when the articles of organization are delivered to the secretary of state for filing.

(2) Each copy of the articles of organization stamped "filed" and marked with the filing date is conclusive evidence that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been legally organized and formed under [sections 1 through 78].

NEW SECTION. Section 14. Filing of facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under [sections 1 through 78] and the signatures on the facsimile copy in the same manner as an original for purposes of [sections 1 through 78], provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(4) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

NEW SECTION. Section 15. Annual report for secretary of state. (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the state or country under whose law it is organized;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and street addresses

1 of the managers;

2 (ii) if the management of a limited liability company is

3 reserved to the members, a statement to that effect;

4 (e) the last date upon which the limited liability

5 company is to be dissolved;

6 (f) if the limited liability company is a professional

7 limited liability company, a statement that all of its

8 members and not less than one-half of its managers are

9 qualified persons with respect to the limited liability

10 company.

11 (2) Information in the annual report must be current as

12 of the date the annual report is executed on behalf of the

13 limited liability company.

14 (3) The first annual report must be delivered to the

15 secretary of state between January 1 and April 15 of the

16 year following the calendar year in which a domestic limited

17 liability company is organized or a foreign limited

18 liability company is authorized to transact business.

19 Subsequent annual reports must be delivered to the secretary

20 of state between January 1 and April 15.

21 (4) If an annual report does not contain the

22 information required by this section, the secretary of state

23 shall promptly notify the reporting domestic or foreign

24 limited liability company in writing and return the report

25 to it for correction.

1 (5) The annual report must be executed by at least one

2 member of the limited liability company and must include the

3 street address of the member.

4 (6) A domestic professional limited liability company

5 or a foreign professional limited liability company

6 authorized to transact business in this state shall annually

7 file before April 15, with each licensing authority having

8 jurisdiction over a professional service of a type described

9 in its articles of organization, a statement of

10 qualification setting forth the names and addresses of the

11 members and managers of the company and additional

12 information that the licensing authority may by rule

13 prescribe as appropriate in determining whether the company

14 is complying with the provisions of [sections 72 through 78]

15 and rules promulgated under [sections 72 through 78]. The

16 licensing authority may charge a fee to cover the cost of

17 filing a statement of qualification.

18 NEW SECTION. **Section 16. Administrative dissolution --**

19 rules. (1) A domestic limited liability company may be

20 dissolved involuntarily by order of the secretary of state

21 if the limited liability company has failed:

22 (a) for 60 days after change of its registered office

23 or registered agent to file in the office of the secretary

24 of state a statement of the change;

25 (b) for 140 days to file its annual report within the

1 time required by law; or

2 (c) to remit any fees required by law.

3 (2) The secretary of state may adopt rules to establish

4 procedures for administrative dissolutions consistent with

5 subsection (1).

6 NEW SECTION. **Section 17.** Reinstatement of dissolved

7 limited liability company. (1) The secretary of state may:

8 (a) reinstate a limited liability company that has been

9 dissolved under the provisions of [section 16];

10 (b) restore to a reinstated limited liability company

11 its right to carry on business in this state and to exercise

12 all of its privileges and immunities.

13 (2) A limited liability company applying for

14 reinstatement shall submit to the secretary of state one

15 original and one copy of the application, executed by a

16 person who was a member at the time of dissolution, setting

17 forth:

18 (a) the name of the limited liability company;

19 (b) a statement that the assets of the limited

20 liability company have not been liquidated;

21 (c) a statement that a majority of its members have

22 authorized the application for reinstatement; and

23 (d) if its name has been legally acquired by another

24 entity prior to its application for reinstatement, the name

25 under which the limited liability company desires to be

1 reinstated.

2 (3) The limited liability company shall submit with its

3 application for reinstatement a certificate from the

4 department of revenue stating that all taxes imposed

5 pursuant to Title 15 have been paid.

6 (4) When all requirements are met and the secretary of

7 state reinstates the limited liability company to its former

8 rights, the secretary of state shall:

9 (a) conform and file in the office of the secretary of

10 state reports, statements, and other instruments submitted

11 for reinstatement;

12 (b) immediately issue and deliver to the reinstated

13 limited liability company a certificate of reinstatement

14 authorizing it to transact business; and

15 (c) upon demand, issue to the limited liability company

16 one or more certified copies of the certificate of

17 reinstatement.

18 (5) The secretary of state may not order a

19 reinstatement if 5 years have elapsed since the dissolution.

20 (6) A restoration of limited liability company rights

21 pursuant to this section relates back to the date the

22 limited liability company was involuntarily dissolved, and

23 the limited liability company is considered to have been an

24 existing legal entity from the date of its original

25 organization.

1 NEW SECTION. Section 18. Fees for filing, copying, and
 2 services -- rules. (1) The secretary of state shall
 3 establish by rule fees for filing documents as required by
 4 [sections 1 through 78].

5 (2) The secretary of state shall establish by rule fees
 6 for copying documents, priority handling, transmitting or
 7 filing facsimile copies, and providing computer-generated
 8 information.

9 (3) The fees prescribed under this section must be
 10 reasonably related to the costs of processing the documents
 11 and preparing and providing the services. The secretary of
 12 state shall maintain records sufficient to support the fees
 13 established under this section.

14 NEW SECTION. Section 19. License fee. (1) In addition
 15 to the filing fee authorized by [section 18], the secretary
 16 of state shall charge and collect from each foreign limited
 17 liability company a license fee of \$50 at the time of filing
 18 its articles of organization.

19 (2) In addition to the filing fee authorized by
 20 [section 18], the secretary of state shall charge and
 21 collect from each foreign limited liability company a
 22 license fee of \$50 at the time of filing an application for
 23 a certificate of authority to transact business.

24 NEW SECTION. Section 20. Agency power of members and
 25 managers. (1) Except as provided in subsection (2), a member

1 is an agent of the limited liability company for the purpose
 2 of its business or affairs and the act of a member,
 3 including but not limited to the execution of any instrument
 4 in the name of the limited liability company for apparently
 5 carrying on in the usual way the business or affairs of the
 6 limited liability company binds the limited liability
 7 company, unless the member so acting has, in fact, no
 8 authority to act for the limited liability company in the
 9 particular matter and the person with whom the member is
 10 dealing has knowledge of the fact that the member has no
 11 such authority.

12 (2) If the articles of organization provide that
 13 management of the limited liability company is vested in a
 14 manager or managers:

15 (a) a member, acting solely in the capacity as a
 16 member, may not be an agent of the limited liability
 17 company; and

18 (b) a manager is an agent of the limited liability
 19 company for the purpose of its business or affairs and the
 20 act of a manager, including but not limited to the execution
 21 of any instrument in the name of the limited liability
 22 company for apparently carrying on in the usual way the
 23 business or affairs of the limited liability company binds
 24 the limited liability company, unless the manager so acting
 25 has, in fact, no authority to act for the limited liability

1 company in the particular matter and the person with whom
2 the manager is dealing has knowledge of the fact that the
3 manager has no such authority.

4 (3) An act of a manager or a member that is not
5 apparently for carrying on in the usual way the business of
6 the limited liability company does not bind the limited
7 liability company, unless authorized in accordance with the
8 articles of organization or the operating agreement, at the
9 time of the transaction or at any other time.

10 (4) An act of a manager or member in contravention of a
11 restriction on authority may not bind the limited liability
12 company to persons having knowledge of the restriction.

13 NEW SECTION. Section 21. Admissions of members and
14 managers. (1) Except as provided in subsection (2), an
15 admission or representation made by a member concerning the
16 business or affairs of a limited liability company within
17 the scope of the member's authority as provided for by
18 [sections 1 through 78] is evidence against the limited
19 liability company.

20 (2) If the articles of organization provide that
21 management of the limited liability company is vested in a
22 manager or managers:

23 (a) an admission or representation made by a manager
24 concerning the business or affairs of a limited liability
25 company within the scope of the manager's authority, as

1 provided for by [sections 1 through 78], is evidence against
2 the limited liability company; and

3 (b) the admission or representation of a member, acting
4 solely in the capacity as a member, may not constitute
5 evidence.

6 NEW SECTION. Section 22. Limited liability company
7 charged with knowledge of or notice to member or manager.

8 (1) Except as provided in subsection (2), notice to a member
9 of any matter relating to the business or affairs of the
10 limited liability company and the knowledge of the member
11 acting in the particular matter, acquired while a member or
12 of which the member had knowledge at the time of becoming a
13 member, and the knowledge of any other member who reasonably
14 could and should have communicated it to the acting member
15 operate as notice to or knowledge of the limited liability
16 company, except in the case of a fraud on the limited
17 liability company committed by or with the consent of that
18 member.

19 (2) If the articles of organization provide that
20 management of the limited liability company is vested in a
21 manager or managers:

22 (a) notice to a manager of any matter relating to the
23 business or affairs of the limited liability company and the
24 knowledge of the manager acting in the particular matter,
25 acquired while a manager or of which the manager had

1 knowledge at the time of becoming a manager, and the
 2 knowledge of any other manager who reasonably could and
 3 should have communicated it to the acting manager operate as
 4 notice to or knowledge of the limited liability company,
 5 except in the case of a fraud on the limited liability
 6 company committed by or with the consent of that manager;
 7 and

8 (b) notice to or knowledge of a member of a limited
 9 liability company while the member is acting solely in the
 10 capacity as a member is not notice to or knowledge of the
 11 limited liability company.

12 **NEW SECTION. Section 23. Liability of members to third**
 13 **parties.** A person who is a member or manager, or both, of a
 14 limited liability company is not liable, solely by reason of
 15 being a member or manager, or both, under a judgment, decree
 16 or order of a court, or in any other manner, for a debt,
 17 obligation, or liability of the limited liability company,
 18 whether arising in contract, tort, or otherwise or for the
 19 acts or omissions of any other member, manager, agent, or
 20 employee of the limited liability company.

21 **NEW SECTION. Section 24. Management.** (1) Unless the
 22 articles of organization vest management of the limited
 23 liability company in a manager or managers, management of
 24 the business or affairs of the limited liability company is
 25 vested in the members. Subject to any provisions in the

1 articles of organization, the operating agreement, or
 2 [sections 1 through 78] restricting or enlarging the
 3 management rights and duties of any person, group, or class
 4 of persons, the members may manage the affairs of the
 5 limited liability company and make all necessary decisions.

6 (2) If the articles of organization vest management of
 7 the limited liability company in one or more managers, the
 8 managers may manage the business or affairs of the limited
 9 liability company as provided in the articles of
 10 organization or operating agreement. Unless otherwise
 11 provided in the articles of organization or an operating
 12 agreement, the managers:

13 (a) must be designated, appointed, elected, removed, or
 14 replaced by a vote, approval, or consent of more than
 15 one-half of the members;

16 (b) need not be members of the limited liability
 17 company or natural persons; and

18 (c) unless they have been earlier removed or have
 19 earlier resigned, shall hold office until their successors
 20 are elected and qualified.

21 **NEW SECTION. Section 25. Duties of members and**
 22 **managers.** (1) Subject to contrary provision of articles of
 23 organization or an operating agreement, a member or manager
 24 is not liable, responsible, or accountable in damages or
 25 otherwise to the limited liability company or to the members

1 of the limited liability company for any action taken or for
2 failure to act on behalf of the limited liability company
3 unless the act or omission constitutes gross negligence or
4 willful misconduct.

5 (2) Each member and manager shall account to the
6 limited liability company and hold as trustee for it any
7 profit or benefit derived by the member or manager without
8 the consent of a majority of the disinterested members or
9 managers or other persons participating in the management of
10 the business or affairs of the limited liability company
11 from:

12 (a) any transaction connected with the conduct or
13 winding up of the limited liability company; or

14 (b) any use by the member or manager of its property,
15 including but not limited to confidential or proprietary
16 information of the limited liability company or other
17 matters entrusted to the member or manager as a result of
18 the member's or manager's status as member or manager.

19 (3) A member who is not also a manager of a limited
20 liability company in which management is vested in managers
21 under [section 24] has no duty to the limited liability
22 company or to the other members solely by reason of acting
23 in the capacity as a member.

24 NEW SECTION. **Section 26. Voting.** (1) Except as
25 provided in the articles of organization, the operating

1 agreement, or [sections 1 through 78] and subject to
2 subsection (2), the affirmative vote, approval, or consent
3 of more than one-half of the members, if management of the
4 limited liability company is vested in the members, or of
5 the managers or other persons vested with the management of
6 the limited liability company, if the management of the
7 limited liability company is vested in the managers or
8 persons, is required to decide any matter connected with the
9 business.

10 (2) Except as provided in writing in the articles of
11 organization or the operating agreement, the affirmative
12 vote, approval, or consent of all members is required to:

13 (a) amend the articles of organization or a written
14 operating agreement; or

15 (b) authorize a member, manager, or other person to do
16 any act on behalf of the limited liability company that
17 contravenes the articles of organization or a written
18 operating agreement, including any written provision of the
19 articles of organization or a written operating agreement
20 that expressly limits the purpose, business, or affairs of
21 the limited liability company or its conduct.

22 NEW SECTION. **Section 27. Limitation of liability and**
23 **indemnification of members and managers.** (1) Subject to
24 subsection (2), the articles of organization or operating
25 agreement may:

(a) eliminate or limit the personal liability of a member or a manager for monetary damages for breach of any duty provided for in [section 25]; and

(b) provide for indemnification of the member or the manager for judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which an individual is a party because the individual is or was a member or a manager.

(2) A provision permitted under subsection (1) may not limit or eliminate the liability of a member or a manager for:

(a) the amount of a financial benefit received by a member or a manager to which the member or the manager is not entitled;

(b) an intentional infliction of harm by the member or the manager on the limited liability company or its members;

(c) an intentional violation of criminal law by the member or the manager; or

(d) an unlawful distribution by the member or the manager.

NEW SECTION. Section 28. Records and information. (1) Unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall keep at its principal place of business the following:

(a) a current and past list, setting forth the full

name and last-known mailing address of each member and manager, if any, set forth in alphabetical order;

(b) a copy of the articles of organization and all amendments to the articles, together with executed copies of any powers of attorney pursuant to which any articles have been executed;

(c) copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the 3 most recent years or, if the returns and statements were not prepared for any reason, copies of the information and statements provided to or that should have been provided to the members to enable them to prepare their federal, state, and local tax returns for the period;

(d) copies of any effective written operating agreements and all amendments and copies of any written operating agreements no longer in effect;

(e) unless provided in writing in an operating agreement:

(i) a writing, if any, setting forth the amount of cash, the agreed value of other property or services contributed by each member, and the times or events upon which any additional contributions agreed to by each member are to be made;

(ii) a writing, if any, stating events that require the

1 limited liability company to be dissolved and its affairs
2 wound up; and

3 (iii) other writings, if any, prepared pursuant to a
4 requirement in an operating agreement.

5 (2) A member may, at the member's own expense, inspect
6 and copy any limited liability company record, wherever the
7 record is located, upon reasonable request during ordinary
8 business hours.

9 (3) Members, if the management of the limited liability
10 company is vested in the members, or managers, if management
11 of the limited liability company is vested in the managers,
12 shall render, to the extent the circumstances make it just
13 and reasonable, true and full information of all things
14 affecting the members to any member and to the legal
15 representative of any deceased member or of any member under
16 legal disability.

17 (4) Failure of the limited liability company to keep or
18 maintain any of the records or information required pursuant
19 to this section may not be grounds for imposing liability on
20 any person for the debts and obligations of the limited
21 liability company.

22 NEW SECTION. Section 29. Contributions to capital. An
23 interest in a limited liability company may be issued in
24 exchange for property, services rendered, or a promissory
25 note or other obligation to contribute cash or property or

1 to perform services.

2 NEW SECTION. Section 30. Liability for contribution.

3 (1) A promise by a member to contribute to the limited
4 liability company is not enforceable unless set out in a
5 writing signed by the member.

6 (2) (a) Except as provided in the articles of
7 organization or the operating agreement, a member is
8 obligated to the limited liability company to perform any
9 enforceable promises to contribute cash or property or to
10 perform services even if the member is unable to perform
11 because of death, disability, or other reason.

12 (b) If a member does not make the required contribution
13 of property or services, the member is obligated, at the
14 option of the limited liability company, to contribute cash
15 equal to that portion of value or the stated contribution
16 that has not been made.

17 (3) (a) Unless otherwise provided in the articles of
18 organization or the operating agreement, the obligation of a
19 member to make a contribution or return money or other
20 property paid or distributed in violation of [sections 1
21 through 78] may be compromised only with the unanimous
22 consent of the members.

23 (b) Notwithstanding the compromise, the original
24 obligation may be enforced by a creditor of a limited
25 liability company who extends credit or otherwise acts in

1 reliance on the obligation after the member signs a writing
2 that reflects the obligation and before the amendment or
3 compromise.

4 NEW SECTION. Section 31. Sharing of profits and
5 losses. Unless otherwise provided in the articles of
6 organization or a written operating agreement, each member
7 must be repaid that member's contributions to capital and
8 share equally in the profits, losses, and surpluses
9 remaining after all liabilities, including those to members,
10 are satisfied.

11 NEW SECTION. Section 32. Sharing of distributions.
12 Except as provided in [sections 33 and 50], distributions of
13 cash or other assets of a limited liability company must be
14 shared among the members and among classes of members in the
15 manner provided in writing in the articles of organization
16 or the operating agreement. If the articles of organization
17 or the operating agreement does not so provide in writing,
18 each member shall share equally in any distribution. A
19 member is entitled to receive distributions described in
20 this section from a limited liability company to the extent
21 and at the times or upon the happening of the events
22 specified in the articles of organization or the operating
23 agreement or at the times determined by the members or
24 managers pursuant to [section 26].

25 NEW SECTION. Section 33. Distributions on event of

1 dissociation. Upon the occurrence of an event of
2 dissociation under [section 45] that does not cause
3 dissolution, a dissociating member is entitled to receive:

4 (1) any distribution to which the member is entitled
5 under the articles of organization or the operating
6 agreement; and

7 (2) if not otherwise provided in the articles of
8 organization or the operating agreement, within a reasonable
9 time after dissociation, the fair value of the member's
10 interest in the limited liability company as of the date of
11 dissociation based upon the member's right to share in
12 distributions from the limited liability company.

13 NEW SECTION. Section 34. Distribution in kind. Except
14 as provided in the articles of organization or the operating
15 agreement:

16 (1) a member, regardless of the nature of the member's
17 contribution, may not demand or receive any distribution
18 from a limited liability company in any form other than
19 cash; and

20 (2) a member may not be compelled to accept from a
21 limited liability company a distribution of any asset in
22 kind to the extent that the percentage of the asset
23 distributed to the members exceeds a percentage of that
24 asset that is equal to the percentage in which the member
25 shares in distributions from the limited liability company.

1 **NEW SECTION. Section 35. Distributions.** (1) A
2 distribution may not be made if, after giving effect to the
3 distribution:

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

7 (b) the limited liability company's total assets would
8 be less than the sum of its total liabilities plus, unless
9 the articles of organization or the operating agreement
10 provides otherwise, the amount that would be needed, if the
11 limited liability company were to be dissolved at the time
12 of the distribution, to satisfy the preferential rights of
13 other members upon dissolution that are superior to the
14 rights of the member receiving the distribution.

15 (2) The limited liability company may base a
16 determination that a distribution is not prohibited under
17 subsection (1) on either:

18 (a) financial statements, prepared on the basis of
19 accounting practices and principles that are reasonable
20 under the circumstances; or

21 (b) a fair valuation or other method that is reasonable
22 under the circumstances.

23 (3) Except as provided in subsection (5), the effect of
24 a distribution under subsection (1) is measured as of:

25 (a) the date the distribution is authorized if the

1 payment occurs within 120 days after the date of
2 authorization; or

3 (b) the date payment is made if it occurs more than 120
4 days after the date of authorization.

5 (4) A limited liability company's indebtedness to a
6 member incurred by reason of a distribution to be made to
7 that member in accordance with this section is at parity
8 with the limited liability company's indebtedness to its
9 general unsecured creditors, except as otherwise provided by
10 agreement.

11 (5) For purposes of this section:

12 (a) if terms of indebtedness provide that payment of
13 principal and interest is to be made only if and to the
14 extent that payment of a distribution to members could then
15 be made under this section, indebtedness of a limited
16 liability company, including indebtedness issued as a
17 distribution, is not a liability for purposes of
18 determinations made under subsection (2); and

19 (b) if the indebtedness is issued as a distribution,
20 each payment of principal or interest on the indebtedness is
21 treated as a distribution, the effect of which is measured
22 on the date the payment is actually made.

23 **NEW SECTION. Section 36. Liability upon wrongful**
24 **distribution.** (1) A member or manager who votes for or
25 assents to a distribution in violation of the articles of

organization, the operating agreement, or [section 35] is personally liable to the limited liability company, but not to other persons, for the amount of the distribution that exceeds what could have been distributed without violating [section 35] or the articles of organization or the operating agreement if it is established that the member or manager did not act in compliance with [section 35].

(2) A member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution:

(a) from each other member or manager who voted for or assented to the unlawful distribution; and

(b) from each member for the amount the member received, knowing that the distribution was made in violation of [section 35] or the articles of organization or the operating agreement.

NEW SECTION. Section 37. Right to distribution.

Subject to [section 50], when a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

NEW SECTION. Section 38. Ownership of limited

liability company property. (1) Property transferred to or otherwise acquired by a limited liability company becomes property of the limited liability company. A member has no

interest in specific limited liability company property.

(2) Property may be acquired, held, and conveyed in the name of the limited liability company. Any estate in real property may be acquired in the name of the limited liability company, and title to any estate acquired must vest in the limited liability company rather than in the members individually.

NEW SECTION. Section 39. Transfer of real property.

(1) Except as provided in subsection (5), title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any member in the name of the limited liability company.

(2) Title to property of the limited liability company that is held in the name of one or more members or managers may be transferred by an instrument of transfer executed by the persons in whose name title is held if there is an indication in the instrument transferring title to the property to them of:

(a) their capacity as members or managers of a limited liability company; or

(b) the existence of a limited liability company, even if the name of the limited liability company is not indicated.

(3) Property transferred under subsection (1) or (2)

1 may be recovered by the limited liability company if it
 2 proves that the act of the person executing the instrument
 3 of transfer did not bind the limited liability company under
 4 [section 20] unless the property has been transferred by the
 5 initial transferee or a person claiming through the initial
 6 transferee to a subsequent transferee who gives value
 7 without having notice that the person who executed the
 8 instrument of initial transfer lacked authority to bind the
 9 limited liability company.

10 (4) Title to property of the limited liability company
 11 may be transferred free of any claims of the limited
 12 liability company or its members by the persons in whose
 13 name title is held to a transferee who gives value without
 14 having notice that it is property of a limited liability
 15 company if title is held in the name of one or more persons
 16 other than the limited liability company and there is no
 17 indication in the instrument transferring title to the
 18 property to them of:

19 (a) their capacity as members or managers of a limited
 20 liability company; or

21 (b) the existence of a limited liability company.

22 (5) If the articles of organization provide that
 23 management of the limited liability company is vested in a
 24 manager or managers:

25 (a) title to property of the limited liability company

1 that is held in the name of the limited liability company
 2 may be transferred by an instrument of transfer executed by
 3 any manager in the name of the limited liability company;
 4 and

5 (b) a member, acting solely in the capacity of a
 6 member, may not transfer title as provided in subsection
 7 (5)(a).

8 NEW SECTION. **Section 40. Nature of membership**
 9 interest. A membership interest is personal property.

10 NEW SECTION. **Section 41. Assignment of membership**
 11 interest. (1) Except as provided in writing in the articles
 12 of organization or an operating agreement:

13 (a) a membership interest is assignable in whole or in
 14 part;

15 (b) an assignment entitles the assignee to receive, to
 16 the extent assigned, only the distributions to which the
 17 assignor would be entitled;

18 (c) an assignment of a membership interest does not of
 19 itself dissolve the limited liability company or entitle the
 20 assignee to participate in the management and affairs of the
 21 limited liability company or to become or to exercise any
 22 rights of a member;

23 (d) until the assignee of a limited liability company
 24 interest becomes a member, the assignor continues to be a
 25 member and to have the power to exercise rights of a member,

1 subject to the members' right to remove the assignor
2 pursuant to [section 45(1)(c)(ii)];

3 (e) until an assignee of a membership interest becomes
4 a member, the assignee has no liability as a member solely
5 as a result of the assignment; and

6 (f) the assignor of a membership interest is not
7 released from liability as a member solely as a result of
8 the assignment.

9 (2) The articles of organization or an operating
10 agreement may provide that a member's interest in a limited
11 liability company may be evidenced by a certificate of
12 membership interest issued by the limited liability company
13 and may also provide for the assignment or transfer of a
14 membership interest represented by a certificate and make
15 other provisions with respect to the certificates.

16 (3) Unless otherwise provided in the articles of
17 organization or an operating agreement, the pledge or
18 granting of a security interest, lien, or other encumbrance
19 in or against any of the membership interest of a member is
20 not an assignment and may not cause the member to cease to
21 be a member or to cease to have the power to exercise any
22 rights or powers of a member.

23 NEW SECTION. Section 42. Rights of judgment creditor.
24 On application to a court of competent jurisdiction by any
25 judgment creditor of a member, the court may charge the

1 membership interest of the member with payment of the
2 unsatisfied amount of judgment, with interest. To the extent
3 charged, the judgment creditor has only the rights of an
4 assignee of the membership interest. [Sections 1 through 78]
5 does not deprive a member of the benefit of any exemption
6 laws applicable to a membership interest.

7 NEW SECTION. Section 43. Right of assignee to become
8 member. (1) Except as otherwise provided in the articles of
9 organization or a written operating agreement, an assignee
10 of an interest in a limited liability company may become a
11 member only if the other members unanimously consent.

12 (2) An assignee who becomes a member has, to the extent
13 assigned, the rights and powers of and is subject to the
14 restrictions and liabilities of a member under the articles
15 of organization, an operating agreement, and [sections 1
16 through 78]. An assignee who becomes a member is liable for
17 obligations of the assignor to make contributions and to
18 return distributions under [section 30]; however, the
19 assignee is not obligated for liabilities of which the
20 assignee had no knowledge at the time the assignee became a
21 member and that could not be ascertained from the articles
22 of organization or a written operating agreement.

23 (3) Whether or not an assignee of a membership interest
24 becomes a member, the assignor is not released from
25 liability to the limited liability company under [section

1 30].

2 (4) Except as otherwise provided in writing in the
3 articles of organization or the operating agreement, a
4 member who assigns the member's entire interest in the
5 limited liability company ceases to be a member and to have
6 the power to exercise any rights of a member when the
7 assignee becomes a member with respect to the assigned
8 interest.

9 NEW SECTION. Section 44. Admission of members. (1)
10 Subject to subsection (2), a person may become a member in a
11 limited liability company:

12 (a) in the case of a person acquiring a limited
13 liability company interest directly from the limited
14 liability company, upon compliance with the articles of
15 organization or the operating agreement or, if the articles
16 of organization or the operating agreement does not so
17 provide in writing, upon the written consent of all members;
18 and

19 (b) in the case of an assignee of a limited liability
20 company interest, as provided in [section 41].

21 (2) The effective time of admission of a member to a
22 limited liability company is the later of:

23 (a) the date the limited liability company is formed;
24 or

25 (b) the time provided in the articles of organization

1 or the operating agreement or, if no time is provided, when
2 the person's admission is reflected in the records of the
3 limited liability company.

4 NEW SECTION. Section 45. Events of dissociation. (1) A
5 person ceases to be a member of a limited liability company
6 upon the occurrence of one or more of the following events:

7 (a) the member withdraws by voluntary act from the
8 limited liability company as provided in subsection (3);

9 (b) the member ceases to be a member of the limited
10 liability company as provided in [section 43];

11 (c) the member is removed as a member:

12 (i) in accordance with the articles of organization or
13 the operating agreement; or

14 (ii) subject to contrary written provisions in the
15 articles of organization or the operating agreement, by an
16 affirmative vote of a majority of the members who have not
17 assigned their interests when the member assigns all the
18 member's interest in the limited liability company;

19 (d) subject to contrary written provisions in the
20 articles of organization or the operating agreement or
21 written consent of all members at the time, the member:

22 (i) makes an assignment for the benefit of creditors;

23 (ii) files a voluntary petition in bankruptcy;

24 (iii) is adjudicated as bankrupt or insolvent;

25 (iv) files a petition or answer seeking reorganization,

1 arrangement, composition, readjustment, liquidation,
2 dissolution, or similar relief under any statute, law, or
3 regulation;

4 (v) files an answer or other pleading admitting or
5 failing to contest the material allegations of a petition
6 filed against the member in any proceeding under subsection
7 (1)(d); or

8 (vi) seeks, consents to, or acquiesces in the
9 appointment of a trustee, receiver, or liquidator of the
10 member or of any substantial part of the member's
11 properties;

12 (e) subject to contrary written provisions in the
13 articles of organization or the operating agreement or
14 written consent of all members at the time if:

15 (i) 120 days after the commencement of any proceeding
16 against the member seeking reorganization, arrangement,
17 composition, readjustment, liquidation, dissolution, or
18 similar relief under any statute, law, or regulation, the
19 proceeding has not been dismissed;

20 (ii) within 90 days after the appointment without the
21 member's consent or acquiescence of a trustee, receiver, or
22 liquidator of the member or of any substantial part of the
23 member's properties, the appointment is not vacated or
24 stayed; or

25 (iii) within 90 days after the expiration of any stay,

1 the appointment is not vacated;

2 (f) subject to contrary written provisions in the
3 articles of organization or the operating agreement or
4 written consent of all members at the time, in the case of a
5 member who is an individual:

6 (i) the member's death; or

7 (ii) the entry of an order by a court of competent
8 jurisdiction adjudicating the member incompetent to manage
9 the member's person or estate;

10 (g) subject to contrary written provisions in the
11 articles of organization or the operating agreement or
12 written consent of all members at the time, in the case of a
13 member who is a trustee or is acting as a member by virtue
14 of being a trustee of a trust, the termination of the trust
15 but not merely the substitution of a new trustee;

16 (h) subject to contrary written provisions in the
17 articles of organization or the operating agreement or
18 written consent of all members at the time, in the case of a
19 member that is a separate limited liability company, the
20 dissolution and commencement of winding up of the separate
21 limited liability company;

22 (i) subject to contrary written provisions in the
23 articles of organization or the operating agreement or
24 written consent of all members at the time, in the case of a
25 member that is a corporation, the filing of articles of

1 dissolution, or the equivalent for the corporation, or
 2 involuntary dissolution and the lapse of 90 days after
 3 notice to the corporation of revocation without a
 4 reinstatement of its charter;

5 (j) subject to contrary written provisions in the
 6 articles of organization or the operating agreement or
 7 written consent of all members at the time, in the case of
 8 an estate, the distribution by the fiduciary of the estate's
 9 entire interest in the limited liability company; or

10 (k) if the limited liability company is a professional
 11 limited liability company, a member becomes a disqualified
 12 person.

13 (2) The members may provide in writing in the articles
 14 of organization or the operating agreement for other events
 15 that result in a person ceasing to be a member of the
 16 limited liability company.

17 (3) Unless the articles of organization or the
 18 operating agreement provides in writing that a member may
 19 not withdraw by voluntary act from a limited liability
 20 company, the member may withdraw at any time by giving 30
 21 days' written notice to the other members or other notice
 22 required in the articles of organization or the operating
 23 agreement. Unless otherwise provided in the articles of
 24 organization or the operating agreement, in the case of a
 25 limited liability company for a definite term or particular

1 undertaking, a withdrawal by a member before the expiration
 2 of that term is a breach of the articles of organization or
 3 the operating agreement. If a member has the power to
 4 withdraw but the withdrawal violates a provision of the
 5 articles of organization or is a breach of the operating
 6 agreement or the withdrawal occurs as a result of otherwise
 7 wrongful conduct of the member, the limited liability
 8 company may:

9 (a) recover from the withdrawing member damages for
 10 violation of the articles of organization or for breach of
 11 the operating agreement, including the reasonable cost of
 12 obtaining replacement of the services the withdrawn member
 13 was obligated to perform;

14 (b) offset the damages against the amount otherwise
 15 distributable to the member; and

16 (c) pursue any other remedies provided for in the
 17 articles of organization or the operating agreement or
 18 otherwise available under applicable law.

19 NEW SECTION. **Section 46. Dissolution.** A limited
 20 liability company is dissolved and its affairs must be wound
 21 up when one of the following occurs:

22 (1) at the time or upon the occurrence of events
 23 specified in writing in the articles of organization or
 24 operating agreement;

25 (2) the written consent of all members;

(3) an event of dissociation of a member, unless the business of the limited liability company is continued by the consent of all the remaining members within 90 days following the occurrence of an event of dissociation or as otherwise provided in writing in the articles of organization or operating agreement; or

(4) entry of a decree of judicial dissolution under [section 47].

NEW SECTION. Section 47. Judicial dissolution. On application by or for a member, a district court may order dissolution of a limited liability company, or other appropriate relief, when it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.

NEW SECTION. Section 48. Winding up. (1) Except as otherwise provided in the articles of organization or the operating agreement, the business or affairs of the limited liability company may be wound up:

(a) by the members or managers who have authority under [section 23] to manage the limited liability company prior to dissolution; or

(b) if one or more of the members or managers have engaged in wrongful conduct or upon other cause shown, by the district court on application of any member or any member's legal representative or assignee.

(2) The persons winding up the business or affairs of the limited liability company may, in the name of and for and on behalf of the limited liability company:

(a) prosecute and defend suits;

(b) settle and close the business of the limited liability company;

(c) dispose of and transfer the property of the limited liability company;

(d) discharge the liabilities of the limited liability company; and

(e) distribute to the members any remaining assets of the limited liability company.

NEW SECTION. Section 49. Agency power of members or managers after dissolution. (1) Except as provided in subsections (3) through (5), after an event causing dissolution of the limited liability company, a member may bind the limited liability company:

(a) by an act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) by any transaction that would have bound the limited liability company, if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the articles of dissolution is

presumed to constitute notice of dissolution for purposes of subsection (1)(b).

(3) An act of a member that would not otherwise be binding on the limited liability company under subsection (1) is binding if it is authorized by the limited liability company.

(4) An act of a member that would be binding under subsection (1) or would be otherwise authorized and that is in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

(5) If the articles of organization vest management of the limited liability company in managers, a manager may exercise the authority of a member under subsection (1) and a member may not exercise the authority if the member is acting solely in the capacity of a member.

NEW SECTION. Section 50. Distribution of assets. Upon the winding up of a limited liability company, the assets must be distributed as follows:

(1) to creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company, whether by payment or the making of reasonable provision for payment, other than liabilities to members for distributions under [section 33 or 34];

(2) unless otherwise provided in the articles of organization or an operating agreement, to members and former members in satisfaction of liabilities for distributions under [section 33 or 34]; and

(3) unless otherwise provided in the articles of organization or an operating agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

NEW SECTION. Section 51. Articles of dissolution. Upon the dissolution and the commencement of winding up of the limited liability company, articles of dissolution must be filed in the office of the secretary of state and must set forth:

- (1) the name of the limited liability company;
- (2) the date of filing of its articles of organization and all amendments to the articles;
- (3) the reason for filing the articles of dissolution;
- (4) the effective date of the articles of dissolution, which must be a date certain, if they are not to be effective upon the filing;
- (5) any other information that the members or managers filing the articles determine necessary;
- (6) the name of the agent or agents authorized to receive service of process after dissolution of the limited

liability company; and

(7) the name of the person or persons authorized to wind up the business and authorized to execute documents on behalf of the limited liability company.

NEW SECTION. Section 52. Revocation of dissolution.

(1) A foreign limited liability company may revoke its dissolution within 120 days of the effective date of the articles of dissolution.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholders' action.

(3) After the revocation of dissolution is authorized, the foreign limited liability company may revoke the dissolution by delivering to the secretary of state, for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the foreign limited liability company;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized; and

(d) a statement of the action that was taken to revoke the dissolution.

(4) Unless a delayed effective date is specified, revocation of dissolution is effective when the articles of revocation of dissolution are filed.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution, and the foreign limited liability company resumes carrying on its business as if dissolution had never occurred.

NEW SECTION. Section 53. Known claims against dissolved limited liability companies. (1) A dissolved limited liability company may dispose of the known claims against it by filing articles of dissolution pursuant to [section 53] and following the procedure described in this section.

(2) The dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be less than 120 days from the later of the effective date of the written notice or the filing of the articles of dissolution pursuant

1 to [section 51], by which the dissolved limited liability
2 company must receive the claim; and

3 (d) state that the claim will be barred if not received
4 by the deadline.

5 (3) A claim against the dissolved limited liability
6 company is barred:

7 (a) if a claimant who was given written notice under
8 subsection (2) does not deliver the claim to the dissolved
9 limited liability company by the deadline; or

10 (b) if a claimant whose claim was rejected by the
11 dissolved limited liability company does not commence a
12 proceeding to enforce the claim within 90 days from the
13 effective date of the rejection notice.

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

17 **NEW SECTION. Section 54. Unknown claims against**
18 **dissolved limited liability companies.** (1) Subject to
19 [section 53], the dissolution of a limited liability
20 company, including dissolution by the expiration of its
21 term, does not take away or impair any remedy available to
22 or against the limited liability company or its members or
23 managers for any claim or right, whether or not the claim or
24 right existed or accrued prior to dissolution. A proceeding
25 by or against the limited liability company may be

1 prosecuted or defended by the limited liability company in
2 its name. The members and managers have power to take action
3 as appropriate to protect the remedy, right, or claim.

4 (2) A claim may be enforced under [section 53] or this
5 section:

6 (a) against the dissolved limited liability company, to
7 the extent of the undistributed assets; or

8 (b) if the assets have been distributed in liquidation,
9 against a member of the dissolved limited liability company,
10 to the extent of the member's pro rata share of the claim or
11 the corporate assets distributed to the member in
12 liquidation, whichever is less, but a member's total
13 liability for all claims under this section may not exceed
14 the total amount of assets distributed to the member.

15 (3) Subsections (1) and (2) apply to foreign limited
16 liability companies and their members transacting business
17 in this state for any claims otherwise arising or accruing
18 under Montana law.

19 **NEW SECTION. Section 55. Authority to transact**
20 **business required.** (1) A foreign limited liability company
21 may not transact business in this state until it obtains a
22 certificate of authority from the secretary of state.

23 (2) The following activities, among others, do not
24 constitute transacting business within the meaning of
25 subsection (1):

(a) maintaining, defending, or settling any proceeding;
 (b) holding meetings of the members or managers or carrying on other activities concerning internal affairs of the limited liability company;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the limited liability company's own securities or maintaining trustees or depositaries with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) owning real or personal property that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a function of the limited liability company;

(j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in

the course of repeated transactions of a similar nature; or

(k) transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

NEW SECTION. Section 56. Consequences of transacting

business without authority. (1) A foreign limited liability company transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign limited liability company that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign limited liability company or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign limited liability company or its successor or assignee until it determines whether the foreign corporation or its successor or assignee requires a certificate of authority. If it determines that a certificate is required, the court may further stay the proceeding until the foreign limited liability company or its successor obtains the certificate.

(4) A foreign limited liability company is liable for a civil penalty of \$5 for each day, but not to exceed a total of \$1,000 for each year, that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection and deposit them to the general fund.

(5) Notwithstanding the provisions of subsections (1) and (2), the failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding in this state.

NEW SECTION. Section 57. Application for certificate of authority. (1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign limited liability company or, if its name is unavailable for use in this state, a name that satisfies the requirements of [section 63];

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

(c) its date of organization and period of duration;

(d) the street address of its principal office;

(e) the address of its registered office in this state and the name of its registered agent at that office; and

(f) the names and usual business addresses of its current managers, if different from its members.

(2) A foreign limited liability company shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign limited liability company is organized.

NEW SECTION. Section 58. Registered office and registered agent of foreign limited liability company. Each foreign limited liability company authorized to transact business in this state shall continuously maintain in this state:

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

(2) a registered agent who may be:

(a) an individual who resides in this state and whose business office is identical with the registered office; or

(b) a domestic corporation, a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state.

NEW SECTION. Section 59. Resignation of registered agent of foreign limited liability company. (1) The registered agent of a foreign limited liability company may

1 resign the agency appointment by signing and delivering to
2 the secretary of state for filing the original and two
3 copies of a statement of resignation. The statement of
4 resignation may include a statement that the registered
5 office is also discontinued.

6 (2) After filing the statement, the secretary of state
7 shall attach the filing receipt to one copy and mail the
8 copy and receipt to the registered office if the office has
9 not been discontinued. The secretary of state shall mail the
10 other copy to the foreign limited liability company at its
11 principal office address shown in its most recent annual
12 report.

13 (3) The agency appointment is terminated and the
14 registered office discontinued, if provided in the
15 statement, 30 days after the date on which the statement was
16 filed.

17 NEW SECTION. Section 60. Change of registered office
18 or registered agent of foreign limited liability company.

19 (1) A foreign limited liability company authorized to
20 transact business in this state may change its registered
21 office or registered agent, or both, by delivering to the
22 secretary of state, for filing, a statement of change
23 setting forth:

24 (a) the foreign limited liability company's name;

25 (b) the street address of its current registered

1 office;

2 (c) if the address of its registered office is to be
3 changed, the new address of the registered office;

4 (d) the name and address of its current registered
5 agent;

6 (e) if its registered agent or the agent's address is
7 to be changed, the name and address of the successor
8 registered agent or the current registered agent's new
9 address; and

10 (f) the fact that after the change or changes are made,
11 the street addresses of its registered office and the
12 business office of its registered agent are identical.

13 (2) If a registered agent changes the street address of
14 the registered agent's business office, the registered agent
15 may change the street address of the registered office of
16 any foreign limited liability company for which the
17 registered agent is the registered agent by notifying the
18 foreign limited liability company in writing of the change
19 and signing, either manually or in facsimile, and delivering
20 to the secretary of state, for filing, a statement of change
21 that complies with the requirements of subsection (1) and
22 that states that the foreign limited liability company has
23 been notified of the change.

24 NEW SECTION. Section 61. Amended certificate of
25 authority. (1) A foreign limited liability company

1 authorized to transact business in this state shall obtain
2 an amended certificate of authority from the secretary of
3 state if it changes:

- 4 (a) its name;
 - 5 (b) the period of its duration; or
 - 6 (c) the state or country of its organization.
- 7 (2) The requirements of [section 57] for obtaining an
8 original certificate of authority apply to obtaining an
9 amended certificate under this section.

10 NEW SECTION. Section 62. Effect of certificate of
11 authority. (1) A certificate of authority issued by the
12 secretary of state authorizes a foreign limited liability
13 company to transact business in this state subject to the
14 right of the state to revoke the certificate as provided in
15 [sections 55 through 68].

16 (2) A foreign limited liability company with a valid
17 certificate of authority has the same rights and privileges
18 as a domestic company of similar character and, except as
19 otherwise provided by [sections 55 through 68], is subject
20 to the same duties, restrictions, penalties, and liabilities
21 imposed on a domestic limited liability company of similar
22 character.

23 (3) [Sections 55 through 68] do not authorize the state
24 to regulate the organization or internal affairs of a
25 foreign limited liability company authorized to transact

1 business in the state.

2 NEW SECTION. Section 63. Name. A certificate of
3 authority may not be issued to a foreign limited liability
4 company unless the name of the company satisfies the
5 requirements of [section 3]. If the name of a foreign
6 limited liability company does not satisfy the requirements
7 of [section 3], to obtain or maintain a certificate of
8 authority:

9 (1) the foreign limited liability company may add the
10 words "limited company", the abbreviation "l.l.c.", or the
11 abbreviation "l.c." to its name for use in this state; or

12 (2) if its real name is unavailable, the foreign
13 limited liability company may use an assumed business name
14 that is available and that satisfies the requirements of
15 [section 15] if it files the assumed business name with the
16 secretary of state.

17 NEW SECTION. Section 64. Withdrawal of foreign limited
18 liability company. (1) A foreign limited liability company
19 authorized to transact business in this state may not
20 withdraw from this state until it obtains a certificate of
21 withdrawal from the secretary of state.

22 (2) A foreign limited liability company authorized to
23 transact business in this state may apply for a certificate
24 of withdrawal by delivering an application to the secretary
25 of state for filing. The application must set forth:

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

(b) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (3);

(e) a commitment to notify the secretary of state in the future of any change in its mailing address;

(f) that all taxes imposed on the foreign limited liability company by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(g) additional information as may be necessary or

appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign limited liability company.

(3) After the withdrawal of the foreign limited liability company is effective, service of process on the secretary of state under this section is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign limited liability company at the mailing address set forth under subsection (2).

NEW SECTION. Section 65. Grounds for revocation. The secretary of state may commence a proceeding under [section 66] to revoke the certificate of authority of a foreign limited liability company authorized to transact business in this state if:

(1) the foreign limited liability company does not deliver its annual report to the secretary of state within 140 days after it is due;

(2) the foreign limited liability company is without a registered agent or registered office in this state for 60 days or more;

(3) the foreign limited liability company does not inform the secretary of state under [section 5] that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office

1 has been discontinued within 60 days of the change,
2 resignation, or discontinuance; or

3 (4) the secretary of state receives a duly
4 authenticated certificate from the secretary of state or
5 other official having custody of company records in the
6 state or country under whose law the foreign limited
7 liability company is organized, stating that it has been
8 dissolved or disappeared as the result of a merger.

9 NEW SECTION. Section 66. Procedure for and effect of
10 revocation. (1) If the secretary of state determines that
11 one or more grounds exist under [section 65] for revocation
12 of a certificate of authority, the secretary of state shall
13 serve the foreign limited liability company with written
14 notice of the secretary of state's determination.

15 (2) If the foreign limited liability company does not
16 correct each ground for revocation or demonstrate to the
17 reasonable satisfaction of the secretary of state that each
18 ground determined by the secretary of state does not exist
19 within 60 days after service of the notice is mailed, the
20 secretary of state may revoke the foreign limited liability
21 company's certificate of authority by signing a certificate
22 of revocation that states the ground or grounds for
23 revocation and the effective date of the revocation. The
24 secretary of state shall file the original of the
25 certificate and mail a copy to the foreign limited liability

1 company.

2 (3) The authority of a foreign limited liability
3 company to transact business in this state ceases on the
4 date shown on the certificate revoking its certificate of
5 authority.

6 (4) The secretary of state's revocation of a foreign
7 limited liability company's certificate of authority
8 appoints the secretary of state as the foreign limited
9 liability company's agent for service of process in any
10 proceeding based on a cause of action that arose during the
11 time the foreign limited liability company was authorized to
12 transact business in this state. Service of process on the
13 secretary of state under this subsection is service on the
14 foreign limited liability company. Upon receipt of process,
15 the secretary of state shall mail a copy of the process to
16 the secretary of the foreign limited liability company at
17 its principal office shown in its most recent annual report
18 or in any subsequent communication received from the foreign
19 limited liability company, stating the current mailing
20 address of its principal office or, if no report or
21 communication is on file, in its application for a
22 certificate of authority.

23 (5) Revocation of a foreign limited liability company's
24 certificate of authority does not terminate the authority of
25 the registered agent of the foreign limited liability

company.

NEW SECTION. Section 67. Appeal from revocation. (1) A foreign limited liability company may appeal the secretary of state's revocation of its certificate of authority to the district court within 30 days after service of the certificate of revocation is mailed. The foreign limited liability company may appeal by petitioning the court to set aside the revocation and by attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

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

NEW SECTION. Section 68. Admission of foreign professional limited liability companies -- application -- revocation. (1) A foreign professional limited liability company is entitled to a certificate of authority to transact business in this state only if:

(a) the name of the foreign professional limited liability company meets the requirements of [section 73];

(b) the foreign professional limited liability company is organized only for purposes for which a professional limited liability company may be organized under [sections

72 through 78]; and

(c) all the members and not less than one-half of the managers of the foreign professional limited liability company are qualified persons with respect to the foreign professional limited liability company.

(2) Notwithstanding [section 55], a foreign professional limited liability company may not be required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the members and not less than one-half of the managers are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the foreign professional limited liability company.

(4) The certificate of authority may be revoked by the secretary of state if the foreign professional limited liability company fails to comply with any provision of [sections 72 through 78]. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional limited liability companies that have given cause for revocation, together with the pertinent facts, and shall concurrently mail to each foreign professional limited liability company at its

1 registered office in this state a notice that the
2 certification has been made. A certificate of authority of a
3 foreign professional limited liability company may not be
4 revoked unless there have been both 60 days' notice of
5 intent to revoke and a failure to correct the noncompliance
6 during the 60 days.

7 (5) A foreign professional limited liability company is
8 subject to all other provisions of [sections 72 through 78]
9 not inconsistent with this section.

10 **NEW SECTION. Section 69.** Suits by and against limited
11 liability company. Suit may be brought by or against a
12 limited liability company in its own name.

13 **NEW SECTION. Section 70.** Authority to sue on behalf of
14 limited liability company. Except as otherwise provided in
15 the articles of organization or the operating agreement,
16 suit on behalf of the limited liability company may be
17 brought in the name of the limited liability company by:

18 (1) any member or members of a limited liability
19 company, whether or not the articles of organization vest
20 management of the limited liability company in one or more
21 managers who are authorized to sue by the vote of more than
22 one-half of the members, unless the vote of all members is
23 required under [section 26(2)], provided that in determining
24 the vote required under [section 26], the vote of a member
25 who has an interest in the outcome of the suit that is

1 adverse to the interest of the limited liability company
2 must be excluded; or

3 (2) any manager or managers of a limited liability
4 company, if the articles of organization vest management of
5 the limited liability company in one or more managers, who
6 are authorized to bring suit on behalf of the limited
7 liability company by the vote required pursuant to [section
8 26], provided that in determining the required vote, the
9 vote of a manager who has an interest in the outcome of the
10 suit that is adverse to the interest of the limited
11 liability company must be excluded.

12 **NEW SECTION. Section 71. Merger.** (1) Pursuant to any
13 agreement, a domestic limited liability company may merge
14 with or into one or more limited liability companies formed
15 under the laws of this state or any other state. The
16 surviving limited liability company is as provided in the
17 merger agreement.

18 (2) A domestic limited liability company that is not
19 the surviving limited liability company in the merger shall
20 file articles of dissolution that must have an effective
21 date not later than the effective date of the merger.

22 (3) If, following a merger of one or more domestic
23 limited liability companies or one or more limited liability
24 companies formed under the laws of any other state, the
25 surviving limited liability company is not a domestic

1 limited liability company, there must be attached to the
2 articles of dissolution for each domestic limited liability
3 company articles of merger executed by the surviving limited
4 liability company:

5 (a) stating that the surviving limited liability
6 company may be served with process in the state of Montana
7 in any action, suit, or proceeding for the enforcement of
8 any obligation of the domestic limited liability company;

9 (b) irrevocably appointing the secretary of state as
10 the surviving limited liability company's agent to accept
11 service of process in any action, suit, or proceeding; and

12 (c) specifying the address to which a copy of process
13 must be mailed to the surviving limited liability company by
14 the secretary of state.

15 (4) When the articles of dissolution required by
16 subsection (2) have become effective, the following must be
17 vested in and enforced against the surviving limited
18 liability company as they were in each of the limited
19 liability companies that merged:

20 (a) all of the rights, privileges, and powers of each
21 of the limited liability companies that merged;

22 (b) all property, real, personal, and mixed;

23 (c) all debts due to any of the limited liability
24 companies; and

25 (d) all other things and causes of action belonging to

1 each of the limited liability companies.

2 **NEW SECTION. Section 72. Purposes of professional**
3 **limited liability companies.** Professional limited liability
4 companies may be organized under [sections 72 through 78]
5 only for the purpose of rendering professional services and
6 services ancillary to professional services within a single
7 profession, except that a professional limited liability
8 company may be organized for the purpose of rendering
9 professional services within two or more professions and for
10 any purpose or purposes for which companies may be organized
11 under [sections 1 through 78] to the extent that the
12 combination of professional purposes or professional and
13 business purposes is permitted by the licensing laws and
14 rules of this state applicable to the professions.

15 **NEW SECTION. Section 73. Professional limited**
16 **liability company name.** The name of a domestic or foreign
17 professional limited liability company:

18 (1) must contain the words "professional limited
19 liability company", "professional l.l.c.", or "p.l.l.c.";
20 and

21 (2) must conform to rules promulgated by a licensing
22 authority having jurisdiction of a professional service
23 described in the articles of organization.

24 **NEW SECTION. Section 74. Professional limited**
25 **liability company managers.** At least one-half of the

managers of a professional limited liability company must be qualified persons with respect to the limited liability company.

NEW SECTION. Section 75. Membership in professional limited liability company. (1) Only the following persons may be members of a professional limited liability company:

(a) natural persons authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of organization of the professional limited liability company;

(b) general partnerships in which all the partners are authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation and in which at least one partner is authorized by law in this state to render a professional service permitted by the articles of organization of the professional limited liability company; and

(c) domestic or foreign professional corporations and domestic or foreign professional limited liability companies authorized by law in this state to render a professional service permitted by the articles of organization of the professional limited liability company.

(2) The licensing authority may by rule further

restrict or condition the issuance of membership interests in order to preserve ethical standards, but a rule may not cause a member at the time the rule becomes effective to become a disqualified person.

NEW SECTION. Section 76. Rendering services. A domestic or foreign professional limited liability company may render professional services in this state only through natural persons permitted to render the services in this state; however, nothing in [sections 72 through 78] requires any person employed by a professional limited liability company to be licensed to perform services for which a license is not otherwise required or prohibits the rendering of professional services by a licensed natural person acting in that person's individual capacity, even if the person is a member or manager of a professional limited liability company.

NEW SECTION. Section 77. Responsibility for services. (1) An individual who renders professional services as an employee of a domestic or foreign professional limited liability company is liable for any negligent or wrongful act or omission in which the individual personally participates to the same extent as if the individual had rendered the services as a sole practitioner. An employee of a professional limited liability company is not liable for the conduct of other employees unless the employee is at

1 fault in appointing, supervising, or cooperating with them.

2 (2) A domestic or foreign professional limited
3 liability company whose employee performs professional
4 services within the scope of the employee's employment or
5 apparent authority to act for the company is liable to the
6 same extent as the employee.

7 (3) Except as otherwise provided by statute, the
8 personal liability of a member of a domestic or foreign
9 professional limited liability company is no greater in any
10 respect than that of a member of a limited liability company
11 otherwise organized under [sections 72 through 78].

12 **NEW SECTION. Section 78. Relationship to clients and**
13 **patients.** (1) The relationship between an individual
14 performing professional services as an employee of a
15 domestic or foreign professional limited liability company
16 and a client or patient is the same as if the individual
17 performed the services as a sole practitioner.

18 (2) The relationship between a domestic or foreign
19 professional limited liability company performing
20 professional services and the client or patient is the same
21 as between the client or patient and the individual
22 performing the services.

23 (3) Any privilege applicable to communications between
24 a person rendering professional services and the person
25 receiving the services recognized under the statutory or

1 common law of this state extends to a domestic or foreign
2 professional limited liability company and its employees.

3 **Section 79.** Section 30-13-141, MCA, is amended to read:

4 **"30-13-141. Definitions.** As used in 30-13-141 through
5 30-13-147, the following definitions apply:

6 (1) "Owner" means the person who owns the original
7 fixation of sounds embodied in a master phonograph record,
8 master disc, master tape, master film, or other device used
9 for reproducing sounds on phonograph records, discs, tapes,
10 films, or other articles upon which sound is recorded and
11 from which the transferred recorded sounds are directly
12 derived.

13 (2) "Performer" means the person or persons appearing
14 in a performance.

15 (3) "Person" means any individual, firm, partnership,
16 limited liability company, corporation, or association.

17 (4) "Sound recording" means a phonograph record, disc,
18 wire, tape, film, or other article on which sound is
19 recorded."

20 **Section 80.** Section 30-13-202, MCA, is amended to read:

21 **"30-13-202. Registration of assumed business name --**
22 **when prohibited.** (1) When an application for registration or
23 amendment to the registration of an assumed business name
24 contains an assumed business name which is the same as or
25 deceptively similar to an assumed business name already

1 registered or to any corporate name, limited partnership
2 name, limited liability company name, trademark, or service
3 mark registered or reserved with the secretary of state, the
4 secretary of state may not register the assumed business
5 name for which application is made.

6 (2) When the applicant is other than a corporation, or
7 limited partnership, or limited liability company, the
8 secretary of state may not register the assumed business
9 name for which application is made if the name applied for
10 contains or there is added at the end of the name the word
11 "corporation", "company", "incorporated", or "limited" or an
12 abbreviation of one of such the words."

13 **Section 81.** Section 30-13-301, MCA, is amended to read:

14 "30-13-301. Definitions. In this part, unless the
15 context requires otherwise, the following definitions apply:

16 (1) "Applicant" means the person filing an application
17 for registration of a trademark under this part or his the
18 person's legal representatives, successors, or assigns.

19 (2) "Mark" means any trademark or service mark entitled
20 to registration under this part whether registered or not.

21 (3) "Person" means any individual, firm, partnership,
22 limited liability company, corporation, association, union,
23 or other organization.

24 (4) "Registrant" means the person to whom the
25 registration of a trademark under this part is issued or his

1 the person's legal representatives, successors, or assigns.

2 (5) "Service mark" means a mark used in the sale or
3 advertising of services to identify the services of one
4 person and distinguish them from the services of others.

5 (6) "Trade name" means a word, name, symbol, device, or
6 any combination thereof used by a person to identify his the
7 person's business, vocation, or occupation and distinguish
8 it from the business, vocation, or occupation of others.

9 (7) "Trademark" means any word, name, symbol, device,
10 or any combination thereof adopted and used by a person to
11 identify goods made or sold by him the person and to
12 distinguish them from goods made or sold by others."

13 **Section 82.** Section 30-13-311, MCA, is amended to read:

14 "30-13-311. Application for registration. (1) Subject
15 to the limitations set forth in this part, a person who
16 adopts and uses a mark in this state may file in the office
17 of secretary of state, on a form to be furnished by the
18 secretary of state, an application for registration of that
19 mark setting forth information including but not limited to
20 the following:

21 (a) the name and business address of the person
22 applying for such registration and, if a corporation, the
23 state of incorporation or, if a limited liability company,
24 the state of organization;

25 (b) the essential feature of the mark to be registered;

1 (c) the goods or services in connection with which the
2 mark is used and the mode or manner in which the mark is
3 used in connection with such the goods or services and the
4 class in which such the goods or services fall;

5 (d) the date when the mark was first used anywhere and
6 the date when it was first used in this state by the
7 applicant or his the applicant's predecessor in business;

8 (e) a statement that the mark is presently in use in
9 this state by the applicant; and

10 (f) a statement that the applicant is the owner of the
11 mark and that no other person has the right to use the mark
12 in this state either in the identical form thereof or in a
13 form that so nearly resembles it that it might be calculated
14 to deceive or might be mistaken for it.

15 (2) The application must be signed by the applicant or
16 a member of the firm or limited liability company or an
17 officer of the corporation or association applying.

18 (3) The application must be accompanied by two copies
19 of a specimen or facsimile of such the mark.

20 (4) The application for registration must be
21 accompanied by a filing fee as provided for in 30-13-320."

22 **Section 83.** Section 35-1-308, MCA, is amended to read:

23 "35-1-308. Corporate name. (1) A corporate name:

24 (a) must contain the word "corporation",
25 "incorporated", "company", or "limited"; the abbreviation

1 "corp.", "inc.", "co.", or "ltd."; or words or abbreviations
2 of similar meaning in another language; and

3 (b) may not contain language that states or implies
4 that the corporation is organized for a purpose or purposes
5 other than those permitted by 35-1-114 and its articles of
6 incorporation.

7 (2) Except as authorized by subsections (3) and (4), a
8 corporate name must be distinguishable in the records of the
9 secretary of state from:

10 (a) the corporate name of another corporation
11 incorporated or authorized to transact business in this
12 state;

13 (b) a corporate name reserved or registered under
14 35-1-309 or 35-1-311;

15 (c) the fictitious name adopted by a foreign
16 corporation authorized to transact business in this state
17 because its real name is unavailable;

18 (d) the corporate name of a not-for-profit corporation
19 incorporated or authorized to transact business in this
20 state;

21 (e) the corporate name of a domestic corporation that
22 has dissolved, but only distinguishable for a period of 120
23 days after the effective date of its dissolution; and

24 (f) any assumed business name, limited partnership
25 name, limited liability company name, trademark, or service

mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

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

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other

corporation.

(5) This chapter does not control the use of fictitious names."

Section 84. Section 35-1-1031, MCA, is amended to read:

"35-1-1031. Corporate name of foreign corporation. (1)

If the corporate name of a foreign corporation does not satisfy the requirements of 35-1-308, to obtain or maintain a certificate of authority to transact business in this state the foreign corporation shall:

(a) add the word "corporation", "incorporated", "company", or "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd." to its corporate name for use in this state; or

(b) use a fictitious name to transact business in this state if its real name is unavailable and deliver to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name of a foreign corporation, including a fictitious name, must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under

1 35-1-309 or 35-1-311;

2 (c) the fictitious name of another foreign corporation
3 authorized to transact business in this state;

4 (d) the corporate name of a not-for-profit corporation
5 incorporated or authorized to transact business in this
6 state;

7 (e) the corporate name of a domestic corporation that
8 has dissolved, but only for a period of 120 days after the
9 effective date of its dissolution; and

10 (f) any assumed business name, limited partnership
11 name, limited liability company name, trademark, or service
12 mark registered or reserved with the secretary of state.

13 (3) A foreign corporation may apply to the secretary of
14 state for authorization to use in this state the name of
15 another corporation, incorporated or authorized to transact
16 business in this state, that is not distinguishable in the
17 secretary of state's records from the name applied for. The
18 secretary of state shall authorize use of the name applied
19 for if:

20 (a) the other corporation consents to the use in
21 writing and submits an undertaking in a form satisfactory to
22 the secretary of state to change its name to a name that is
23 distinguishable in the records of the secretary of state
24 from the name of the applying corporation; or

25 (b) the applicant delivers to the secretary of state a

1 certified copy of a final judgment of a court of competent
2 jurisdiction establishing the applicant's right to use the
3 name applied for in this state.

4 (4) A foreign corporation may use in this state the
5 name of another domestic or foreign corporation, including
6 the fictitious name, that is used in this state if the other
7 corporation is incorporated or authorized to transact
8 business in this state and the foreign corporation:

9 (a) has merged with the other corporation;

10 (b) has been formed by reorganization of the other
11 corporation; or

12 (c) has acquired all or substantially all of the
13 assets, including the corporate name, of the other
14 corporation.

15 (5) If a foreign corporation authorized to transact
16 business in this state changes its corporate name to one
17 that does not satisfy the requirements of 35-1-308, it may
18 not transact business in this state under the changed name
19 until it adopts a name satisfying the requirements of
20 35-1-308 and obtains an amended certificate of authority
21 under 35-1-1029."

22 **Section 85.** Section 35-2-305, MCA, is amended to read:

23 "35-2-305. Corporate name. (1) A corporate name may not
24 contain language stating or implying that the corporation is
25 organized for a purpose other than that permitted by

35-2-117 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(b) a corporate name reserved or registered under Title 35, chapter 1, 35-2-306, or 35-2-307;

(c) the fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a domestic business or nonprofit corporation that has been dissolved, but only distinguishable for a period of 120 days after the effective date of the dissolution; or

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in

writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

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

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) This chapter does not control the use of fictitious names."

Section 86. Section 35-2-826, MCA, is amended to read:

"35-2-826. Corporate name of foreign corporation. (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-2-305, the foreign

1 corporation, to obtain or maintain a certificate of
2 authority to transact business in this state, may use a
3 fictitious name to transact business in this state if:

4 (a) its real name is unavailable; and

5 (b) it delivers to the secretary of state, for filing,
6 a copy of the resolution of its board of directors,
7 certified by its secretary, adopting the fictitious name.

8 (2) Except as authorized by subsections (3) and (4),
9 the corporate name, including a fictitious name, of a
10 foreign corporation must be distinguishable in the records
11 of the secretary of state from:

12 (a) the corporate name of a nonprofit or business
13 corporation incorporated or authorized to transact business
14 in this state;

15 (b) a corporate name reserved or registered under
16 35-1-309, 35-1-311, 35-2-306, or 35-2-307;

17 (c) the fictitious name of another foreign business or
18 nonprofit corporation authorized to transact business in
19 this state;

20 (d) the corporate name of a domestic corporation that
21 has dissolved, but distinguishable only for a period of 120
22 days after the effective date of dissolution; and

23 (e) any assumed business name, limited partnership
24 name, limited liability company name, trademark, or service
25 mark registered or reserved with the secretary of state.

1 (3) A foreign corporation may apply to the secretary of
2 state for authorization to use in this state the name of
3 another corporation, incorporated or authorized to transact
4 business in this state, that is not distinguishable in the
5 records of the secretary of state from the name applied for.
6 The secretary of state shall authorize use of the name
7 applied for if:

8 (a) the other corporation consents to the use in
9 writing and submits an undertaking in a form satisfactory to
10 the secretary of state to change its name to a name that is
11 distinguishable in the records of the secretary of state
12 from the name of the applying corporation; or

13 (b) the applicant delivers to the secretary of state a
14 certified copy of a final judgment of a court of competent
15 jurisdiction establishing the applicant's right to use the
16 name applied for in this state.

17 (4) A foreign corporation may use in this state the
18 name, including the fictitious name, of another domestic or
19 foreign business or nonprofit corporation that is used in
20 this state if the other corporation is incorporated or
21 authorized to transact business in this state and the
22 foreign corporation:

23 (a) has merged with the other corporation;

24 (b) has been formed by reorganization of the other
25 corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-2-305, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-2-305 and obtains an amended certificate of authority under 35-2-823."

Section 87. Section 35-4-206, MCA, is amended to read:

"35-4-206. Corporate name. The name of a domestic or foreign professional corporation:

(1) must contain the words "professional corporation" or the abbreviation "P.C.";

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact

business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of such other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state; and

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation."

Section 88. Section 35-12-505, MCA, is amended to read:

"35-12-505. Name. The name of each limited partnership as set forth in its certificate of limited partnership:

1 (1) shall contain the words "limited partnership" in
2 full;
3 (2) may not contain the name of a limited partner
4 unless:
5 (a) it is also the name of a general partner; or
6 (b) the business of the limited partnership had been
7 carried on under that name before the admission of that
8 limited partner;
9 (3) may not contain any word or phrase indicating or
10 implying that it is organized other than for a purpose
11 stated in its certificate of limited partnership; and
12 (4) may not be the same as or deceptively similar to
13 the name of any corporation, or limited partnership, or
14 limited liability company organized under the laws of this
15 state or licensed or registered as a foreign corporation or
16 limited partnership in this state."
17 NEW SECTION. Section 89. Codification instruction.
18 [Sections 1 through 78] are intended to be codified as an
19 integral part of Title 35, and the provisions of Title 35
20 apply to [sections 1 through 78].

-End-