

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 923*
Committee Substitute Favorable 5/20/93
Committee Substitute #2 Favorable 6/17/93

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

(Public)

Sponsors:

Referred to:

April 14, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO PERMIT THE ORGANIZATION AND OPERATION OF LIMITED
3 LIABILITY COMPANIES.

4 The General Assembly of North Carolina enacts:

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

7 **"CHAPTER 57C.**

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

9 **"ARTICLE 1.**

10 **"GENERAL PROVISIONS.**

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

12 **"§ 57C-1-01. Short title.**

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

15 **"§ 57C-1-02. Reservation of power to amend or repeal.**

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

19 **"§ 57C-1-03. Definitions.**

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

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

- 1 partnership, a limited liability company, a foreign limited liability
2 company, an unincorporated association, or another entity.
3 (18) State. – A state, territory, or possession of the United States, the
4 District of Columbia, or the Commonwealth of Puerto Rico.

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

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

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

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

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

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

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

20 (f) The document must be executed:

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

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

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

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

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

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

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

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

39 **"§ 57C-1-21. Forms.**

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

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

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

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

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

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

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

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

Document	Fee
(1) <u>Articles of organization</u>	<u>\$100.00</u>
(2) <u>Application for reserved name</u>	<u>10.00</u>
(3) <u>Notice of transfer of reserved name</u>	<u>10.00</u>
(4) <u>Application for registered name</u>	<u>10.00</u>
(5) <u>Application for renewal of registered name</u>	<u>10.00</u>
(6) <u>Limited liability company's statement of</u> <u>change of registered agent or registered</u> <u>office or both</u>	<u>5.00</u>
(7) <u>Agent's statement of change of registered</u> <u>office for each affected limited</u> <u>liability company</u>	<u>5.00</u>
(8) <u>Agent's statement of resignation</u>	<u>No fee</u>
(9) <u>Designation of registered agent or</u> <u>registered office or both</u>	<u>5.00</u>
(10) <u>Amendment of articles of organization</u>	<u>50.00</u>
(11) <u>Restated articles of organization</u> <u>without amendment of articles</u>	<u>10.00</u>
(12) <u>Restated articles of organization</u> <u>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</u> <u>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</u> <u>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</u> <u>or authorization</u>	<u>5.00</u>

- 1 (25) Annual report 200.00
2 (26) Any other document required or permitted
3 to be filed by this Chapter 10.00.

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

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

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

14 **"§ 57C-1-23. Effective time and date of document.**

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

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

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

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

30 **"§ 57C-1-24. Correcting filed document.**

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

34 (b) A document is corrected:

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

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

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

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

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

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

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

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

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

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

21 **"§ 57C-1-26. Appeal from Secretary of State's refusal to file document.**

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

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

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

36 **"§ 57C-1-27. Evidentiary effect of copy of filed document.**

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

41 **"§ 57C-1-28. Certificate of existence.**

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

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

2 (1) The domestic limited liability company's name or the foreign limited
3 liability company's name used in this State;

4 (2) That (i) the domestic limited liability company is duly formed under
5 the law of this State, the date of its formation, and the period of its
6 duration, or (ii) that the foreign limited liability company is authorized
7 to transact business in this State;

8 (3) That the articles of organization of a domestic limited liability
9 company or the certificate of authority of a foreign limited liability
10 company has not been suspended under G.S. 105-230 for failure to pay
11 a tax or fee or file a report or return, and that the limited liability
12 company has not been administratively dissolved for failure to comply
13 with the provisions of this Chapter;

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

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

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

21 **"§ 57C-1-29. Penalty for signing false document.**

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

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

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

27 **"§ 57C-1-30. Powers of the Secretary of State.**

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

30 **"§ 57C-1-31. Interrogatories by Secretary of State.**

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

1 appropriate, all interrogatories and answers thereto which disclose a violation of any of
2 the provisions of this Chapter requiring or permitting action by the Attorney General.

3 **"§ 57C-1-32. Penalties imposed upon domestic and foreign limited liability**
4 **companies for failure to answer interrogatories.**

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

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

14 **"§ 57C-1-33. Information disclosed by interrogatories.**

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

21 **"ARTICLE 2.**

22 **"PURPOSES, POWERS, FORMATION, ANNUAL REPORT,**
23 **NAME, REGISTERED OFFICE, AND AGENT.**

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

25 **"§ 57C-2-01. Purposes.**

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

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

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

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

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

28 **"§ 57C-2-02. Powers of the limited liability company.**

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

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

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

34 **"PART 2. FORMATION; ARTICLES OF ORGANIZATION;**
35 **AMENDMENT OF ARTICLES; ANNUAL REPORT.**

36 **"§ 57C-2-20. Formation.**

37 (a) Two or more persons may organize a limited liability company by delivering
38 executed articles of organization to the Secretary of State for filing.

- 39 (b) (1) When the Secretary of State files the articles of
40 organization, the proposed organization becomes a limited liability
41 company subject to this Chapter and to the purposes, conditions, and
42 provisions stated in the articles, and the persons executing the
43 articles of organization become members of the limited liability
44 company.

- 1 (2) Filing of the articles by the Secretary of State is conclusive evidence of
2 the organization of the limited liability company, except in a
3 proceeding by the State to cancel or revoke the articles of organization
4 or involuntarily dissolve the limited liability company.

5 **"§ 57C-2-21. Articles of organization.**

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

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

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

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

25 **"§ 57C-2-22. Amendment of articles of organization.**

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

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

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

35 **"§ 57C-2-23. Annual report for Secretary of State.**

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

- 39 (1) The name of the limited liability or foreign limited liability company
40 and the state or country under whose law it is organized;
41 (2) The street address, and the mailing address if different from the street
42 address, of the registered office, the county in which the registered
43 office is located, and the name of its registered agent at that office in

1 this State, and a statement of any change of the registered office or
2 registered agent, or both;

3 (3) The address of its principal office;

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

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

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

9 (c) The annual report shall be delivered to the Secretary of State each year within
10 60 days immediately following the last day of the month in which the domestic limited
11 liability company was organized or the foreign limited liability company received a
12 certificate of authority in this State. Forms required for the filing of the annual report
13 shall be mailed by the Secretary of State to the domestic or foreign limited liability
14 company at its registered office for the first annual report, and then to its principal office
15 for subsequent annual reports.

16 (d) If an annual report does not contain the information required by this section,
17 the Secretary of State shall promptly notify the reporting domestic or foreign limited
18 liability company in writing and return the report to it for correction. If the report is
19 corrected to contain the information required by this section and delivered to the
20 Secretary of State within 30 days after the effective date of notice, it is deemed to be
21 timely filed.

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

"PART 3. NAME.

"§ 57C-2-30. Name.

27 (a) The name of a limited liability company:

28 (1) Must contain the words 'limited liability company' or the abbreviation
29 'L.L.C.' or 'LLC', or the combination 'ltd. liability co.', 'limited liability
30 co.', or 'ltd. liability company';

31 (2) May not contain language stating or implying that the limited liability
32 company is organized for a purpose other than that permitted by G.S.
33 57C-2-01 and its articles of organization; and

34 (3) If the limited liability company is authorized to engage in rendering
35 professional services, must comply with G.S. 57C-2-01(c).

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

39 (1) The name of a corporation, nonprofit corporation, limited partnership,
40 or limited liability company organized in this State, or a foreign
41 corporation or nonprofit corporation, foreign limited partnership, or
42 foreign limited liability company authorized to transact business in this
43 State;

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

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

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

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

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

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

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

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

30 **"§ 57C-2-31. Reserved name.**

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

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

41 (c) Any person acquiring the goodwill of a domestic limited liability company or
42 of a foreign limited liability company authorized to transact business in this State may,
43 on furnishing the Secretary of State satisfactory evidence of such acquisition, reserve

1 the exclusive right to the limited liability company name of the limited liability
2 company for a period of 10 years.

3 **"§ 57C-2-32. Registered name.**

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

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

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

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

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

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

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

31 **"§ 57C-2-33. Reserved and registered names; powers of the Secretary of State.**

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

39 **"§ 57C-2-34. Real property records.**

40 (a) Whenever the name of any domestic or foreign limited liability company
41 holding title to real property in this State is changed upon amendment to its articles of
42 organization or whenever title to real property in this State is transferred by operation of
43 law upon merger of two or more limited liability companies, a certificate reciting the
44 change or transfer shall be recorded in the office of the register of deeds of the county

1 where the property lies, or if the property is located in more than one county, then in
2 each county where any portion of the property lies.

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

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

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

15 **"§ 57C-2-40. Registered office and registered agent.**

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

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

19 (2) A registered agent, who shall be (i) an individual who resides in this
20 State and whose business office is identical with the registered office;
21 (ii) a domestic corporation, nonprofit corporation, or limited liability
22 company whose business office is identical with the registered office;
23 or (iii) a foreign corporation, nonprofit corporation, or limited liability
24 company authorized to transact business in this State whose business
25 office is identical with the registered office.

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

29 **"§ 57C-2-41. Change of registered office or registered agent.**

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

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

34 (2) The street address, and the mailing address if different from the street
35 address, of the limited liability company's current registered office,
36 and the county in which it is located;

37 (3) If the address of the limited liability company's registered office is to
38 be changed, the street address, and the mailing address if different
39 from the street address, of the new registered office, and the county in
40 which it is located;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **"ARTICLE 3.**

10 **"MEMBERSHIP AND MANAGEMENT.**

11 **"PART 1. MEMBERSHIP.**

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

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

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

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

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

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

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

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

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

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

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

41 b. Filing a voluntary petition in bankruptcy;

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

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

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

3 **"§ 57C-3-03. Voting of members.**

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

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

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

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

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

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

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

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

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

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

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

20 **"PART 2. MANAGERS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **"PART 3. LIABILITY.**

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

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

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

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

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

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

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

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

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

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

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

41 (2) If approved by all the members, provide for indemnification of a
42 manager or member for judgments, settlements, penalties, fines, or
43 expenses incurred in a proceeding to which the member or manager is
44 a party because he is or was a manager or member. For purposes of

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

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

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

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

25 **"ARTICLE 4.**

26 **"FINANCE.**

27 **"§ 57C-4-01. Contributions to capital.**

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

35 **"§ 57C-4-02. Liability for contribution.**

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

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

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

7 **"§ 57C-4-03. Allocation of income, gain, loss, deduction, or credit.**

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

17 **"§ 57C-4-04. Interim distributions.**

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

28 **"§ 57C-4-05. Distribution in kind.**

29 Except as provided in an operating agreement:

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

38 **"§ 57C-4-06. Restrictions on making distributions.**

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

- 40 (1) The limited liability company would not be able to pay its debts as
41 they become due in the usual course of business; or
42 (2) The limited liability company's total assets would be less than the sum
43 of its total liabilities plus, unless the operating agreement provides
44 otherwise, the amount that would be needed, if the limited liability

1 company were to be dissolved at the time of the distribution, to satisfy
2 the preferential rights upon dissolution of members whose preferential
3 rights are superior to the rights of the member receiving the
4 distribution.

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

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

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

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

26 **"§ 57C-4-07. Liability upon wrongful distribution.**

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

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

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

36 (2) Reimbursement from each member for the amount the member
37 received knowing that the distribution was made in violation of G.S.
38 57C-4-06 or the operating agreement.

39 (c) A proceeding under this section is barred unless it is commenced within three
40 years after the date on which the effect of the distribution is measured under G.S. 57C-
41 4-06(c).

42 **"§ 57C-4-08. Right to distribution.**

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

4 **"ARTICLE 5.**

5 **"ASSIGNMENT OF MEMBERSHIP INTERESTS; WITHDRAWAL.**

6 **"§ 57C-5-01. Nature of membership interest.**

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

9 **"§ 57C-5-02. Assignment of membership interest.**

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

22 **"§ 57C-5-03. Rights of judgment creditor.**

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

29 **"§ 57C-5-04. Right of assignee to become a member.**

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

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

1 the assignee became a member and which could not be ascertained from the articles of
2 organization or a written operating agreement.

3 (c) Whether or not an assignee of a membership interest becomes a member, the
4 assignor is not released from his liability to the limited liability company under G.S.
5 57C-4-02 (liability for contribution) and G.S. 57C-4-07 (liability upon wrongful
6 distribution).

7 **"§ 57C-5-05. Powers of legal representative of a deceased, incompetent, or**
8 **dissolved member.**

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

20 **"§ 57C-5-06. Voluntary withdrawal of member.**

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

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

28 **"ARTICLE 6.**
29 **"DISSOLUTION.**

30 **"§ 57C-6-01. Dissolution.**

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

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

1 member or members, and (iii) the remaining member or members elect
2 to do so pursuant to such vote, to procedures prescribed in the articles
3 of organization or a written operating agreement, or, in the absence of
4 prescribed voting requirements or procedures, by a unanimous vote of
5 the remaining member or members taken after the event of withdrawal.
6 The foregoing to the contrary notwithstanding, a limited liability
7 company shall not be dissolved and is not required to be wound up by
8 reason of any event of withdrawal if, within 90 days after the event of
9 withdrawal, all remaining members, and the person or persons with
10 respect to whom the event of withdrawal has occurred (or his
11 successor), agree in writing that the business of the limited liability
12 company may be continued; or

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

16 **"§ 57C-6-02. Judicial dissolution.**

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

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

23 **"§ 57C-6-03. Administrative dissolution.**

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

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

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

1 dissolution that recites the ground or grounds for dissolution and its effective date. The
2 Secretary of State shall file the original certificate of dissolution and mail a copy to the
3 limited liability company.

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

10 **"§ 57C-6-04. Winding up.**

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

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

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

35 **"§ 57C-6-05. Distribution of assets.**

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

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

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

11 **"§ 57C-6-06. Articles of dissolution.**

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

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

23 **"§ 57C-6-07. Known claims against dissolved limited liability company.**

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

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

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

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

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

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

1 **"§ 57C-6-08. Unknown and certain other claims against dissolved limited liability**
2 **company.**

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

6 (b) The notice must:

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

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

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

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

20 (1) A claimant who was known but did not receive written notice under
21 G.S. 57C-6-07;

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

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

26 **"§ 57C-6-09. Enforcement of claims.**

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

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

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

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

39 **"ARTICLE 7.**

40 **"FOREIGN LIMITED LIABILITY COMPANIES.**

41 **"§ 57C-7-01. Law governing.**

42 The laws of the state or other jurisdiction under which a foreign limited liability
43 company is organized shall govern its organization and internal affairs and the liability
44 of its managers and members, regardless of whether the foreign limited liability

1 company procured or should have procured a certificate of authority under this Chapter,
2 and a foreign limited liability company may not be denied a certificate of authority by
3 reason of any difference between the laws under which it is organized and the laws of
4 this State. A foreign limited liability company with a valid certificate of authority has
5 the same but no greater rights and has the same but no greater privileges as, and is
6 subject to the same duties, restrictions, penalties, and liabilities now or later imposed on,
7 a domestic limited liability company of like character.

8 **"§ 57C-7-02. Authority to transact business required.**

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

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

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

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

4 **"§ 57C-7-03. Consequences of transacting business without authority.**

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

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

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

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

32 **"§ 57C-7-04. Application for certificate of authority.**

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

36 (1) The name of the foreign limited liability company or, if its name is
37 unavailable for use in this State, a name that satisfies the requirements
38 of G.S. 57C-7-06;

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

40 (3) Its date of organization and period of duration;

41 (4) The street address, and the mailing address if different from the street
42 address, of its principal office in the state or country under whose law
43 it is organized;

1 (5) The street address, and the mailing address if different from the street
2 address, of its registered office in this State and the name of its
3 registered agent at that office; and

4 (6) The names and usual business addresses of its current managers.

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

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

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

14 (2) File in his office the application and the certificate of existence (or
15 document of similar import as described in subsection (b) of this
16 section);

17 (3) Issue a certificate of authority to transact business in this State to
18 which the Secretary of State shall affix the exact or conformed copy of
19 the application; and

20 (4) Send to the foreign limited liability company or its representative the
21 certificate of authority, together with the exact or conformed copy of
22 the application affixed thereto.

23 **"§ 57C-7-05. Amended certificate of authority.**

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

27 (1) Its name;

28 (2) The period of its duration; or

29 (3) The state or country of its organization.

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

32 (1) The name of the limited liability company and the name in which the
33 limited liability company is authorized to transact business in North
34 Carolina if different;

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

36 (3) The date it was originally authorized to transact business in this State;
37 and

38 (4) A statement of the change or changes being made.

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

42 **"§ 57C-7-06. Name of foreign limited liability company.**

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

4 (1) May add the words 'limited liability company', or the abbreviation
5 'L.L.C.', 'LLC', or the combination 'ltd. liability co.', 'limited liability
6 co.', or 'ltd. liability company', to its name for use in this State if such
7 addition will cause the name to satisfy the requirements of G.S. 57C-2-
8 30; or

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

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

17 (1) The name of a corporation, limited partnership, or limited liability
18 company organized in this State, or a foreign corporation, foreign
19 limited partnership, or foreign limited liability company authorized to
20 transact business in this State;

21 (2) A name reserved or registered under G.S. 55-4-02, 55-4-03, 57C-2-31,
22 57C-2-32, or 59-104;

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

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

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

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

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

42 (d) If a foreign limited liability company authorized to transact business in this
43 State changes its name to one that does not satisfy the requirements of G.S. 57C-2-30, it
44 may not transact business in this State under the changed name until it adopts a name

1 satisfying the requirements of G.S. 57C-2-30 or G.S. 57C-7-06 and obtains an amended
2 certificate of authority under G.S. 57C-7-05.

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

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

10 **"§ 57C-7-07. Registered office and registered agent of foreign limited liability**
11 **company.**

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

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

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

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

26 **"§ 57C-7-08. Change of registered office or registered agent of foreign limited**
27 **liability company.**

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

31 (1) Its name;

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

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

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

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

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

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

8 **"§ 57C-7-09. Resignation of registered agent of foreign limited liability company.**

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

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

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

25 **"§ 57C-7-10. Service on foreign limited liability company.**

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

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

1 principal office on file, to the foreign limited liability company at its registered office.
2 Service on a foreign limited liability company under this subsection shall be effective
3 for all purposes from and after the date of the service on the Secretary of State.

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

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

10 **"§ 57C-7-11. Withdrawal of foreign limited liability company.**

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

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

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

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

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

28 (4) A mailing address to which the Secretary of State may mail a copy of
29 any process served on him under subdivision (3) of this subsection;
30 and

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

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

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

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

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

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

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

1 section is service on the foreign limited liability company. Upon receipt of process, the
2 Secretary of State shall mail a copy of the process to the foreign limited liability
3 company at the mailing address set forth under subsection (b) of this section.

4 **"§ 57C-7-12. Withdrawal of limited liability company by reason of a merger.**

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

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

19 (2) That the surviving entity consents that service of process based upon
20 any cause of action arising in this State, or arising out of business
21 transacted in this State, during the time each merged foreign limited
22 liability company was authorized to transact business in this State, may
23 thereafter be made on such foreign limited liability company by
24 service thereof on the Secretary of State;

25 (3) A mailing address to which the Secretary of State may mail a copy of
26 any process served on him under subdivision (a)(2) of this section; and

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

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

31 (1) Endorse on the articles of merger or certificate and the application for
32 withdrawal, if required, the word 'filed' and the hour, day, month, and
33 year of filing thereof;

34 (2) File the articles of merger or certificate and the application, if required;

35 (3) Issue a certificate of withdrawal; and

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

39 **"§ 57C-7-13. Action by Attorney General.**

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

42 **"§ 57C-7-14. Revocation of certificate of authority.**

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

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

7 (2) The foreign limited liability company has not delivered its annual
8 report to the Secretary of State on or before the date it is due;

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

11 (4) The foreign limited liability company does not inform the Secretary of
12 State as required by this Chapter that its registered agent or registered
13 office has been changed, that its registered agent has resigned, or that
14 its registered office has been discontinued within 60 days of the
15 change, resignation, or discontinuance;

16 (5) An organizer, member, manager, or agent of the foreign limited
17 liability company has signed a document that he knew was false in any
18 material respect with the intent the document be delivered to the
19 Secretary of State for filing;

20 (6) The Secretary of State receives a duly authenticated certificate from
21 the secretary of state or other official having custody of limited
22 liability company records in the state or country under whose law the
23 foreign limited liability company is organized stating that it has been
24 dissolved or has ceased to exist as the result of a merger or otherwise;
25 or

26 (7) The limited liability company is exceeding the authority conferred
27 upon it by this Chapter.

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

40 (c) Upon the revocation of a foreign limited liability company's certificate of
41 authority, the Secretary of State shall become the foreign limited liability company's
42 agent for service of process in any proceeding based on a cause of action arising in this
43 State or arising out of business transacted in this State during the time the foreign

1 limited liability company was authorized to transact business in this State. The
2 Secretary of State shall then proceed in accordance with G.S. 57C-7-10.

3 (d) A foreign limited liability company may appeal the Secretary of State's
4 revocation of its certificate of authority under the same procedures that a foreign
5 corporation may appeal the revocation of its certificate of authority pursuant to G.S. 55-
6 15-32 and G.S. 55-15-33.

7 **"ARTICLE 8.**

8 **"DERIVATIVE ACTIONS.**

9 **"§ 57C-8-01. Members' derivative actions.**

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

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

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

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

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

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

1 be reasonable in the circumstances, and the amount of such expense shall be awarded as
2 costs of the action.

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

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

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

16 **"ARTICLE 9.**

17 **"MERGER.**

18 **"§ 57C-9-01. Merger.**

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

21 **"§ 57C-9-02. Plan of merger.**

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

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

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

38 **"§ 57C-9-03. Approval of merger.**

39 (a) A proposed plan of merger complying with the requirements of G.S. 57C-9-
40 02 shall be approved by the unanimous consent of the members, unless the articles of
41 organization or a written operating agreement provides otherwise.

42 (b) After a merger is authorized, unless the plan of merger provides otherwise,
43 and at any time before articles of merger (as provided for in G.S. 57C-9-04) are filed,
44 the plan of merger may be abandoned (subject to any contractual rights), in accordance

1 with the procedure set forth in the plan of merger or, if none is set forth, in the manner
2 determined by the managers.

3 **"§ 57C-9-04. Articles of merger.**

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

7 (1) The plan of merger; and

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

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

11 **"§ 57C-9-05. Effects of merger.**

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

13 (1) The limited liability companies that are party to the plan of merger
14 shall be a single entity, which shall be the limited liability company
15 designated in the plan of merger as the surviving limited liability
16 company;

17 (2) The separate existence of each limited liability company party to the
18 plan of merger, except the surviving limited liability company, shall
19 cease;

20 (3) The surviving limited liability company shall thereupon and thereafter
21 possess all the rights, privileges, immunities, powers, and franchises of
22 a public as well as a private nature, of each limited liability company
23 party to the merger and shall be subject to all the restrictions,
24 disabilities, and duties of each of the limited liability companies;

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

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

34 (6) The surviving limited liability company shall thenceforth be
35 responsible and liable for all liabilities and obligations of each limited
36 liability company party to the merger, and any claim existing or action
37 or proceeding pending by or against any such limited liability
38 company may be prosecuted as if the merger had not taken place, or
39 the surviving limited liability company may be substituted in the
40 action;

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

- 1 (8) The articles of organization of the surviving limited liability company
2 shall be amended to the extent provided in the plan of merger; and
3 (9) The membership or other interests of each limited liability company
4 that are to be converted or exchanged into interests or other securities,
5 cash, obligations, or other property under the terms of the articles of
6 merger are so converted, and the former holders thereof are entitled
7 only to the rights provided in the plan of merger or the rights otherwise
8 provided by law.

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

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

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

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

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

34 (c) The effect of the merger shall be as provided in G.S. 57C-9-05, if the
35 surviving limited liability company is to be governed by the laws of this State. If the
36 surviving limited liability company is to be governed by the laws of any jurisdiction
37 other than this State, the effect of the merger shall be the same as provided in G.S. 57C-
38 9-05, except insofar as the laws of such other jurisdiction provide otherwise.

39 **"ARTICLE 10.**

40 **"MISCELLANEOUS.**

41 **"§ 57C-10-01. Execution by judicial act.**

42 Any person who is adversely affected by the failure or refusal of any person to
43 execute and file any articles or other document to be filed under this Chapter may
44 petition the superior court in the county where the limited liability company's principal

1 office (or, if none in this State, its registered office) is or was last located or, if there is
2 no such office, in the County of Wake, to direct the execution and filing of the articles
3 or other document. If the court finds that it is proper for the articles or the document to
4 be executed and filed and that there has been failure or refusal to execute and file the
5 document, it shall order the Secretary of State to file the appropriate articles or other
6 document.

7 **"§ 57C-10-02. Applicability of provisions to foreign and interstate commerce.**

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

11 **"§ 57C-10-03. Rules of construction.**

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

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

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

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

19 **"§ 57C-10-04. Jurisdiction of the superior courts.**

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

21 **"§ 57C-10-05. Rules for cases not provided for in this Chapter.**

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

23 **"§ 57C-10-06. Income taxation.**

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

41 **"§ 57C-10-07. Intent.**

42 It is the intent of the General Assembly that the legal existence of limited liability
43 companies organized under this Chapter be recognized outside the boundaries of this
44 State and that, subject to any reasonable requirement of registration, a domestic limited

1 liability company transacting business outside this State be granted full faith and credit
2 under Section 1 of Article IV of the Constitution of the United States."

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

4 **"§ 55B-9. Professional relationship and liability.**

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

10 (b) Liability. – A shareholder, a director, or an officer of a professional
11 corporation is not individually liable for the debts and obligations of the professional
12 corporation arising from errors, omissions, negligence, incompetence, or malfeasance
13 committed in the course of the professional corporation's business by another
14 shareholder, director, or officer, or by a representative of the professional corporation
15 not working under the supervision or direction of the first shareholder, director, or
16 officer at the time the errors, omissions, negligence, incompetence, or malfeasance
17 occurred, unless the first shareholder, director, or officer was directly involved in the
18 specific activity in which the errors, omissions, negligence, incompetence, or
19 malfeasance were committed by the other shareholder, director, or officer or by the
20 representative. This subsection does not affect the joint and several liability of a
21 shareholder, a director, or an officer of a professional corporation for any taxes owed by
22 the professional corporation under Chapter 105 of the General Statutes or Article 3 of
23 Chapter 119 of the General Statutes."

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

25 **"§ 59-32. Definition of terms.**

26 In this Article:

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

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

39 **"§ 59-45. Nature of partner's ~~liability.~~ liability in ordinary partnerships and in**
40 **registered limited liability partnerships.**

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

43 (b) A partner in a registered limited liability partnership is not individually liable
44 for debts and obligations of the partnership arising from errors, omissions, negligence,

1 incompetence, or malfeasance committed in the course of the partnership business by
2 another partner or representative of the partnership not working under the supervision or
3 direction of the first partner at the time the errors, omissions, negligence, incompetence,
4 or malfeasance occurred, unless the first partner was directly involved in the specific
5 activity in which the errors, omissions, negligence, incompetence, or malfeasance were
6 committed by the other partner or representative.

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

8 (1) The joint and several liability of a partner for debts and obligations of
9 the partnership arising from any cause other than those specified in
10 subsection (b) of this section.

11 (2) The joint and several liability of a partner for any taxes owed by the
12 partnership under Chapter 105 of the General Statutes or Article 3 of
13 Chapter 119 of the General Statutes.

14 (3) The liability of partnership assets for partnership debts and
15 obligations."

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

19 **"ARTICLE 3A.**

20 **"MISCELLANEOUS PROVISIONS.**

21 **"§ 59-84.2. Registered limited liability partnerships.**

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

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

30 (c) An application for registration as a registered limited liability partnership or
31 for renewal of a registration must be accompanied by a fee of one hundred dollars
32 (\$100.00).

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

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

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

41 **"§ 59-84.3. Name of registered limited liability partnerships.**

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

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

3 **"§ 105-33.1. Definitions.**

4 The following definitions apply in this Article:

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

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

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

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

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

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

21 "(8) 'Person' ~~means an individual, firm, partnership, association,~~
22 ~~corporation, other organization or group, or other combination of~~
23 ~~individuals acting as a unit.~~ has the same meaning as in G.S. 105-
24 228.90."

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

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

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

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

- 32 (1) The term 'Code' ~~has the same meaning as~~ Code. – Defined in G.S. 105-
33 228.90.
- 34 (2) The term 'corporation' ~~shall, unless the context clearly requires another~~
35 ~~interpretation, mean and include not only corporations but also~~
36 ~~associations or joint stock companies and every other form of~~
37 ~~organization~~ Corporation. – A domestic corporation, a foreign
38 corporation, an electric membership corporation organized under
39 Chapter 117 of the General Statutes or doing business in this State, or
40 an association that is organized for pecuniary gain, having has capital
41 stock represented by shares, whether with or without par value, and
42 ~~having~~ has privileges not possessed by individuals or partnerships; and
43 ~~whether organized under, or without, statutory authority.~~ The term
44 'corporation' ~~shall also mean and include any electric membership~~

1 corporation organized under Chapter 117, and any electric membership
2 corporation, whether or not organized under the laws of this State,
3 doing business within the State. partnerships. The term does not
4 include a limited liability company.

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

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

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

15 **"§ 105-130.2. Definitions.**

16 The following definitions apply in this Division:

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

18 (1a) ~~Corporation. – This term includes A joint-stock companies or associations~~
19 ~~and company or association, an insurance companies. company, a~~
20 domestic corporation, a foreign corporation, or a limited liability
21 company.

22 (1b) C Corporation. – A corporation that is not an S Corporation.

23 (1c) Department. – The Department of Revenue.

24 (2) Domestic corporation. – A corporation organized under the laws of
25 this State.

26 (3) Fiscal year. – An income year, ending on the last day of any month
27 other than December. A corporation that pursuant to the provisions of
28 the Code has elected to compute its federal income tax liability on the
29 basis of an annual period varying from 52 to 53 weeks shall compute
30 its taxable income under this Division on the basis of the same period
31 used by the corporation in computing its federal income tax liability
32 for the income year.

33 (4) Foreign corporation. – Any corporation other than a domestic
34 corporation.

35 (5) Income year. – The calendar year or the fiscal year upon the basis of
36 which the net income is computed under this Division. If no fiscal year
37 has been established, the income year is the calendar year. In the case
38 of a return made for a fractional part of a year under the provisions of
39 this Division or under rules adopted by the Secretary, the income year
40 is the period for which the return is made.

41 (5a) Limited liability company. – Either a domestic limited liability
42 company organized under Chapter 57C of the General Statutes or a
43 foreign limited liability company authorized by that Chapter to transact
44 business in this State that is classified for federal income tax purposes

1 as a corporation. As applied to a limited liability company that is a
 2 corporation under this Division, the term 'shareholder' means a
 3 member of the limited liability company and the term 'corporate
 4 officer' means a member or manager of the limited liability company.

5 ~~(5a)~~(5b) S Corporation. – Defined in G.S. 105-131(b).

6 ~~(5b)~~(5c) Secretary. – The Secretary of Revenue.

7 ~~(5e)~~(5d) State net income. – Federal taxable income adjusted as provided in
 8 G.S. 105-130.5 and, in the case of a corporation that has income from
 9 business activity that is taxable both within and without this State,
 10 allocated and apportioned to this State as provided in G.S. 105-130.4.

11 ~~(5d)~~(5e) Taxable year. – Income year.

12 (6) Taxpayer. – A corporation subject to the tax imposed by this
 13 Division."

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

16 "**§ 105-134.1. Definitions.**

17 The following definitions apply in this Division:

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

19 (2) Department. – The Department of Revenue.

20 (3) Educational institution. – An educational institution that normally
 21 maintains a regular faculty and curriculum and normally has a
 22 regularly organized body of students in attendance at the place where
 23 its educational activities are carried on.

24 (4) Fiscal year. – Defined in section 441(e) of the Code.

25 (5) Gross income. – Defined in section 61 of the Code.

26 (6) Head of household. – Defined in section 2(b) of the Code.

27 (7) Individual. – A ~~natural person~~ human being.

28 (7a) Limited liability company. – Either a domestic limited liability
 29 company organized under Chapter 57C of the General Statutes or a
 30 foreign limited liability company authorized by that Chapter to transact
 31 business in this State that is classified for federal income tax purposes
 32 as a partnership. As applied to a limited liability company that is a
 33 partnership under this Division, the term 'partner' means a member of
 34 the limited liability company.

35 (8) Married individual. – An individual who is married and is considered
 36 married as provided in section 7703 of the Code.

37 (9) Nonresident individual. – An individual who is not a resident of this
 38 State.

39 (10) North Carolina taxable income. – Defined in G.S. 105-134.5.

40 (10a) Partnership. – A domestic partnership, a foreign partnership, or a
 41 limited liability company.

42 (11) Person. — ~~An individual, a fiduciary, or a partnership. The term~~
 43 ~~includes an officer or employee of a corporation or a member or~~
 44 ~~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.~~"

1 Sec. 16. G.S. 150-164.3(11) reads as rewritten:

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

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

9 **"§ 105-164.29. Application for licenses by wholesale merchants and retailers.**

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

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

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

18 (3) By an executive officer or some other person specifically
19 authorized by the corporation to sign the application, ~~to which shall~~
20 be attached the written if the owner is a corporation. If the
21 application is signed by a person authorized to do so by the
22 corporation, written evidence of the person's ~~authority.~~ authority
23 must be attached to the application.

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

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

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

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

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

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

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

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

16 "**§ 105-230. Charter suspended for failure to report.**

17 ~~If a corporation or a limited liability company required by the provisions of this~~
18 ~~Subchapter fails to file any report or return or to pay any tax or fee, either as a public~~
19 ~~utility (not as an agency of interstate commerce) or as a corporation incorporated under~~
20 ~~the laws of this State, or as a foreign corporation domesticated in or doing business in~~
21 ~~this State, or owning and using a part or all of its capital or plant in this State, fails or~~
22 ~~neglects to make any such report or return or to pay any such tax or fee required by this~~
23 ~~Subchapter for 90 days after the time prescribed in this Subchapter for making such~~
24 ~~report or return, or for paying such tax or fee, the Secretary of Revenue shall certify~~
25 ~~such fact to it is due, the Secretary shall inform the Secretary of State. State of this~~
26 ~~failure. The Secretary of State shall thereupon suspend the articles of incorporation of~~
27 ~~any such corporation which is incorporated under the laws of this State by appropriate~~
28 ~~entry upon the records of his office, or suspend the certificate of authority of any such~~
29 ~~foreign corporation to do business in this State by proper entry. Thereupon all the~~
30 ~~incorporation, articles of organization, or certificate of authority, as appropriate, of the~~
31 ~~corporation or limited liability company. The powers, privileges, and franchises~~
32 ~~conferred upon such the corporation or limited liability company by such the articles of~~
33 ~~incorporation or by such certificate of authority shall cease and determine.~~
34 ~~incorporation, the articles of organization, or the certificate of authority terminate upon~~
35 ~~suspension. The Secretary of State shall immediately notify by mail every such~~
36 ~~domestic or foreign corporation or limited liability company of the action taken by him.~~
37 ~~suspension."~~

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

39 "**§ 105-231. Penalty for exercising corporate functions after cancellation or**
40 **suspension of charter, articles or certificate.**

41 ~~Any person, persons or corporations~~ A person who shall exercise exercises or by any act
42 ~~attempt attempts~~ to exercise any powers, privileges, or franchises under articles of
43 ~~incorporation incorporation, articles of organization, or a certificate of authority after the~~
44 ~~same are suspended, as provided in any section of this Subchapter, it has been suspended~~

1 under G.S. 105-230 shall pay a penalty of not less than one hundred dollars (\$100.00)
2 nor more than one thousand dollars (\$1,000), to be recovered in an action to be brought
3 by the Secretary of Revenue in the Superior Court of Wake County. Any ~~corporate~~ act
4 performed or attempted to be performed during the period of ~~such~~ suspension ~~shall be~~ is
5 invalid and of no effect."

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

7 "**§ 105-232. ~~Corporate rights~~ Rights restored; receivership and liquidation.**

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

21 (b) When the articles of ~~incorporation~~ incorporation, articles of organization, or
22 certificate of authority to do business in this State has been suspended by the Secretary
23 of State ~~as provided in~~ under G.S. 105-230, and the corporation or limited liability
24 company has ceased to operate as a going concern, if there remains property held in the
25 name of the ~~corporation,~~ corporation or limited liability company or undisposed of at the
26 time of the suspension, or there remain future interests that may accrue to the ~~corporation~~
27 corporation, the limited liability company, or its successors or ~~successors, members, or~~
28 stockholders, any ~~stockholder, bona fide creditor, or other~~ interested party may apply to the
29 superior court for the appointment of a receiver. Application for the receiver may be
30 made in a civil action to which all ~~stockholders~~ stockholders, members, or their
31 representatives or next of kin shall be made parties. Stockholders or members whose
32 whereabouts are unknown, unknown ~~stockholders,~~ stockholders or members, unknown
33 heirs and next of kin of deceased stockholders, members, creditors, dealers, and other
34 interested persons may be served by publication. A guardian **ad litem** may be
35 appointed for any ~~stockholders~~ stockholders, members, or their representatives who may
36 ~~be an infant~~ are infants or incompetent. The receiver shall enter into a bond if the court
37 requires one and shall give notice to creditors by publication or otherwise as the court
38 may prescribe. Any creditor who fails to file a claim with the receiver within the time
39 set shall be barred of the right to participate in the distribution of the assets. The
40 receiver may (i) sell the property interests of the corporation or limited liability
41 company upon such terms and in such manner as the court may order, (ii) apply the
42 proceeds to the payment of any debts of the ~~corporation,~~ corporation or limited liability
43 company, and (iii) distribute the remainder among the ~~stockholders~~ stockholders, the
44 members, or their representatives in proportion to their interests in the property

1 interests. Shares due to any stockholder or member who is unknown or whose
2 whereabouts are unknown shall be paid into the office of the clerk of the superior court,
3 to be disbursed according to law. In the event the ~~stock books records~~ of the corporation
4 or limited liability company are lost or do not reflect the ~~latest stock transfers, owners of~~
5 the property interests, the court shall determine the ~~respective interests of the stockholders~~
6 owners from the best evidence available, and the receiver shall be protected in acting in
7 accordance with the court's finding. This proceeding is authorized for the sole purpose
8 of providing a procedure for disposing of the ~~corporate assets of the corporation or~~
9 limited liability company by the payment of ~~corporate debts, its debts including franchise~~
10 taxes which had accrued prior to the suspension of the corporate charter and any other taxes the
11 assessment or collection of which is not barred by a statute of limitations, and by the transfer
12 to ~~the stockholders~~ its stockholders, its members, or their representatives their
13 proportionate shares of ~~the assets owned by the corporation. its assets."~~

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

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

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

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

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

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

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

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

36 "(a) Application. — Every distributor shall obtain a license from the ~~Secretary of~~
37 ~~Revenue. Secretary.~~ To obtain a license, an applicant must file an application with the
38 Secretary of Revenue on a form provided by the Secretary and file with the Secretary a
39 bond or an irrevocable letter of credit. An application shall include the applicant's name
40 and address and any other information required by the ~~Secretary of Revenue. Secretary.~~
41 If the applicant is a corporation, the applicant must either be incorporated in this State or
42 be authorized to transact business in this State. If the applicant is a limited liability
43 company, the applicant must either be organized in this State or be authorized to
44 transact business in this State. If the applicant is a limited partnership, the applicant

1 must either be formed in this State or be authorized to transact business in this State. If
2 the applicant is an individual or a general partnership, the applicant must designate an
3 agent for service of process and give the agent's name and address."

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

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

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

9 **"§ 105-449.4. Application for supplier's license.**

10 To obtain a license as a supplier, an applicant must file an application with the
11 Secretary on a form provided by the Secretary and file with the Secretary a bond or an
12 irrevocable letter of credit. An application shall include the applicant's name and
13 address and any other information required by the Secretary. If the applicant is a
14 corporation, the applicant must either be incorporated in this State or be authorized to
15 transact business in this State. If the applicant is a limited liability company, the
16 applicant must either be organized in this State or be authorized to transact business in
17 this State. If the applicant is a limited partnership, the applicant must either be formed
18 in this State or be authorized to transact business in this State. If the applicant is an
19 individual or a general partnership, the applicant must designate an agent for service of
20 process and give the agent's name and address."

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

22 "(2a) Person. —~~An individual, a firm, a partnership, an association, a~~
23 ~~corporation, or any other organization or group acting as a unit.~~
24 Defined in G.S. 105-228.90."

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

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