

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 354
HOUSE BILL 923

AN ACT TO PERMIT THE ORGANIZATION AND OPERATION OF LIMITED
LIABILITY COMPANIES.

The General Assembly of North Carolina enacts:

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

"Chapter 57C.

"North Carolina Limited Liability Company Act.

"ARTICLE 1.

"General Provisions.

"Part 1. Short Title; Reservation of Power; Definitions.

"§ 57C-1-01. Short title.

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

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

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

"§ 57C-1-03. Definitions.

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

- (1) Articles of organization. – The document filed under G.S. 57C-2-20 of this Chapter for the purpose of forming a limited liability company, as amended or restated.
- (2) Bankrupt. – Bankrupt under the United States Bankruptcy Code, as amended, or insolvent under State insolvency laws.
- (3) Business. – Any trade, occupation, investment, or other commercial activity engaged in for gain or profit.
- (4) Corporation. – Has the same meaning as in G.S. 55-1-40(4).
- (5) Court. – Includes every court and judge having jurisdiction in the case.
- (6) Distribution. – A direct or indirect transfer of money or other property or incurrence of indebtedness by a limited liability company to or for the benefit of its members in respect of their membership interests.
- (7) Foreign corporation. – Has the same meaning as in G.S. 55-1-40(10).
- (8) Foreign limited liability company. – An unincorporated organization formed under laws other than the laws of this State, that affords to

- each of its members, pursuant to the laws under which it is formed, limited liability with respect to the liabilities of the organization.
- (9) Foreign limited partnership. – Has the same meaning as in G.S. 59-102(5).
 - (10) Individual. – A human being.
 - (11) Limited liability company or domestic limited liability company. – An entity formed and existing under this Chapter.
 - (12) Limited partnership or domestic limited partnership. – Has the same meaning as in G.S. 59-102(8).
 - (13) Manager. – Has the following meanings: (i) with respect to a limited liability company that has set forth in its articles of organization that it is to be or may be managed by persons other than members, any person designated in accordance with G.S. 57C-3-20(a), (ii) with respect to any other limited liability company, its members, and (iii) with respect to a foreign limited liability company, any person authorized to act for and bind the foreign limited liability company.
 - (14) Member. – A person who has been admitted to membership in the limited liability company as provided in G.S. 57C-3-01 until the person's membership ceases as provided in G.S. 57C-3-02.
 - (15) Membership interest or interest. – All of a member's rights in the limited liability company, including without limitation the member's share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company assets, any right to vote, and any right to participate in management.
 - (16) Operating agreement. – Any agreement, written or oral, of the members with respect to the affairs of a limited liability company and the conduct of its business that is binding on all the members.
 - (17) Person. – An individual, a trust, an estate, or a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, a foreign limited liability company, an unincorporated association, or another entity.
 - (18) State. – A state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"Part 2. Filing Documents.

"§ 57C-1-20. Filing requirements.

- (a) To be entitled to filing by the Secretary of State under this Chapter, a document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements.
- (b) The document must be one that is required or permitted by this Chapter to be filed in the Office of the Secretary of State.
- (c) The document must contain the information required by this Chapter. It may contain other information as well.
- (d) The document must be typewritten or printed.

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

(f) The document must be executed:

- (1) By a manager of a domestic or foreign limited liability company;
- (2) If managers have not been selected, or if the limited liability company does not have a manager other than a member, by any member;
- (3) If the limited liability company has not been formed, by an organizer;
or
- (4) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

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

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

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

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

"§ 57C-1-21. Forms.

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

- (1) An application for a certificate of existence;
- (2) A foreign limited liability company's application for a certificate of authority to transact business in this State; and
- (3) A foreign limited liability company's application for a certificate of withdrawal.

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

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

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

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

	<u>Document</u>	<u>Fee</u>
<u>(1)</u>	<u>Articles of organization</u>	<u>\$100.00</u>
<u>(2)</u>	<u>Application for reserved name</u>	<u>10.00</u>
<u>(3)</u>	<u>Notice of transfer of reserved name</u>	<u>10.00</u>
<u>(4)</u>	<u>Application for registered name</u>	<u>10.00</u>
<u>(5)</u>	<u>Application for renewal of registered name</u>	<u>10.00</u>

(6)	<u>Limited liability company's statement of change of registered agent or registered office or both</u>	<u>5.00</u>
(7)	<u>Agent's statement of change of registered office for each affected limited liability company</u>	<u>5.00</u>
(8)	<u>Agent's statement of resignation</u>	<u>No fee</u>
(9)	<u>Designation of registered agent or registered office or both</u>	<u>5.00</u>
(10)	<u>Amendment of articles of organization</u>	<u>50.00</u>
(11)	<u>Restated articles of organization without amendment of articles</u>	<u>10.00</u>
(12)	<u>Restated articles of organization with amendment of articles</u>	<u>50.00</u>
(13)	<u>Articles of merger</u>	<u>50.00</u>
(14)	<u>Articles of dissolution</u>	<u>30.00</u>
(15)	<u>Articles of revocation of dissolution</u>	<u>10.00</u>
(16)	<u>Certificate of administrative dissolution</u>	<u>No fee</u>
(17)	<u>Certificate of reinstatement</u>	<u>No fee</u>
(18)	<u>Certificate of judicial dissolution</u>	<u>No fee</u>
(19)	<u>Application for certificate of authority</u>	<u>200.00</u>
(20)	<u>Application for amended certificate of authority</u>	<u>50.00</u>
(21)	<u>Application for certificate of withdrawal</u>	<u>10.00</u>
(22)	<u>Certificate of revocation of authority to transact business</u>	<u>No fee</u>
(23)	<u>Articles of correction</u>	<u>10.00</u>
(24)	<u>Application for certificate of existence or authorization</u>	<u>5.00</u>
(25)	<u>Annual report</u>	<u>200.00</u>
(26)	<u>Any other document required or permitted to be filed by this Chapter</u>	<u>10.00.</u>

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

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

- (1) One dollar (\$1.00) a page for copying or comparing a copy to the original; and
- (2) Five dollars (\$5.00) for the certificate.

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

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

- (1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or
- (2) At the time specified in the document as its effective time on the date it is filed.

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

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

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

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

(b) A document is corrected:

- (1) By preparing articles of correction that (i) describe the document (including its filing date) or attach a copy of it to the articles, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and
- (2) By delivering the articles of correction to the Secretary of State for filing.

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

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

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

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

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

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

- (1) Affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document; or
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

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

(a) If the Secretary of State refuses to file a document delivered to the Secretary of State's office for filing, the person tendering the document for filing may, within 30 days after the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition shall have attached to it the document to be filed and the Secretary of State's explanation for his refusal to file. The appeal to the superior court is not governed by Chapter 150B of the General Statutes, the Administrative Procedure Act, and shall be determined upon such further notice and opportunity to be heard, if any, as the court may deem appropriate under the circumstances.

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

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

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

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

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

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

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

- (1) The domestic limited liability company's name or the foreign limited liability company's name used in this State;
- (2) That (i) the domestic limited liability company is duly formed under the law of this State, the date of its formation, and the period of its duration, or (ii) that the foreign limited liability company is authorized to transact business in this State;
- (3) That the articles of organization of a domestic limited liability company or the certificate of authority of a foreign limited liability company has not been suspended under G.S. 105-230 for failure to pay a tax or fee or file a report or return, and that the limited liability

company has not been administratively dissolved for failure to comply with the provisions of this Chapter;

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

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

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

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

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

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

"Part 3. Secretary of State.

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

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

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

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

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

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

(b) Each manager of a foreign or domestic limited liability company who fails or refuses within the time prescribed by this Chapter to answer truthfully and fully

interrogatories propounded to the manager by the Secretary of State in accordance with the provisions of this Chapter shall be guilty of a misdemeanor.

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

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

"ARTICLE 2.

"Purposes, Powers, Formation, Annual Report,
Name, Registered Office, and Agent.

"Part 1. Purposes and Powers.

"§ 57C-2-01. Purposes.

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

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

(c) Subsections (a) and (b) of this section to the contrary notwithstanding and except as set forth in this subsection, a domestic or foreign limited liability company shall engage in rendering professional services only to the extent that, and subject to the conditions and limitations under which, a professional corporation may engage in rendering professional services under Chapter 55B of the General Statutes (the Professional Corporation Act) and under the applicable licensing statute. Chapter 55B of the General Statutes and each applicable licensing statute are deemed amended to provide that professionals licensed under the applicable licensing statute may render professional services through a domestic or foreign limited liability company. For purposes of applying the provisions, conditions, and limitations of Chapter 55B of the General Statutes and the applicable licensing statute to domestic and foreign limited liability companies that engage in rendering professional services, (i) unless the context clearly requires otherwise, references to Chapter 55 of the General Statutes (the North Carolina Business Corporation Act) shall be treated as references to this Chapter, and references to a 'corporation' or 'foreign corporation' shall be treated as references to a limited liability company or foreign limited liability company, respectively, (ii) members shall be treated in the same manner as shareholders of a professional corporation, (iii) managers shall be treated in the same manner as directors of a professional corporation, (iv) the persons signing the articles of organization of a limited liability company shall be treated in the same manner as the incorporators of a professional corporation, and (v) the name of a domestic or foreign limited liability company so engaged shall comply with G.S. 57C-2-30 or G.S. 57C-7-06 and, in addition, shall contain the word 'Professional' or the abbreviation 'P.L.L.C.' or 'PLLC'.

For purposes of this subsection, 'applicable licensing statute' shall mean those provisions of the General Statutes referred to in G.S. 55B-2(6).

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

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

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

- (1) To sue and be sued, complain, and defend in its own name;
- (2) To make and amend operating agreements, not inconsistent with its articles of organization or with the laws of this State, for managing the business and regulating the affairs of the limited liability company;
- (3) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- (4) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (5) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
- (6) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other interests in the limited liability company), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (7) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (8) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (9) To conduct its business, locate offices, and exercise the powers granted by this Chapter within or without this State;

- (10) To elect or appoint managers, officers, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit;
- (11) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other benefit or incentive plans for any or all of its current or former managers, officers, employees, and agents;
- (12) To make donations for the public welfare or for charitable, religious, cultural, scientific, or educational purposes;
- (13) To transact any lawful business that will aid governmental policy;
- (14) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the limited liability company;
- (15) To provide insurance for its benefit on the life or physical or mental ability of any of its managers, officers, or employees or on the life or physical or mental ability of any owner of any interest in the limited liability company for the purpose of acquiring the interest owned by him at the time of his death or disability, and for these purposes the limited liability company is deemed to have an insurable interest in its managers, officers, employees, or members and other interest owners; and to provide insurance for its benefit on the life or physical or mental ability of any other person in whom it has an insurable interest; and
- (16) To render professional services, subject to G.S. 57C-2-01(c).

"Part 2. Formation; Articles of Organization; Amendment of Articles; Annual Report.

"§ 57C-2-20. Formation.

- (a) Two or more persons may organize a limited liability company by delivering executed articles of organization to the Secretary of State for filing.
- (b)
 - (1) When the Secretary of State files the articles of organization, the proposed organization becomes a limited liability company subject to this Chapter and to the purposes, conditions, and provisions stated in the articles, and the persons executing the articles of organization become members of the limited liability company.
 - (2) Filing of the articles by the Secretary of State is conclusive evidence of the organization of the limited liability company, except in a proceeding by the State to cancel or revoke the articles of organization or involuntarily dissolve the limited liability company.

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

- (a) The articles of organization must set forth:
 - (1) A name for the limited liability company that satisfies the provisions of G.S. 57C-2-30;
 - (2) The latest date on which the limited liability company is to dissolve;
 - (3) The name and address of each person executing the articles of organization;
 - (4) The street address, and the mailing address if different from the street address, of the limited liability company's initial registered office, the

county in which the initial registered office is located, and the name of the limited liability company's initial registered agent at that address;

(5) Unless all of the members by virtue of their status as members shall be managers of the limited liability company, a statement that, except as provided in G.S. 57C-3-20(a), the members shall not be managers by virtue of their status as members.

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

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

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

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

(1) There is a change in the name of the limited liability company;

(2) There is a false or erroneous statement in the articles of organization;

(3) There is a change in the time as stated in the articles of organization for the dissolution of the limited liability company; or

(4) The members desire to make a change in the articles of organization.

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

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

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

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

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or both;

(3) The address of its principal office;

(4) The names and business addresses of its managers; and

(5) A brief description of the nature of its business.

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

(c) The annual report shall be delivered to the Secretary of State each year within 60 days immediately following the last day of the month in which the domestic limited liability company was organized or the foreign limited liability company received a certificate of authority in this State. Forms required for the filing of the annual report shall be mailed by the Secretary of State to the domestic or foreign limited liability

company at its registered office for the first annual report, and then to its principal office for subsequent annual reports.

(d) 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. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report.

"Part 3. Name.

"§ 57C-2-30. Name.

(a) The name of a limited liability company:

- (1) Must contain the words 'limited liability company' or the abbreviation 'L.L.C.' or 'LLC', or the combination 'ltd. liability co.', 'limited liability co.', or 'ltd. liability company';
- (2) May not contain language stating or implying that the limited liability company is organized for a purpose other than that permitted by G.S. 57C-2-01 and its articles of organization; and
- (3) If the limited liability company is authorized to engage in rendering professional services, must comply with G.S. 57C-2-01(c).

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

- (1) The name of a corporation, nonprofit corporation, limited partnership, or limited liability company organized in this State, or a foreign corporation or nonprofit corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this State;
- (2) A name reserved under G.S. 55-4-02, 55-4-03, 57C-2-31, 57C-2-32, or 59-104; and
- (3) The fictitious name adopted by a foreign corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this State because its real name is unavailable.

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

- (1) The other person who has or uses the name or who has reserved or registered the name 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 upon the records of the Secretary of State from the name of the applicant; or

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

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

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

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

"§ 57C-2-31. Reserved name.

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

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

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

"§ 57C-2-32. Registered name.

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

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

- (1) Setting forth its name, or its name with any required addition, the state or country and date of its organization, and a brief description of the nature of the business in which it is engaged; and
- (2) Accompanied by a certificate of existence (or a document of a similar import) from the state or country of organization.

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

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

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

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

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

"§ 57C-2-34. Real property records.

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

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

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

"Part 4. Registered Office and Registered Agent.

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

- (a) Each limited liability company must 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 shall be (i) an individual who resides in this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business in this State whose business office is identical with the registered office.
- (b) The sole duty of the registered agent to the limited liability company is to forward to the limited liability company at its last known address any notice, process, or demand that is served on the registered agent.

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

- (a) A limited liability company may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:
- (1) The name of the limited liability company;
 - (2) The street address, and the mailing address if different from the street address, of the limited liability company's current registered office, and the county in which it is located;
 - (3) If the address of the limited liability company's registered office is to be changed, the street address, and the mailing address if different from the street address, of the new registered office, and the county in which it is located;
 - (4) The name of its current registered agent;
 - (5) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent (either on the statement or attached to it) to the appointment; and
 - (6) That after the change or changes are made, the addresses of its registered office and the business office of its registered agent will be identical.
- (b) If a registered agent changes the address of his business office, he may change the address of the registered office of any limited liability company for which he is the registered agent by notifying the limited liability company in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (a) of this section; and recites that the limited liability company has been notified of the change.

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

- (a) A registered agent may resign his agency appointment by signing and filing with the Secretary of State the signed original and two exact or conformed copies of a statement of resignation which may include a statement that the registered office is also

discontinued. The statement must include or be accompanied by a certification from the registered agent that he has mailed or delivered to the limited liability company at its last known address written notice of his resignation. Such certification shall include the name and title of the officer notified, if any, and the address to which the notice was mailed or delivered.

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

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

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

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

(b) Whenever a limited liability company shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with due diligence be found at the registered office, then the Secretary of State shall be an agent of the limited liability company upon whom any process, notice, or demand may be served. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with the Secretary of State or with any clerk having charge of the limited liability company department of the Secretary of State's office, duplicate copies of the process, notice, or demand. In the event any such process, notice, or demand is served on the Secretary of State, the Secretary of State shall immediately mail one of the copies thereof, by registered or certified mail, return receipt requested, to the limited liability company at the address indicated in the latest communication received by the Secretary of State from the limited liability company stating the current mailing address of its principal office or, if there is no mailing address for the principal office on file, to the limited liability company at its registered office. Service on a limited liability company under this subsection shall be effective for all purposes from and after the date of the service on the Secretary of State.

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

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

"ARTICLE 3.

"Membership and Management.

"Part 1. Membership.

"§ 57C-3-01. Admission of members.

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

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

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

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

"§ 57C-3-02. Cessation of membership.

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

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

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

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

a. Making an assignment for the benefit of creditors;

b. Filing a voluntary petition in bankruptcy;

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

d. Filing a petition or answer seeking for him any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

e. Seeking, consenting to, or acquiescing in, the appointment of a trustee or receiver for, or liquidation of the member or of all or any substantial part of his properties; or

f. Filing an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the person in any proceeding described in this subdivision;

(4) Unless otherwise provided in the articles of organization or a written operating agreement or with the consent of all other members, the

continuation of any proceeding against the person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, for 120 days after the commencement thereof or the appointment of a trustee, receiver, or liquidator for the person or all or any substantial part of the person's properties without the person's agreement or acquiescence, which appointment is not vacated or stayed for 120 days or, if the appointment is stayed, for 120 days after the expiration of the stay during which period the appointment is not vacated;

- (5) Unless otherwise provided in the articles of organization or a written operating agreement or with the consent of all other members, in the case of a member who is an individual, the individual's:
 - a. Death; or
 - b. Adjudication by a court of competent jurisdiction as incompetent to manage his person or property;
- (6) Unless otherwise provided in the articles of organization or a written operating agreement or with the consent of all other members, in the case of a member who is acting as a member by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);
- (7) Unless otherwise provided in the articles of organization or a written operating agreement or with the consent of all other members, in the case of a member that is a partnership or another limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company;
- (8) Unless otherwise provided in the articles of organization or a written operating agreement or with the consent of all other members, in the case of a member that is a corporation, the dissolution of the corporation or the revocation of its charter; or
- (9) Unless otherwise provided in the articles of organization or a written operating agreement or with the consent of all other members, in the case of a member that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

"§ 57C-3-03. Voting of members.

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

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

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

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

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

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

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

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

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

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

A member shall be bound by any operating agreement, including any amendment thereto, otherwise valid under this Chapter and other applicable law, (i) to which the member has expressly assented, or (ii) which was in effect at the time the member became a member and either was in writing or the terms of which were actually known to the member, or (iii) with respect to any amendment, if the member was bound by the

operating agreement as in effect immediately prior to such amendment and such amendment was adopted in accordance with the terms of such operating agreement. The articles of organization or written operating agreement may require that all agreements of the members constituting the operating agreement be in writing, in which case the term 'operating agreement' shall not include oral agreements of the members.

"Part 2. Managers.

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

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

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

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

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

- (1) Managers need not be members and, unless otherwise required by G.S. 57C-3-20(a), members need not be managers;
- (2) Designation of managers (other than those managers who are such by virtue of their status as members) shall be evidenced in a written operating agreement, as amended from time to time;
- (3) Upon designation as manager in a written operating agreement and the person's consent to such designation, the designated person shall serve as manager until the earliest to occur of (i) the person's resignation, (ii) any event described in G.S. 57C-3-02(3) with respect to the manager, (iii) any event specified in the articles of organization or written operating agreement that results in a manager ceasing to be a manager, or (iv) the amendment of the written operating agreement removing the person's designation as a manager.

"§ 57C-3-22. Duties of managers.

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

(b) A manager shall discharge his duties as manager in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in the manner the manager reasonably believes to be in the best

interests of the limited liability company. In discharging his duties, a manager is entitled to rely on information, opinions, reports, or statements, including, but not limited to, financial statements or other financial data, if prepared or presented by:

- (1) One or more employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matters presented;
- (2) Legal counsel, certified public accountants, or other persons on matters the manager reasonably believes are within the person's professional or expert competence; or
- (3) A committee of managers of which the manager is not a member if the manager reasonably believes the committee merits confidence.

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

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

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

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

Every manager is an agent of the limited liability company for the purpose of its business, and the act of every manager, including execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business of the limited liability company of which he is a manager, 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 authority. An act of a manager that is not apparently for carrying on the usual course of the business of the limited liability company does not bind the limited liability company unless authorized in fact or ratified by the managers of the limited liability company.

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

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

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

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

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

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

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

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

"Part 3. Liability.

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

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

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

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

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

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

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

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

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

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

- (1) Eliminate or limit the personal liability of a manager for monetary damages for breach of any duty provided for in G.S. 57C-3-22 (other than liability under G.S. 57C-4-07); and
- (2) If approved by all the members, provide for indemnification of a manager or member for judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which the member or manager is a party because he is or was a manager or member. For purposes of this subdivision, the words 'expenses', 'proceeding', and 'party' shall have the meanings set forth in G.S. 55-8-50(b).

(b) No provision permitted under subsection (a) of this section shall limit, eliminate, or indemnify against the liability of a manager for (i) acts or omissions that the manager knew at the time of the acts or omissions were clearly in conflict with the interests of the limited liability company, (ii) any transaction from which the manager derived an improper personal benefit, or (iii) acts or omissions occurring prior to the date the provision became effective. As used in this subsection, 'improper personal benefit' does not include reasonable compensation or other reasonable incidental benefit for or on account of service as a manager, an officer, an employee, an independent contractor, an attorney, or a consultant of the limited liability company.

No provision permitted under subsection (a) of this section shall limit or eliminate the liability of a member or manager for any taxes owed by the limited liability company under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes.

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

"ARTICLE 4.

"Finance.

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

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

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

(a) 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.

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

(c) Unless otherwise provided in the operating agreement, the obligation of a member to make a contribution or to return money or other property paid or distributed in violation of this Chapter may be compromised only with the unanimous consent of the members. Any such compromise, however, shall not affect the rights of a creditor of a limited liability company to enforce a claim that arose prior to the date of the compromise.

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

Income, gain, loss, deduction, or credit of a limited liability company shall be allocated among the members, and among classes of members, in the manner agreed to in an operating agreement. To the extent an operating agreement does not so provide for the allocation of such items, income, gain, loss, deduction, or credit shall be allocated among the members in proportion to the agreed value, as stated in the limited liability company records required to be kept pursuant to G.S. 57C-3-04(a)(5), of the contributions made by each member, taking into account variations in the capital

contributions of each member during the period for which the allocations are made using any reasonable method selected by the managers.

"§ 57C-4-04. Interim distributions.

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

"§ 57C-4-05. Distribution in kind.

Except as provided in an operating agreement:

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

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

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

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

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

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

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

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

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

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

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

- (1) Contribution from each other manager who could be held liable under subsection (a) of this section for the wrongful distribution; and
- (2) Reimbursement from each member for the amount the member received knowing that the distribution was made in violation of G.S. 57C-4-06 or the operating agreement.

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

"§ 57C-4-08. Right to distribution.

Subject to the provisions of this Article, at the time 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.

"ARTICLE 5.

"Assignment of Membership Interests; Withdrawal.

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

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

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

Except as provided in the articles of organization or a written operating agreement, a membership interest is assignable in whole or in part. An assignment of a membership interest does not dissolve the limited liability company or entitle the assignee to become or exercise any rights of a member. An assignment entitles the assignee to receive, to the extent assigned, only the distributions and allocations to which the assignor would be entitled but for the assignment. Except as provided in the articles of organization or

a written operating agreement, a member ceases to be a member upon assignment of all of his membership interest. Except as provided in the articles of organization or a written operating agreement, the pledge of, or granting of a security interest, lien, or other encumbrance in or against, all or any part of the membership interest of a member shall not cause the member to cease to be a member or the secured party to have the power to exercise any rights or powers of a member.

"§ 57C-5-03. 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 the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the membership interest. This Chapter does not deprive any member of the benefit of any exemption laws applicable to his membership interest.

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

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

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

(c) Whether or not an assignee of a membership interest becomes a member, the assignor is not released from his liability to the limited liability company under G.S. 57C-4-02 (liability for contribution) and G.S. 57C-4-07 (liability upon wrongful distribution).

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

Unless otherwise provided in the articles of organization or a written operating agreement, if a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage his person or his property, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the member's rights for the purpose of settling his estate or administering his property, including any power the member had under the articles of organization or a written operating agreement to give an assignee the right to become a

member. If a member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor for the purpose of liquidating, winding up, and making final distributions of the entity's assets to its owners, beneficiaries, or creditors.

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

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

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

"ARTICLE 6.

"Dissolution.

"§ 57C-6-01. Dissolution.

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

- (1) The time specified in the articles of organization or a written operating agreement;
- (2) The happening of an event specified in the articles of organization or a written operating agreement;
- (3) The written consent of all members;
- (4) Unless otherwise provided in the articles of organization or a written operating agreement, the happening of any event of withdrawal described in G.S. 57C-3-02 (cessation of membership) with respect to any member, unless at the time of the event of withdrawal (i) there is at least one remaining member, (ii) the provisions of the articles of organization or a written operating agreement permit the business of the limited liability company to be carried on by the remaining member or members, and (iii) the remaining member or members elect to do so pursuant to such vote, to procedures prescribed in the articles of organization or a written operating agreement, or, in the absence of prescribed voting requirements or procedures, by a unanimous vote of the remaining member or members taken after the event of withdrawal. The foregoing to the contrary notwithstanding, a limited liability company shall not be dissolved and is not required to be wound up by reason of any event of withdrawal if, within 90 days after the event of withdrawal, all remaining members, and the person or persons with respect to whom the event of withdrawal has occurred (or his successor), agree in writing that the business of the limited liability company may be continued; or
- (5) Entry of a decree of judicial dissolution under G.S. 57C-6-02, or the filing by the Secretary of State of a certificate of dissolution under G.S. 57C-6-03.

"§ 57C-6-02. Judicial dissolution.

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

(b) Venue for a proceeding under subsection (a) of this section to dissolve a limited liability company lies in the county where the limited liability company's principal office (or, if none in this State, its registered office) is or was last located.

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

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

- (1) The limited liability company has not paid within 60 days after they are due any penalties, fees, or other payments due under this Chapter;
- (2) The limited liability company does not deliver its annual report to the Secretary of State on or before the date it is due;
- (3) The limited liability company has been without a registered agent or registered office in this State for 60 days or more;
- (4) The limited liability company has not notified the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or
- (5) The limited liability company's period of duration stated in its articles of organization has expired.

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

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

"§ 57C-6-04. Winding up.

(a) Except as otherwise provided in this Chapter, the articles of organization, or a written operating agreement, the managers shall wind up the limited liability company's affairs following its dissolution. If the dissolved limited liability company has no managers, the legal representative of or successor to the member whose event of withdrawal has resulted in the dissolution may wind up the limited liability company's

affairs. The court may wind up the limited liability company's affairs, or appoint a person to wind up its affairs, on application of any member, his legal representative, or assignee.

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

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

"§ 57C-6-05. Distribution of assets.

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

- (1) To creditors, including members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for distributions to members under G.S. 57C-4-04;
- (2) Except as provided in the articles of organization or a written operating agreement, to members or former members in satisfaction of liabilities for distributions under G.S. 57C-4-04; and
- (3) Except as provided in the articles of organization or a written operating agreement, by distribution to the members and to any former member whose event of withdrawal resulted in the dissolution in proportion to the agreed value, as stated in the limited liability company records required to be kept pursuant to G.S. 57C-3-04(a)(5), of the contributions made by each such member and former member, after such agreed values are adjusted by: (i) adding thereto the person's share of the profits of the limited liability company, and (ii) deducting therefrom the person's share of the losses of the limited liability company and all distributions previously received by the person.

"§ 57C-6-06. Articles of dissolution.

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

- (1) The name of the limited liability company;

- (2) The dates of filing of its articles of organization and all amendments thereto;
- (3) The reason for filing the articles of dissolution;
- (4) The effective date (which shall be a date certain) of the dissolution, as determined in accordance with G.S. 57C-6-01; and
- (5) Any other information the members or managers filing the articles of dissolution determine.

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

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

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

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

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

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

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

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

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

(b) The notice must:

- (1) Be published one time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office (or, if none in this State, its registered office) is or was last located;
- (2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
- (3) State that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

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

- (1) A claimant who was known but did not receive written notice under G.S. 57C-6-07;
- (2) A claimant whose claim was timely sent to the dissolved limited liability company but not acted on; or
- (3) A claimant whose claim is contingent or based on an event occurring after the filing of the articles of dissolution.

"§ 57C-6-09. Enforcement of claims.

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

- (1) Against the dissolved limited liability company, to the extent of its undistributed assets, including coverage under any applicable insurance policy; or
- (2) If the assets have been distributed in winding up, against a member of the dissolved limited liability company to the extent of his pro rata share of the claim or the limited liability company assets distributed to him in winding up, 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 him.

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

"ARTICLE 7.

"Foreign Limited Liability Companies.

"§ 57C-7-01. Law governing.

The laws of the state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability of its managers and members, regardless of whether the foreign limited liability company procured or should have procured a certificate of authority under this Chapter, and a foreign limited liability company may not be denied a certificate of authority by reason of any difference between the laws under which it is organized and the laws of this State. A foreign limited liability company with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic limited liability company of like character.

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

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

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

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
- (2) Holding meetings of its managers or members or carrying on other activities concerning its internal affairs;
- (3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of its membership interests, or appointing and maintaining trustees or depositories with relation to its membership interests;
- (5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance without this State before becoming binding contracts;
- (6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and sales, the acquiring of property at foreclosure sale, and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;
- (7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;
- (8) Transacting business in interstate commerce;
- (9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature;
- (10) Selling through independent contractors; and
- (11) Owning, without more, real or personal property.

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

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

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

(b) A foreign limited liability company failing to obtain a certificate of authority as required by this Chapter shall be liable to the State for the years or parts thereof during which it transacted business in this State without a certificate of authority in an amount equal to all fees and taxes which would have been imposed by law upon the foreign limited liability company had it duly applied for and received such permission.

plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign limited liability company shall be liable for a civil penalty of ten dollars (\$10.00) for each day, but not to exceed a total of one thousand dollars (\$1,000) for each year or part thereof, it transacts business in this State without a certificate of authority. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection.

(c) Notwithstanding subsection (a) of this section, 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.

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

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

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

- (1) 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 G.S. 57C-7-06;
- (2) The name of the state or country under whose law it is organized;
- (3) Its date of organization and period of duration;
- (4) The street address, and the mailing address if different from the street address, of its principal office in the state or country under whose law it is organized;
- (5) The street address, and the mailing address if different from the street address, of its registered office in this State and the name of its registered agent at that office; and
- (6) The names and usual business addresses of its current managers.

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

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

- (1) Endorse on the application and an exact or conformed copy thereof the word 'filed' and the hour, day, month, and year of the filing thereof;
- (2) File in his office the application and the certificate of existence (or document of similar import as described in subsection (b) of this section);

- (3) Issue a certificate of authority to transact business in this State to which the Secretary of State shall affix the exact or conformed copy of the application; and
- (4) Send to the foreign limited liability company or its representative the certificate of authority, together with the exact or conformed copy of the application affixed thereto.

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

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

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

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

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

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

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

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

- (1) May add the words 'limited liability company', or the abbreviation 'L.L.C.', 'LLC', or the combination 'ltd. liability co.', 'limited liability co.', or 'ltd. liability company', to its name for use in this State if such addition will cause the name to satisfy the requirements of G.S. 57C-2-30; or
- (2) May use a fictitious name, which includes one or more of the words or abbreviations in subdivision (1) of this subsection, to transact business in this State if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its managers adopting the fictitious name.

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

- (1) The name of a corporation, limited partnership, or limited liability company organized in this State, or a foreign corporation, foreign

limited partnership, or foreign limited liability company authorized to transact business in this State;

- (2) A name reserved or registered under G.S. 55-4-02, 55-4-03, 57C-2-31, 57C-2-32, or 59-104;
- (3) The fictitious name of another foreign corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this State because its real name is unavailable; or
- (4) The fictitious name of another foreign limited liability company authorized to transact business in this State.

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

- (1) The other person who has or uses the name or who has reserved or registered the name consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying limited liability company; or
- (2) 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.

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

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

(f) Neither the reservation or registration of a name nor the issuance of a certificate of authority to a foreign limited liability company shall authorize the use in this State of a name in violation of the rights of any third party under the federal trademark act, the trademark act of this State, or other statutory or common law, or be a defense to an action for violation of any such rights.

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

(a) Each foreign limited liability company authorized to transact business in this State must 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 shall be (i) an individual who resides in this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability

company whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business in this State whose business office is identical with the registered office.

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

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

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

- (1) Its name;
- (2) The street address, and the mailing address if different from the street address, of its current registered office, and the county in which it is located;
- (3) If the address of its registered office is to be changed, the street address, and the mailing address if different from the street address, of the new registered office, and the county in which it is located;
- (4) The name of its current registered agent;
- (5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and
- (6) That after the change or changes are made, the addresses of its registered office and the business office of its registered agent will be identical.

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

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

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

(b) After filing the statement, the Secretary of State shall mail one copy to the registered office (if not discontinued) and the other copy to the foreign limited liability

company at its principal office shown in its application for certificate of authority or amended certificate of authority or at the address indicated in the latest communication received by the Secretary of State from the foreign limited liability company stating the correct mailing address of its principal office.

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

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

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

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

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

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

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

(a) 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.

(b) 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:

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

- (2) That it is not transacting business in this State and that it surrenders its authority to transact business in this State;
- (3) That the foreign limited liability company revokes the authority of its registered agent to accept service of process and consents that service of process in any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited liability company was authorized to transact business in this State, may thereafter be made on such foreign limited liability company by service thereof on the Secretary of State;
- (4) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (3) of this subsection; and
- (5) A commitment to notify the Secretary of State in the future of any change in its mailing address.

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

- (1) Endorse on the application and an exact or conformed copy thereof the word 'filed' and the hour, day, month, and year of the filing thereof;
- (2) File the application in the Secretary of State's office;
- (3) Issue a certificate of withdrawal to which the Secretary of State shall affix the exact or conformed copy of the application; and
- (4) Send to the foreign limited liability company or its representative the certificate of withdrawal together with the exact or conformed copy of the application affixed thereto.

(d) After the withdrawal of the foreign limited liability company is effective, service of process on the Secretary of State in accordance with subdivision (b)(3) of 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 (b) of this section.

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

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

- (1) The name of each merged foreign limited liability company authorized to transact business in this State and the name of the surviving entity and a statement that the surviving entity is not authorized to transact business in this State;

- (2) That the surviving entity consents that service of process based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time each merged foreign limited liability company was authorized to transact business in this State, may thereafter be made on such foreign limited liability company by service thereof on the Secretary of State;
- (3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2) of this section; and
- (4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

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

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

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

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

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

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

- (1) The foreign limited liability company has not paid, within 60 days after they are due, any penalties, fees, or other payments due under this Chapter;
- (2) The foreign limited liability company has not delivered its annual report to the Secretary of State on or before the date it is due;
- (3) The foreign limited liability company has been without a registered agent or a registered office in this State for 60 days or more;
- (4) The foreign limited liability company does not inform the Secretary of State as required by this Chapter that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance;
- (5) An organizer, member, manager, or agent of the foreign limited liability company has signed a document that he knew was false in any material respect with the intent the document be delivered to the Secretary of State for filing;

- (6) The Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of limited liability company records in the state or country under whose law the foreign limited liability company is organized stating that it has been dissolved or has ceased to exist as the result of a merger or otherwise;
or
- (7) The limited liability company is exceeding the authority conferred upon it by this Chapter.

(b) If the Secretary of State determines that one or more grounds exist under this section for revocation of the certificate of authority, the Secretary of State shall mail the foreign limited liability company written notice of his determination. If, within 60 days after notice is mailed, a 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 does not exist, the Secretary of State shall revoke the foreign limited liability company's certificate of authority by signing a certificate of revocation that recites the ground or grounds for the revocation, shall file the certificate of revocation, and shall mail a copy to the foreign limited liability company. The authority of the foreign limited liability company to transact business in this State shall cease on the date the certificate of authority is revoked by the filing of the certificate of revocation by the Secretary of State.

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

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

"ARTICLE 8.

"Derivative Actions.

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

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

- (1) The plaintiff does not have the authority to cause the limited liability company to sue in its own right; and
- (2) The plaintiff (i) is a member of the limited liability company at the time of bringing the action, and (ii) was a member of the limited liability company at the time of the transaction of which the plaintiff complains, or the plaintiff's status as a member of the limited liability company thereafter devolved upon the plaintiff pursuant to the terms

of the operating agreement from a person who was a member at such time.

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

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

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

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

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

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

"ARTICLE 9.

"Merger.

"§ 57C-9-01. Merger.

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

"§ 57C-9-02. Plan of merger.

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

(b) The plan of merger shall set forth:

- (1) The name of each limited liability company planning to merge and the name of the surviving limited liability company into which each other limited liability company proposes to merge;
- (2) The terms and conditions of the proposed merger;
- (3) The manner and basis of converting the interests of each limited liability company into interests or other securities or obligations, as the case may be, of the surviving or any other limited liability company, or, in whole or in part, into cash or other property;
- (4) Such amendments to the articles of organization of the surviving limited liability company as are desired to be effected by the merger, or that no such changes are desired; and
- (5) Such other provisions relating to the proposed merger as are deemed necessary or desirable.

"§ 57C-9-03. Approval of merger.

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

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

"§ 57C-9-04. Articles of merger.

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

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

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

"§ 57C-9-05. Effects of merger.

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

- (1) The limited liability companies that are party to the plan of merger shall be a single entity, which shall be the limited liability company designated in the plan of merger as the surviving limited liability company;
- (2) The separate existence of each limited liability company party to the plan of merger, except the surviving limited liability company, shall cease;

- (3) The surviving limited liability company shall thereupon and thereafter possess all the rights, privileges, immunities, powers, and franchises of a public as well as a private nature, of each limited liability company party to the merger and shall be subject to all the restrictions, disabilities, and duties of each of the limited liability companies;
- (4) All property, real, personal, and mixed, and all debts due on whatever account, including promises to make capital contributions and subscriptions for shares, and all other choses in action, and all and every other interest of or belonging to or due to each limited liability company party to the merger shall be vested in the surviving limited liability company without further act or deed;
- (5) The title to all real estate and any interest therein vested in any limited liability company party to the merger shall not revert or be in any way impaired by reason of the merger;
- (6) The surviving limited liability company shall thenceforth be responsible and liable for all liabilities and obligations of each limited liability company party to the merger, and any claim existing or action or proceeding pending by or against any such limited liability company may be prosecuted as if the merger had not taken place, or the surviving limited liability company may be substituted in the action;
- (7) Neither the rights of creditors nor any liens on the property of any limited liability company party to the merger shall be impaired by the merger;
- (8) The articles of organization of the surviving limited liability company shall be amended to the extent provided in the plan of merger; and
- (9) The membership or other interests of each limited liability company that are to be converted or exchanged into interests or other securities, cash, obligations, or other property under the terms of the articles of merger are so converted, and the former holders thereof are entitled only to the rights provided in the plan of merger or the rights otherwise provided by law.

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

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

- (1) The merger is permitted by the law of the state or jurisdiction under whose laws each foreign limited liability company is organized or formed and each foreign limited liability company complies with that law in effecting the merger;
- (2) The foreign limited liability company complies with G.S. 57C-9-04 if it is the surviving limited liability company; and
- (3) Each domestic limited liability company complies with the applicable provisions of G.S. 57C-9-01 through G.S. 57C-9-03 and, if it is the surviving limited liability company, with G.S. 57C-9-04.

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

- (1) That it may be served with process in this State in any proceeding for enforcement of any obligation of any limited liability company party to the merger that was organized under the laws of this State, as well as for enforcement of any obligation of the surviving limited liability company arising from the merger; and
- (2) To appoint the Secretary of State as its agent for service of process in any such proceeding, and the surviving limited liability company shall specify the address to which a copy of the process shall be mailed to it by the Secretary of State.

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

"ARTICLE 10.

"Miscellaneous.

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

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

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

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

"§ 57C-10-03. Rules of construction.

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

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

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

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

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

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

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

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

"§ 57C-10-06. Income taxation.

A limited liability company, a foreign limited liability company authorized to transact business in this State, and a member of one of these companies are subject to taxation under Article 4 of Chapter 105 of the General Statutes in accordance with their classification for federal income tax purposes. Accordingly, if a limited liability company or a foreign limited liability company authorized to transact business in this State is classified for federal income tax purposes as a corporation, the company is subject to tax under Article 4 of Chapter 105 to the same extent as a corporation. If a limited liability company or a foreign limited liability company authorized to transact business in this State is classified for federal income tax purposes as a partnership, the company and its members are subject to tax under Article 4 of Chapter 105 to the same extent as a partnership and its members. If a limited liability company or a foreign limited liability company authorized to transact business in this State is classified for federal income tax purposes as other than a corporation or a partnership, the company and its members are subject to tax under Article 4 in a manner consistent with that classification. This section does not require a limited liability company or a foreign limited liability company to obtain an administrative ruling from the Internal Revenue Service on its classification under the Internal Revenue Code.

"§ 57C-10-07. Intent.

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

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

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

(a) Relationship. – Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit or alter the law in this State applicable to the professional relationship and liabilities between the ~~person~~–licensee furnishing the professional services and the person receiving such professional service, or the standards of professional conduct applicable to the rendering therein of such services.

(b) Liability. – A shareholder, a director, or an officer of a professional corporation is not individually liable for the debts and obligations of the professional corporation arising from errors, omissions, negligence, incompetence, or malfeasance committed in the course of the professional corporation's business by another shareholder, director, or officer, or by a representative of the professional corporation not working under the supervision or direction of the first shareholder, director, or officer at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first shareholder, director, or officer was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other shareholder, director, or officer or by the representative. This subsection does not affect the joint and several liability of a

shareholder, a director, or an officer of a professional corporation for any taxes owed by the professional corporation under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes."

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

"§ 59-32. Definition of terms.

In this Article:

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

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

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

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

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

(c) Subsection (b) of this section does not affect any of the following:

- (1) The joint and several liability of a partner for debts and obligations of the partnership arising from any cause other than those specified in subsection (b) of this section.
- (2) The joint and several liability of a partner for any taxes owed by the partnership under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes.
- (3) The liability of partnership assets for partnership debts and obligations."

Sec. 5. Chapter 59 of the General Statutes is amended by adding a new Article 3A to read as follows and to include current G.S. 59-84.1 as the first section in Article 3A:

"ARTICLE 3A.
"Miscellaneous Provisions.

"§ 59-84.2. Registered limited liability partnerships.

(a) To become a registered limited liability partnership, a partnership must file with the Secretary of State an application stating the name of the partnership, the address of its principal office, the number of partners, and a brief statement of the business in which the partnership engages. A registration as a registered limited liability partnership must be renewed annually.

(b) An application for registration as a registered limited liability partnership must be executed by a majority in interest of the partners or by one or more partners authorized by a majority in interest of the partners.

(c) An application for registration as a registered limited liability partnership or for renewal of a registration must be accompanied by a fee of one hundred dollars (\$100.00).

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

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

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

"§ 59-84.3. Name of registered limited liability partnerships.

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

Sec. 6. G.S. 105-33.1, as amended by Section 3 of Chapter 12 of the 1993 Session Laws, reads as rewritten:

"§ 105-33.1. Definitions.

The following definitions apply in this Article:

- (1) Code. – Defined in G.S. 105-228.90.
- (2) Municipality. – A municipal corporation organized under the laws of this State.
- (3) Person. —~~An individual, a firm, a partnership, an association, a corporation, or another organization or group acting as a unit.~~ Defined in G.S. 105-228.90.
- (4) Secretary. – The Secretary of Revenue."

Sec. 7. G.S. 105-113.4(8) reads as rewritten:

"(8) Person. —~~An individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit.~~ Defined in G.S. 105-228.90."

Sec. 8. G.S. 105-113.44(7) reads as rewritten:

"(7) Person. ~~An individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit.~~ Defined in G.S. 105-228.90."

Sec. 9. G.S. 105-113.68(a)(8) reads as rewritten:

"(8) 'Person' means ~~an individual, firm, partnership, association, corporation, other organization or group, or other combination of individuals acting as a unit.~~ has the same meaning as in G.S. 105-228.90."

Sec. 10. G.S. 105-113.106(7) reads as rewritten:

"(7) Person. — ~~An individual or an entity that identifies itself as an entity and exists for a purpose, including a corporation, firm, partnership, institution, or other unit.~~ Defined in G.S. 105-228.90."

Sec. 11. G.S. 105-114(b), as amended by Section 4 of Chapter 12 of the 1993 Session Laws, reads as rewritten:

"(b) Definitions. — The following definitions apply in this Article:

(1) ~~The term 'Code' has the same meaning as Code. — Defined in G.S. 105-228.90.~~

(2) ~~The term 'corporation' shall, unless the context clearly requires another interpretation, mean and include not only corporations but also associations or joint stock companies and every other form of organization—Corporation. — A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, having has capital stock represented by shares, whether with or without par value, and having has privileges not possessed by individuals or partnerships; and whether organized under, or without, statutory authority. The term 'corporation' shall also mean and include any electric membership corporation organized under Chapter 117, and any electric membership corporation, whether or not organized under the laws of this State, doing business within the State. partnerships. The term does not include a limited liability company.~~

(3) ~~The term 'doing business' shall mean and include each—Doing business. — Each and every act, power—power, or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges acquired by the nature of such organizations whether the form of existence be corporate, associate, joint stock company or common law trust. granted by the laws of this State.~~

(4) ~~The term 'income year' shall mean an income year as defined—Income year. — Defined in G.S. 105-130.2(5)."~~

Sec. 12. G.S. 105-130.2, as amended by Section 5 of Chapter 12 of the 1993 Session Laws, reads as rewritten:

"§ 105-130.2. Definitions.

The following definitions apply in this Division:

(1) Code. — Defined in G.S. 105-228.90.

(1a) Corporation. — ~~This term includes—A joint-stock companies or associations and—company or association, an insurance companies.~~

company, a domestic corporation, a foreign corporation, or a limited liability company.

- (1b) C Corporation. – A corporation that is not an S Corporation.
- (1c) Department. – The Department of Revenue.
- (2) Domestic corporation. – A corporation organized under the laws of this State.
- (3) Fiscal year. – An income year, ending on the last day of any month other than December. A corporation that pursuant to the provisions of the Code has elected to compute its federal income tax liability on the basis of an annual period varying from 52 to 53 weeks shall compute its taxable income under this Division on the basis of the same period used by the corporation in computing its federal income tax liability for the income year.
- (4) Foreign corporation. – Any corporation other than a domestic corporation.
- (5) Income year. – The calendar year or the fiscal year upon the basis of which the net income is computed under this Division. If no fiscal year has been established, the income year is the calendar year. In the case of a return made for a fractional part of a year under the provisions of this Division or under rules adopted by the Secretary, the income year is the period for which the return is made.
- (5a) Limited liability company. – Either a domestic limited liability company organized under Chapter 57C of the General Statutes or a foreign limited liability company authorized by that Chapter to transact business in this State that is classified for federal income tax purposes as a corporation. As applied to a limited liability company that is a corporation under this Division, the term 'shareholder' means a member of the limited liability company and the term 'corporate officer' means a member or manager of the limited liability company.
- ~~(5a)~~(5b) S Corporation. – Defined in G.S. 105-131(b).
- ~~(5b)~~(5c) Secretary. – The Secretary of Revenue.
- ~~(5e)~~(5d) State net income. – Federal taxable income adjusted as provided in G.S. 105-130.5 and, in the case of a corporation that has income from business activity that is taxable both within and without this State, allocated and apportioned to this State as provided in G.S. 105-130.4.
- ~~(5d)~~(5e) Taxable year. – Income year.
- (6) Taxpayer. – A corporation subject to the tax imposed by this Division."

Sec. 13. G.S. 105-134.1, as amended by Section 7 of Chapter 12 of the 1993 Session Laws, reads as rewritten:

"§ 105-134.1. Definitions.

The following definitions apply in this Division:

- (1) Code. – Defined in G.S. 105-228.90.
- (2) Department. – The Department of Revenue.

- (3) Educational institution. – An educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.
- (4) Fiscal year. – Defined in section 441(e) of the Code.
- (5) Gross income. – Defined in section 61 of the Code.
- (6) Head of household. – Defined in section 2(b) of the Code.
- (7) Individual. – ~~A natural person.~~ human being.
- (7a) Limited liability company. – Either a domestic limited liability company organized under Chapter 57C of the General Statutes or a foreign limited liability company authorized by that Chapter to transact business in this State that is classified for federal income tax purposes as a partnership. As applied to a limited liability company that is a partnership under this Division, the term 'partner' means a member of the limited liability company.
- (8) Married individual. – An individual who is married and is considered married as provided in section 7703 of the Code.
- (9) Nonresident individual. – An individual who is not a resident of this State.
- (10) North Carolina taxable income. – Defined in G.S. 105-134.5.
- (10a) Partnership. – A domestic partnership, a foreign partnership, or a limited liability company.
- (11) ~~Person. – An individual, a fiduciary, or a partnership. The term includes an officer or employee of a corporation or a member or employee of a partnership who, as officer, employee, or member, is under a duty to perform an act in meeting the requirements of this Division. Defined in G.S. 105-228.90.~~
- (12) Resident. – An individual who is domiciled in this State at any time during the taxable year or who resides in this State during the taxable year for other than a temporary or transitory purpose. In the absence of convincing proof to the contrary, an individual who is present within the State for more than 183 days during the taxable year is presumed to be a resident, but the absence of an individual from the state for more than 183 days raises no presumption that the individual is not a resident. A resident who removes from the State during a taxable year is considered a resident until he has both established a definite domicile elsewhere and abandoned any domicile in this State. The fact of marriage does not raise any presumption as to domicile or residence.
- (13) Retirement benefits. – Amounts paid to a former employee or the beneficiary of a former employee under a written retirement plan established by the employer to provide payments to an employee or the beneficiary of an employee after the end of the employee's employment with the employer where the right to receive the

payments is based upon the employment relationship. With respect to a self-employed individual or the beneficiary of a self-employed individual, the term means amounts paid to the individual or beneficiary of the individual under a written retirement plan established by the individual to provide payments to the individual or the beneficiary of the individual after the end of the self-employment. In addition, the term includes amounts received from an individual retirement account described in section 408 of the Code or from an individual retirement annuity described in section 408 of the Code. For the purpose of this subdivision, the term "employee" includes a volunteer worker.

(14) S Corporation. – Defined in G.S. 105-131(b).

(15) Secretary. – The Secretary of Revenue.

(16) Taxable income. – Defined in section 63 of the Code.

(17) Taxable year. – Defined in section 441(b) of the Code.

(18) Taxpayer. – An individual subject to the tax imposed by this Division.

(19) This State. – The State of North Carolina."

Sec. 14. G.S. 105-154(a) is repealed.

Sec. 15. G.S. 105-163.1(13) reads as rewritten:

"(13) Person. —~~An individual, a fiduciary, a partnership, a corporation, or a unit of government. The term includes an officer or employee of a corporation, a member or employee of a partnership, and an employee of an individual proprietorship who, as officer, employee, or member, is under a duty to perform an act in meeting the requirements of this Division. Defined in G.S. 105-228.90.~~"

Sec. 16. G.S. 105-164.3(11) reads as rewritten:

"(11) 'Person' ~~includes any individual, firm, copartnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate or other group, or combination acting as a unit, body politic, or political subdivision, whether public or private or quasi public and the plural as well as the singular number. has the same meaning as in G.S. 105-228.90.~~"

Sec. 17. G.S. 105-164.29 reads as rewritten:

"§ 105-164.29. Application for licenses by wholesale merchants and retailers.

(a) Application. — Every application for a license by a wholesale merchant or retailer shall be made upon a form prescribed by the Secretary and shall set forth all information the Secretary may require. The application shall be signed ~~by~~ as follows:

(1) By the owner, if the owner if is a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an individual.

(2) By a manager, member, or partner, if the owner is an association, a partnership, or a limited liability company.

(3) By an executive officer or some other person specifically authorized by the corporation to sign the application, to which shall be attached

~~the written~~ if the owner is a corporation. If the application is signed by a person authorized to do so by the corporation, written evidence of the person's authority ~~authority~~ must be attached to the application.

A wholesale merchant or retailer whose business extends into more than one county is required to secure only one license to cover all operations of the business throughout the State.

(b) Issuance. – When the required application has been made the Secretary shall issue a license to the applicant. A license is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated in the license. The license holder shall display the license conspicuously at all times at the place for which it was issued.

(c) Reissuance. – A person whose license has been previously suspended or revoked shall pay the Secretary fifteen dollars (\$15.00) for the reissuance of the license. A wholesale merchant whose annual license has been previously suspended or revoked shall pay the Secretary twenty-five dollars (\$25.00) for the reissuance of the license for the remainder of the license year.

(d) Revocation. – Whenever a license holder fails to comply with this Article, the Secretary, upon hearing, after giving the license holder 10 days' notice in writing, specifying the time and place of hearing and requiring the license holder to show cause why the license should not be revoked, may revoke or suspend the license. The notice may be served personally or by registered mail directed to the last known address of the license holder. All provisions with respect to review and appeals of the Secretary's decisions as provided by G.S. 105-241.2, 105-241.3, and 105-241.4 apply to this section.

Any wholesale merchant or retailer who engages in business as a seller in this State without a license or after the license has been suspended or revoked, and each officer of any corporation that so engages in business shall be guilty of a misdemeanor and subject to a fine of up to five hundred dollars (\$500.00) for each offense."

Sec. 18. G.S. 105-228.90(b)(5) reads as rewritten:

"(5) Person. – An individual, a fiduciary, a firm, an association, a partnership, ~~an association~~, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes."

Sec. 19. G.S. 105-230 reads as rewritten:

"§ 105-230. Charter suspended for failure to report.

If a corporation or a limited liability company ~~required by the provisions of this Subchapter~~ fails to file any report or return or to pay any tax or fee, either as a public utility (not as an agency of interstate commerce) or as a corporation incorporated under the laws of this State, or as a foreign corporation domesticated in or doing business in

~~this State, or owning and using a part or all of its capital or plant in this State, fails or neglects to make any such report or return or to pay any such tax or fee required by this Subchapter for 90 days after the time prescribed in this Subchapter for making such report or return, or for paying such tax or fee, the Secretary of Revenue shall certify such fact to it is due, the Secretary shall inform the Secretary of State. State of this failure. The Secretary of State shall thereupon suspend the articles of incorporation of any such corporation which is incorporated under the laws of this State by appropriate entry upon the records of his office, or suspend the certificate of authority of any such foreign corporation to do business in this State by proper entry. Thereupon all the incorporation, articles of organization, or certificate of authority, as appropriate, of the corporation or limited liability company. The powers, privileges, and franchises conferred upon such the corporation or limited liability company by such the articles of incorporation or by such certificate of authority shall cease and determine. incorporation, the articles of organization, or the certificate of authority terminate upon suspension. The Secretary of State shall immediately notify by mail every such domestic or foreign corporation or limited liability company of the action taken by him. suspension."~~

Sec. 20. G.S. 105-231 reads as rewritten:

"§ 105-231. Penalty for exercising corporate functions after cancellation or suspension of charter, articles or certificate.

~~Any person, persons or corporations~~ A person who shall exercise exercises or by any act ~~attempt attempts~~ to exercise any powers, privileges, or franchises under articles of ~~incorporation incorporation~~, articles of organization, or a certificate of authority after the same are suspended, as provided in any section of this Subchapter, it has been suspended under G.S. 105-230 shall pay a penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000), to be recovered in an action to be brought by the Secretary of Revenue in the Superior Court of Wake County. Any corporate act performed or attempted to be performed during the period of such suspension shall be is invalid and of no effect."

Sec. 21. G.S. 105-232 reads as rewritten:

"§ 105-232. Corporate rights Rights restored; receivership and liquidation.

(a) Any corporation or limited liability company whose articles of ~~incorporation incorporation~~, articles of organization, or certificate of authority to do business in this State has been suspended by the Secretary of State ~~as provided in under~~ G.S. 105-230, that complies with all the requirements of this Subchapter and pays all State taxes, fees, or penalties due from it (which total amount due may be computed, for years prior and subsequent to the suspension, in the same manner as if the suspension had not taken place), and pays to the Secretary of Revenue a fee of twenty-five dollars (\$25.00) to cover the cost of reinstatement, is entitled to exercise again its rights, privileges, and franchises in this State. The Secretary of Revenue shall notify the Secretary of State of this compliance and the Secretary of State shall reinstate the corporation or limited liability company by appropriate entry upon the records of the Office of Secretary of State. The Secretary of State shall immediately notify the corporation or limited liability company of the reinstatement.

(b) When the articles of ~~incorporation~~ incorporation, articles of organization, or certificate of authority to do business in this State has been suspended by the Secretary of State as ~~provided in~~ under G.S. 105-230, and the corporation or limited liability company has ceased to operate as a going concern, if there remains property held in the name of the ~~corporation~~, corporation or limited liability company or undisposed of at the time of the suspension, or there remain future interests that may accrue to the ~~corporation~~ corporation, the limited liability company, or its ~~successors or~~ successors, members, or stockholders, any ~~stockholder~~, bona fide creditor, or other interested party may apply to the superior court for the appointment of a receiver. Application for the receiver may be made in a civil action to which all ~~stockholders~~ stockholders, members, or their representatives or next of kin shall be made parties. Stockholders or members whose whereabouts are unknown, unknown ~~stockholders~~, stockholders or members, unknown heirs and next of kin of deceased stockholders, members, creditors, dealers, and other interested persons may be served by publication. A guardian **ad litem** may be appointed for any ~~stockholders~~ stockholders, members, or their representatives who ~~may be an infant~~ are infants or incompetent. The receiver shall enter into a bond if the court requires one and shall give notice to creditors by publication or otherwise as the court may prescribe. Any creditor who fails to file a claim with the receiver within the time set shall be barred of the right to participate in the distribution of the assets. The receiver may (i) sell the property interests of the corporation or limited liability company upon such terms and in such manner as the court may order, (ii) apply the proceeds to the payment of any debts of the ~~corporation~~, corporation or limited liability company, and (iii) distribute the remainder among the ~~stockholders~~ stockholders, the members, or their representatives in proportion to their interests in the property interests. Shares due to any stockholder or member who is unknown or whose whereabouts are unknown shall be paid into the office of the clerk of the superior court, to be disbursed according to law. In the event the ~~stock books~~ records of the corporation or limited liability company are lost or do not reflect the ~~latest stock transfers~~, owners of the property interests, the court shall determine the ~~respective interests of the stockholders~~ owners from the best evidence available, and the receiver shall be protected in acting in accordance with the court's finding. This proceeding is authorized for the sole purpose of providing a procedure for disposing of the ~~corporate assets of the corporation or limited liability company~~ by the payment of ~~corporate debts, its debts including franchise taxes which had accrued prior to the suspension of the corporate charter and any other taxes the assessment or collection of which is not barred by a statute of limitations~~, and by the transfer to the ~~stockholders~~ its stockholders, its members, or their representatives their proportionate shares of ~~the assets owned by the corporation~~ its assets."

Sec. 22. G.S. 105-236(11) reads as rewritten:

"(11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is

prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

~~The term 'person' as used in this section includes an officer or employee of a corporation, or a member or employee of a partnership who as officer, employee, or member is under a duty to perform the act in respect to which the violation occurs."~~

Sec. 23. G.S. 105-273(12) reads as rewritten:

"(12) 'Person' and 'he' include any individual, trustee, executor, administrator, other fiduciary, corporation, limited liability company, unincorporated association, partnership, sole proprietorship, company, firm, or other legal entity."

Sec. 24. G.S. 105-430(5) reads as rewritten:

"(5) Person. —~~An individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit.~~
Defined in G.S. 105-228.90."

Sec. 25. G.S. 105-433(a) reads as rewritten:

"(a) Application. — Every distributor shall obtain a license from the ~~Secretary of Revenue~~. Secretary. To obtain a license, an applicant must file an application with the ~~Secretary of Revenue~~ on a form provided by the Secretary and file with the Secretary a bond or an irrevocable letter of credit. An application shall include the applicant's name and address and any other information required by the ~~Secretary of Revenue~~. Secretary. If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State. If the applicant is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State. If the applicant is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State. If the applicant is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address."

Sec. 26. G.S. 105-449.2(7) reads as rewritten:

"(7) Person. —~~An individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit.~~
Defined in G.S. 105-228.90."

Sec. 27. G.S. 105-449.4 reads as rewritten:

"§ 105-449.4. Application for supplier's license.

To obtain a license as a supplier, an applicant must file an application with the Secretary on a form provided by the Secretary and file with the Secretary a bond or an irrevocable letter of credit. An application shall include the applicant's name and address and any other information required by the Secretary. If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State. If the applicant is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State. If the applicant is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State. If the applicant is an

individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address."

Sec. 28. G.S. 105-449.37(a)(2a) reads as rewritten:

"(2a) Person. — ~~An individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit.~~
Defined in G.S. 105-228.90."

Sec. 29. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this end, the provisions of this act are severable.

Sec. 30. This act becomes effective October 1, 1993.

In the General Assembly read three times and ratified this the 15th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives