

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 439
PROPOSED COMMITTEE SUBSTITUTE S439-CSTG-27 [v.1]

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Short Title: Amend & Restate NC Limited Liability Co. Act.

(Public)

Sponsors:

Referred to:

March 27, 2013

A BILL TO BE ENTITLED
AN ACT TO AMEND AND RESTATE THE NORTH CAROLINA LIMITED LIABILITY
COMPANY ACT AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 57C of the General Statutes is repealed.

SECTION 2. The General Statutes are amended by adding a new Chapter to read:

"Chapter 57D.

"North Carolina Limited Liability Company Act.

"Article 1.

"General Provisions.

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

"§ 57D-1-01. Short title.

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

"§ 57D-1-02. Governing law; jurisdiction of the superior courts; intent; reservation of power to amend or repeal.

(a) This Chapter and any other applicable laws of this State govern (i) the internal affairs of every LLC, including the interpretation, construction, and enforcement of operating agreements and determining the rights and duties of interest owners, managers, and other company officials, and (ii) any liability that interest owners or managers or other company officials may have for the liabilities of the LLC.

(b) The superior courts of this State have jurisdiction to enforce the provisions of this Chapter.

(c) The General Assembly may amend or repeal all or any part of this Chapter at any time, and all LLCs and the rights and duties of interest owners, managers, and other company officials subject to this Chapter will be subject to any such amendment or repeal. Except as otherwise provided in this Chapter, all amendments of this Chapter apply to all LLCs, foreign LLCs, interest owners, and managers and other company officials, including those LLCs and foreign LLCs in existence, or person having such interests and status, at the time of the enactment of any such amendment.

(d) Each provision of this Chapter is severable, such that if any provision, including any clause of any provision, of this Chapter or application thereof to any person or in a particular context is held to be invalid, such invalidity will not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application.

"§ 57D-1-03. Definitions.

Unless otherwise specifically provided, the following definitions apply in this Chapter:



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- (1) Approve. – With respect to a manager or other company official, member, or organizer and a decision or other action to be taken by the managers or other applicable company officials, members, or organizers, as the case may be, (i) the affirmative vote of that person at a meeting of the managers or other applicable company officials, members, or organizers, as applicable, or (ii) any other expression of assent to the action to be taken that is made in the manner or form required to establish the assent of the members to amendments of the operating agreement.
- (2) Articles of organization. – The document filed under G.S. 57D-2-20 (or former G.S. 57C-2-20 for LLCs formed before January 1, 2014) for the purpose of forming an LLC, as amended or restated.
- (3) Business. – Any lawful trade, investment, or other purpose or activity, whether or not conducted or undertaken for profit, except that the term "business," as used in Article 7 of this Chapter, or to which reference is otherwise made in this Chapter to a foreign LLC "transacting business" (or is authorized or required to be authorized to "transact business") in this State, has the same meaning in that context as applied in Article 15 of Chapter 55 of the General Statutes.
- (4) Capital interest. – An interest owner's interest in or share of the owners' equity of the LLC, which may be based on the method of accounting consistently applied under which the LLC maintains its financial records to be made available to the members under G.S. 57D-3-04(a)(2).
- (5) Company official. – Any person exercising any management authority over the limited liability company, whether the person is a manager or referred to as a manager, director, or officer or given any other title.
- (6) Contribution amount. – The fair market value, net of liabilities assumed (or to which any property contributed to the LLC is subject, but not in excess of the fair market value of the property that is subject to the liability) or other consideration paid by the LLC, of contributions in any form described in G.S. 57D-4-01 made in respect of an economic interest, determined as of the time the contribution is made, reduced by any money or other property or services promised to be transferred or rendered to or on behalf of the LLC in respect of the economic interest that are discharged without performance.
- (7) Corporation. – A domestic corporation or a foreign corporation, as those terms are defined in G.S. 55-1-40.
- (8) Debtor in bankruptcy – A person who is the subject of either of the following:
- a. An order for relief under Title 11 of the United States Code or a successor statute of general application.
- b. A comparable order under federal, state, or foreign law governing insolvency.
- (9) Distribution. – Except as provided in the last sentence of this definition of distribution with respect to G.S. 57D-4-05, 57D-4-06, and 57D-6-12, the direct or indirect transfer of money or other property to, or incurrence of indebtedness by, an LLC for the benefit of an interest owner in respect of the interest owner's ownership interest. The amount of a distribution is the fair market value of the property distributed net of liabilities assumed or other consideration paid by the interest owner (or to which any property distributed to the interest owner is subject, but not in excess of the fair market value of the property that is subject to the liability), determined as of the time the distribution is made. As used in G.S. 57D-4-05, 57D-4-06, and

- 57D-6-12, "distribution" does not include payments made to, or an account of, an interest owner that constitute compensation for services and does not include payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.
- (10) Economic interest. – The proprietary interest of an interest owner in the capital, income, losses, credits, and other economic rights and interests of a limited liability company, including the right of the owner of the interest to receive distributions from the limited liability company.
- (11) Economic interest owner. – A person who owns an economic interest but is not a member.
- (12) Entity. – A corporation, limited liability company, partnership (including a limited partnership), unincorporated association, trust, estate, government or governmental agency, instrumentality, or other entity.
- (13) Foreign LLC. – An unincorporated entity organized under the law of (i) a state other than this State that is denominated thereunder as a limited liability company or (ii) a foreign jurisdiction other than a state, and the statute under which it is organized is substantially similar to the limited liability company statute of any state and is not more appropriately characterized as a corporation, partnership, or trust.
- (14) Individual. – A human being.
- (15) Interest owner. – A member or an economic interest owner.
- (16) LLC. – An entity formed under this Chapter (or former Chapter 57C of the General Statutes) that has not become another entity or form of entity by merger, conversion, or other means.
- (17) Liabilities, debts, and obligations. – Have the same meaning and are used interchangeably throughout this Chapter. Reference to "liabilities," "debts," or "obligations," whether individually or in any combination, means all liabilities, debts, and obligations, whether arising in contract, tort, or other applicable law.
- (18) Limited liability company. – An LLC or foreign LLC.
- (19) Limited partnership. – A domestic limited partnership or a foreign limited partnership as those terms are defined in G.S. 59-102.
- (20) Manager. – Has the following meanings: (i) with respect to an LLC, any person designated as a manager as provided in the operating agreement or, if applicable, in G.S. 57D-3-20(d) and (ii) with respect to a foreign LLC, any person designated as a manager under the law of the jurisdiction in which the foreign LLC is organized.
- (21) Member. – A person who has been admitted as a member of the LLC as provided in the operating agreement or G.S. 57D-3-01 or who was a member of the LLC immediately before the repeal of Chapter 57C of the General Statutes until the person ceases to be a member as provided in the operating agreement or G.S. 57D-3-02 or, with respect to a foreign LLC, a person who has been admitted as a member of the foreign LLC under the law of the jurisdiction in which the foreign LLC is organized until the person ceases to be a member under that law.
- (22) Nonprofit corporation. – A domestic corporation or a foreign corporation as those terms are defined in G.S. 55A-1-40.
- (23) Operating agreement. – Any agreement concerning the LLC or any ownership interest in the LLC to which each interest owner is a party or is otherwise bound as an interest owner. Subject to other controlling law, the operating agreement may be in any form, including written, oral, or implied,

or any combination thereof. The operating agreement may specify the form that the operating agreement must take, in which case any purported amendment to the operating agreement or other agreement expressed in a nonconforming manner will not be deemed to be part of the operating agreement and will not be enforceable to the extent it would be part of the operating agreement if it were in proper form. Subject to G.S. 57D-2-21 and the other provisions of this Chapter governing articles of organization, the articles of organization are to be deemed to be, or be part of, the operating agreement. If the LLC has only one interest owner and no operating agreement to which another person is a party, then any document or record intended by the interest owner to serve as the operating agreement will be the operating agreement.

(24) Organizer. – A person who executes the articles of organization in the capacity of an organizer.

(25) Ownership interest. – All of an interest owner's rights and obligations as an interest owner in an LLC, including (i) any economic interest, (ii) any right to participate in the management, or approve actions proposed by persons responsible for the management of the LLC, (iii) any right to bring a derivative action, and (iv) any right to inspect the books and records of or receive information from the LLC.

(26) Person. – An individual or an entity.

(27) Principal office. – The principal executive office of the limited liability company as stated in its most recent annual report filed by the Secretary of State or, if the limited liability company has never filed an annual report, in its articles of organization or application for a certificate of authority.

(28) Proceeding. – Any civil or criminal proceeding or other action pending before any court of law or other governmental body or agency or any arbitration proceeding.

(29) Professional service. – Has the meaning provided in G.S. 55B-2.

(30) Professional limited liability company. – A limited liability company subject to G.S. 57D-2-02.

(31) Record. – When used as a noun, information that is inscribed on a tangible medium or that is stated in an electronic or other medium and is retrievable in readable form.

(32) Secretary of State. – The Secretary of State of North Carolina.

(33) State. – A state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, and "this State" refers to the State of North Carolina.

(34) Transfer. – As a noun, the transfer of legal, equitable, or beneficial ownership by sale, exchange, assignment, gift, donation, grant, or other conveyance or disposition of any kind, whether voluntary or involuntary, including transfers by operation of law or legal process and includes, with respect to the ownership interest of an interest owner for purposes of G.S. 57D-3-02(a)(3), any (i) appointment of a receiver, trustee, liquidator, custodian, or other similar official for that interest owner or all or any part of the property of that interest owner under any law of bankruptcy or insolvency; (ii) gift, donation, transfer by will or intestacy, or other similar type of transfer or disposition, whether during one's life or because of death; (iii) appointment of a personal or other legal representative or other person serving in a similar capacity of a deceased interest owner; (iv) appointment of a guardian or other person serving in a similar capacity of an interest

owner who has been adjudicated to be incompetent by a court of competent jurisdiction; and (v) other transfer or disposition to a spouse or former spouse (including by reason of a separation agreement or divorce, equitable, community or marital property distribution, judicial decree, or other court order concerning the division or partition of property between spouses or former spouses or other persons); and, as a verb, the act of making any transfer.

"§§ 57D-1-04 through 57D-1-19: Reserved for future codification purposes.

"Part 2. Filing Documents.

"§ 57D-1-20. Filing requirements.

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed as provided in Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a limited liability company must be executed by one of the following:

(1) A manager or other company official.

(2) If the document is the articles of organization, a person acting in the capacity of an organizer or a member as provided in G.S. 57D-2-21(a)(2).

(3) If the LLC has never had any members, an organizer.

(4) If the LLC is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

"§ 57D-1-21. Forms.

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

(1) An application for a certificate of existence.

(2) A foreign LLC's application for a certificate of authority to transact business in this State.

(3) A foreign LLC's application for a certificate of withdrawal.

(b) If the Secretary of State so requires, use of the forms listed in subsection (a) of this section is mandatory.

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

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

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

<u>Document</u>	<u>Fee</u>
(1) <u>Articles of organization</u>	<u>\$125.00</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 change of registered agent or registered office or both</u>	<u>5.00</u>
(7) <u>Agent's statement of change of registered office for each affected limited liability company</u>	<u>5.00</u>
(8) <u>Agent's statement of resignation</u>	<u>No fee</u>
(9) <u>Designation of registered agent or registered office or both</u>	<u>5.00</u>
(10) <u>Amendment of articles of organization</u>	<u>50.00</u>
(11) <u>Restated articles of organization without amendment of articles</u>	<u>10.00</u>
(12) <u>Restated articles of organization with amendment of articles</u>	<u>50.00</u>
(13) <u>Articles of conversion (other than articles of conversion included as part of another document)</u>	<u>50.00</u>

1	<u>(14) Articles of merger</u>	<u>50.00</u>
2	<u>(15) Articles of dissolution</u>	<u>30.00</u>
3	<u>(16) Cancellation of articles of dissolution</u>	<u>10.00</u>
4	<u>(17) Certificate of administrative dissolution</u>	<u>No fee</u>
5	<u>(18) Application for reinstatement following administrative dissolution</u>	<u>100.00</u>
6	<u>(19) Certificate of reinstatement</u>	<u>No fee</u>
7	<u>(20) Certificate of judicial dissolution</u>	<u>No fee</u>
8	<u>(21) Application for certificate of authority</u>	<u>250.00</u>
9	<u>(22) Application for amended certificate of authority</u>	<u>50.00</u>
10	<u>(23) Application for certificate of withdrawal</u>	<u>10.00</u>
11	<u>(24) Certificate of revocation of authority to transact business</u>	<u>No fee</u>
12	<u>(25) Articles of correction</u>	<u>10.00</u>
13	<u>(26) Application for certificate of existence or authorization (paper)</u>	<u>15.00</u>
14	<u>(27) Application for certificate of existence or authorization (electronic)</u>	<u>10.00</u>
15	<u>(28) Annual report</u>	<u>200.00</u>
16	<u>(29) Any other document required or permitted to be filed by this Chapter</u>	<u>10.00</u>

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

20 (c) The Secretary of State shall collect the following fees for copying and certifying a
 21 copy of any filed document relating to a limited liability company:

- 22 (1) One dollar (\$1.00) a page for copying.
- 23 (2) Fifteen dollars (\$15.00) for a paper certificate.
- 24 (3) Ten dollars (\$10.00) for an electronic certificate.

25 **"§ 57D-1-23. Execution by judicial act.**

26 Any person who is adversely affected by the failure or refusal of any person to execute and
 27 deliver to the Secretary of State for filing any document to be filed under this Chapter may
 28 petition the superior court in the county where the limited liability company's principal office
 29 or, if none in this State, its registered office is or was last located or, if there is no such office,
 30 in the County of Wake to direct the execution and delivery to the Secretary of State for filing of
 31 the document. If the court finds that it is proper for the document to be executed and delivered
 32 to the Secretary of State for filing and there has been failure or refusal by the applicable
 33 company officials to do so, it shall order the Secretary of State to make the filing.

34 **"§ 57D-1-24. Certificate of existence; certificate of authorization.**

35 (a) Anyone may apply to the Secretary of State for a certificate of existence for an LLC
 36 or a certificate of authorization for a foreign LLC.

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

- 38 (1) The limited liability company's name and, in the case of a foreign LLC, any
 39 different name that the foreign LLC is authorized under Article 3 of Chapter
 40 55D of the General Statutes to use to transact business in this State, as
 41 provided in the foreign LLC's certificate of authority.
- 42 (2) That (i) the articles of organization for the LLC have been filed and are in
 43 effect and the date on which the filed articles of organization became
 44 effective or (ii) a certificate of authority has been issued to the foreign LLC
 45 and is in effect and the date on which the certificate of authority became
 46 effective.
- 47 (3) That the articles of organization of an LLC or the certificate of authority of a
 48 foreign LLC are not suspended under G.S. 57D-1-32(a) (or for limited
 49 liability companies formed before January 1, 2014, former
 50 G.S. 57C-1-32(a)) for failure to answer interrogatories propounded by the

Secretary of State or under G.S.105-230 for failure to pay a tax or fee or file a report or return.

(4) That the LLC has not been administratively dissolved under G.S. 57D-6-06 (or for limited liability companies formed before January 1, 2014, former G.S. 57C-6-03) and no decree of judicial dissolution has been filed under G.S. 57D-6-05 (or, for limited liability companies formed before January 1, 2014, former G.S. 57C-6-02) or, with respect to a foreign LLC, no application for a certificate of withdrawal or a certificate of revocation has been filed under Article 7 of this Chapter (or, for limited liability companies formed before January 1, 2014, former Article 7 of Chapter 57C of the General Statutes).

(5) That, in the case of an LLC, articles of dissolution have not been filed nor have articles of merger or conversion been filed causing it to merge or convert into another entity or form of entity.

(6) Other facts of record in the Office of the Secretary of State pertaining to the limited liability company that may be requested by the applicant.

(c) A certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence as to the accuracy of its contents.

"§§ 57D-1-25 through 57D-1-29: Reserved for future codification purposes.

"Part 3. Secretary of State.

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

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

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

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

"§ 57D-1-32. Penalties imposed on limited liability companies for failure to answer interrogatories.

(a) In addition to the recourse that the Secretary of State may have under G.S. 57D-6-06 and Part 3 of Article 7 of this Chapter to administratively dissolve an LLC or revoke the certificate of authority of the foreign LLC, if a limited liability company knowingly fails or refuses to answer truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter, the Secretary of State may suspend its articles of organization or its certificate of authority to do business in this State. The Secretary of State shall immediately notify by mail the limited liability company of its suspension. The powers, privileges, and franchises conferred on the limited liability company by the articles of organization or the certificate of authority terminate upon their suspension. Any act performed or attempted to be performed during the period of suspension is invalid and of no effect unless and to the extent the Secretary of State reinstates the limited liability company.

(b) The Secretary of State shall reinstate a limited liability company upon the limited liability company fully complying with its obligations under G.S. 57D-1-31, paying all state taxes, fees, and penalties due from it (which total amount due may be computed, for years before and after the suspension, in the same manner as if the suspension had not taken place), and paying to the Secretary of State twenty-five dollars (\$25.00) to cover the cost of reinstatement. Upon reinstatement of an LLC's articles of organization or a foreign LLC's certificate of authority by the Secretary of State, (i) the limited liability company may again exercise its rights, privileges, and franchises in this State and (ii) the Secretary of State shall make the appropriate entry thereof on the records of the Secretary of State. The entry of reinstatement in the records of the Secretary of State relates back to and takes effect as of the date of the suspension by the Secretary of State, and the limited liability company may resume conducting its business as if the suspension had never occurred, subject to the rights of any person who relied, to that person's prejudice, on the suspension. The Secretary of State shall immediately notify by mail the limited liability company of the reinstatement.

(c) When the articles of organization or certificate of authority of a limited liability company have or has been suspended by the Secretary of State under subsection (a) of this section and the limited liability company has ceased to operate as a going concern, if there remains property held in the name of the limited liability company that is not disposed at the time of the suspension, or there remain future interests that may accrue to the limited liability company, its successor, or its interest owners, then any interested party may apply to the superior court for the appointment of a receiver. Application for the receiver may be made in a civil action to which all interest owners are made parties. The applicant may serve persons whom the applicant either is unable to locate or are unknown by publication made in the same manner as the publication of notice under G.S. 57D-6-11. A guardian ad litem may be appointed for any interest owners who are infants or incompetent. The receiver shall enter into a bond if the court requires one and shall give notice to creditors by publication or otherwise as the court may prescribe. Any creditor who fails to file a claim with the receiver within the time set will be barred of the right to participate in the distribution of the assets. The receiver may (i) sell the property interests of the limited liability company on such terms and in such manner as the court may order, (ii) apply the proceeds to the payments of any debt of the limited liability company, and (iii) distribute the remainder among the interest owners in accordance with the manner in which liquidating distributions are to be made by the limited liability company. Amounts due to any interest owner who is unknown or whose whereabouts are unknown are to be paid to the office of the clerk of the superior court and disbursed according to law. If the records of the limited liability company are lost or do not reflect the owners of the property interests, the court shall determine the owners from the best evidence available, and the receiver will be protected in acting in accordance with the court's finding. This proceeding is authorized for the sole purpose of providing a procedure for disposing of the assets of the limited liability company by payment of its debts and by the transfer to its interest owners, or their representatives, of their shares of the limited liability company's remaining assets.

(d) Each manager or other company official of a limited liability company who fails or refuses within the time prescribed by this Chapter to answer truthfully and fully interrogatories propounded to the manager or other company official by the Secretary of State in accordance with the provisions of this Chapter shall be guilty of a Class 1 misdemeanor.

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

Interrogatories propounded by the Secretary of State and the answers thereto will not be open to public inspection nor shall the Secretary of State disclose any facts or information obtained therefrom, except to the extent applicable law requires the Secretary of State to make the information public or the interrogatories or the answers thereto are required for evidence in any proceedings by this State.

"Article 2.

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

"Part 1. Purposes and Powers.

"§ 57D-2-01. Nature, purposes, duration, existence.

(a) An LLC is an entity distinct from its interest owners.

(b) An LLC has perpetual duration.

(c) Subject to subsection (d) of this section, an LLC may engage in any lawful business.

(d) A limited liability company engaging in a business that is subject to regulation under another statute of this State may be formed or authorized to transact business under this Chapter if not precluded by the other statute and is otherwise subject to the application of the other statute, which in the case of a limited liability company rendering a professional service requires giving effect to G.S. 57D-2-02.

(e) After the dissolution of an LLC, the LLC continues its existence but shall wind up pursuant to G.S. 57D-6-07.

"§ 57D-2-02. Professional limited liability companies.

(a) Except as set forth in this subsection, a limited liability company may engage in rendering professional services only to the extent that it would be able to render those services were it a corporation, including, as applicable, complying with Chapter 55B of the General Statutes and the statutes referenced in the definition of "professional service" in G.S. 55B-2(6). Chapter 55B of the General Statutes and each statute referenced therein are deemed amended, and to apply with such changes as are necessary to cause them to be applicable to limited liability companies in the same degree as for corporations but subject to any provisions contained herein pursuant to which limited liability companies, or their members, managers, and other company officials, are treated differently from corporations, or their shareholders, directors, and officers.

For purposes of applying the provisions, conditions, and limitations of Chapter 55B of the General Statutes and the statutes referenced therein to limited liability companies that engage in rendering professional services, unless the context specifically requires otherwise, the following rules of construction shall apply:

(1) References to Chapter 55 of the General Statutes are treated as references to this Chapter, and references to a "corporation" or "foreign corporation" are treated as references to an LLC or foreign LLC, respectively.

(2) References to "articles of incorporation" are treated as references to articles of organization.

(3) The persons executing the articles of organization of an LLC are treated in the same manner as the incorporators of a professional corporation.

(4) References to "directors" are treated as references to company officials having equal or greater authority in the management of a limited liability company as directors of a domestic corporation or foreign corporation, as the case may be.

(5) References to "officers" are treated as references to company officials whose authority to manage the limited liability company is equal to or greater than that exercised by officers of a domestic corporation.

(6) A professional limited liability company is not required to have more than one company official who would be treated as a director, officer, or both under Chapter 55B of the General Statutes.

(7) A manager or other company official who has the authority of both a director and an officer were the limited liability company or a corporation is to be treated as holding both positions for purposes of applying Chapter 55B of the General Statutes to the limited liability company.

(8) References to "shares" of a shareholder are treated as references to the ownership interest of an interest owner and, where the context so indicates or requires, a portion of an interest owner's ownership interest.

(9) References to "shareholders" are treated as references to interest owners.

(10) The name of a limited liability company that is to render a professional service and is subject to this section shall comply with Article 3 of Chapter 55D of the General Statutes and, in addition, shall contain the word "Professional" or the abbreviation "P.L.L.C." or "PLLC".

(b) Nothing in this Chapter abolishes, modifies, restricts, limits, or alters the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, the standards of professional conduct applicable to the rendering of the services, or any responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A member or manager or other company official of a professional limited liability company is not individually liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of, or chargeable to, the professional limited liability company that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed by another member, manager or other company official, employee, agent, or other representative of the professional limited liability company, except nothing in this Chapter affects the liability of a member or manager or other company official of a professional limited liability company for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services.

"§ 57D-2-03. Powers of the LLC.

Unless this Chapter provides otherwise or the powers of the LLC are limited under the operating agreement, an LLC has the same powers as an individual or a domestic corporation to do all things necessary or convenient to carry out its business.

"§§ 57C-2-04 through 57C-2-19: Reserved for future codification purposes.

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

"§ 57D-2-20. Formation.

(a) One or more persons may cause an LLC to be formed by delivering executed articles of organization to the Secretary of State for filing in accordance with this Chapter and Chapter 55D of the General Statutes. An LLC may also be formed through the conversion of another eligible entity into an LLC pursuant to Part 2 of Article 9 of this Chapter.

(b) An LLC is formed at the time the articles of organization filed by the Secretary of State become effective. Filing of the articles of organization by the Secretary of State is conclusive proof that all conditions to the formation of the LLC have been satisfied except in a proceeding by the State to cancel or revoke the articles of organization or involuntarily dissolve the LLC.

(c) If initial members are not identified in the articles of organization of an LLC in the manner provided in G.S. 57D-3-01(a)(1), the organizer or organizers shall either identify the initial members of the LLC or dissolve the LLC. Unless otherwise provided in the articles of organization, all decisions to be made by the organizers require the approval of a majority of the organizers.

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

(a) The articles of organization must include the following information:

(1) A name of the LLC that satisfies the provisions of G.S. 55D-20 and G.S. 55D-21.

(2) The name and address of each person executing the articles of organization and whether the person is executing the articles of organization in the capacity of a member or an organizer.

(3) The street address, and the mailing address if different from the street address, of the LLC's initial registered office, the county in which the initial registered office is located, and the name of the LLC's initial registered agent at that address.

(4) The street address, and the mailing address if different from the street address, of the LLC's principal office, if any, and the county in which the principal office, if any, is located.

(5) If the LLC is to render professional services and is subject to G.S. 57D-2-02 as a professional limited liability company, the professional services to be rendered by the LLC.

(b) The articles of organization may include any other provision that is or may be included in an operating agreement.

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

(a) An LLC may amend its articles of organization to add or change a provision that is required or permitted in the articles of organization or to delete a provision that is not required to be included in the articles of organization. Whether a provision is required or permitted in the articles of organization is determined as of the effective date of the amendment. The LLC shall amend or otherwise correct its articles of organization when (i) there is a change in the name of the LLC or (ii) they contain an inaccurate statement.

(b) Any amendment to the articles of organization must be approved by either of the following:

(1) All of the members.

(2) If no member of the LLC has been identified in the manner provided in this Chapter, a majority of the organizers.

"§ 57D-2-23. Restated articles of organization.

(a) An LLC may restate its articles of organization at any time.

(b) The restated articles of organization may include one or more amendments to the articles of organization. The restated articles of organization shall include a statement of the address of the current registered office and the name of the current registered agent of the LLC.

(c) An LLC restating its articles of organization must deliver to the Secretary of State for filing articles of restatement that include the following:

(1) The name of the LLC.

(2) Attached as an exhibit thereto, the text of the restated articles of organization.

(3) A statement that the restated articles of organization do not contain an amendment or, if the articles of organization do contain an amendment, a statement that there is an amendment that was duly adopted by the LLC.

(d) Restated articles of organization supersede the original articles of organization as theretofore amended.

(e) The Secretary of State may certify restated articles of organization as the articles of organization currently in effect without including the other information required by subsection (c) of this section.

"§ 57D-2-24. Annual report for Secretary of State.

(a) Excluding professional limited liability companies governed by G.S. 57D-2-02, each LLC and each foreign LLC authorized to transact business in this State must deliver to the Secretary of State for filing annual reports on a form prescribed by, and in the manner required by, the Secretary of State and as otherwise provided in subsection (b) of this section. Each annual report must specify the year for which the report applies and provide the information required by this subsection. The information must be current as of the date the limited liability company completes the report. If the information in the limited liability company's most recent

annual report has not changed, the limited liability company may certify in its annual report that the information has not changed in lieu of restating the information.

The following information must be included in each annual report:

- (1) The name of the limited liability company and, in the case of a foreign LLC, any different name that the foreign LLC is authorized under Article 3 of Chapter 55D of the General Statutes to use to transact business in this State, as provided in the foreign LLC's certificate of authority.
- (2) In the case of a foreign LLC, the name of the jurisdiction under whose law the foreign LLC is organized.
- (3) The street address, and the mailing address if different from the street address, of the limited liability company's registered office in the State, the county in which the registered office is located, the name of its registered agent at that office, and a statement of any change of the registered office or registered agent.
- (4) The address and telephone number of its principal office.
- (5) The names, titles, and business addresses of the limited liability company's principal company officials.
- (6) A brief description of the nature of its business.

(b) The Secretary of State must notify limited liability companies of the annual report filing requirement. The first annual report of a limited liability company is due to be delivered to the Secretary of State by April 15 of the year following (i) in the case of an LLC, the calendar year in which the LLC's articles of organization or articles of organization and conversion filed by the Secretary of State become effective or (ii) in the case of a foreign LLC, the calendar year in which the Secretary of State issues to the foreign LLC a certificate of authority to transact business in this State.

The limited liability company shall deliver an annual report by April 15 of each subsequent year until (i) in the case of an LLC, the effective date of its articles of dissolution filed by the Secretary of State or the effective date of either a certificate of dissolution for an LLC that is not reinstated under G.S. 57D-6-06(c) or a decree of dissolution that is filed by the Secretary of State as provided in G.S. 57D-6-05; (ii) in the case of a foreign LLC, the foreign LLC receives a certificate of withdrawal from the Secretary of State or the Secretary of State revokes the foreign LLC's certificate of authority under Part 3 of Article 7 of this Chapter; or (iii) in the case of either an LLC or foreign LLC, the effective date of a merger or conversion under Article 9 of this Chapter in which the limited liability company is a merging entity or a converting entity but not the surviving entity.

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

(d) Amendments to any previously filed annual report may be delivered for filing by the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report.

"§§ 57D-2-25 through 57D-2-29: Reserved for future codification purposes.

"Part 3. Operating Agreement.

"§ 57D-2-30. Scope, function, and limitations of operating agreements.

(a) The operating agreement governs the internal affairs of an LLC and the rights, duties, and obligations of (i) the interest owners, and the rights of any other persons to become interest owners, in relation to each other, the LLC, and their ownership interests or rights to acquire ownership interests and (ii) the company officials in relation to each other, the LLC, and the interest owners. Subject to the limitations set forth in subsections (b), (c), (d) and (e) of

1 this section, the provisions of this Chapter and common law will apply only to the extent
2 contrary or inconsistent provisions are not made in, or are not otherwise supplanted, varied,
3 disclaimed, or nullified by, the operating agreement. The provisions of the operating agreement
4 are severable and each will apply to the extent it is valid and enforceable.

5 (b) The operating agreement may not supplant, vary, disclaim, or nullify the provisions
6 of this Chapter or their application to the extent the provisions do any of the following:

- 7 (1) Concern the functions of, including the filings and payments to be made, and
8 the manner in which they are to be made by or to, the Secretary of State, the
9 Attorney General, the courts, or any other governmental official, agency, or
10 authority, including Article 1 of this Chapter, G.S. 57D-2-21(a),
11 57D-2-22(a), 57D-2-23, 57D-2-24, 57D-2-40, 57D-6-02(1),
12 57D-6-03(a)-(c), 57D-6-04, 57D-6-05, 57D-6-06, the last sentence of
13 G.S. 57D-6-07(c), 57D-6-09, and 57D-10-01; except, the operating
14 agreement may provide the forum in which disputes concerning the LLC or
15 the rights and duties of interest owners and other parties to the operating
16 agreement are to be resolved.
- 17 (2) Apply to persons who are not parties to, or otherwise bound by, the
18 operating agreement, including the extent to which G.S. 57D-5-03 may be
19 applicable to such persons or for which they may be entitled to recovery or
20 other relief thereunder, or the extent to which G.S. 57D-1-02, 57D-6-08(1),
21 57D-6-10, 57D-6-11, 57D-6-12, and 57D-6-13 are applicable to creditors or
22 such persons.
- 23 (3) Diminish the rights and protections of the LLC under G.S. 57D-4-05 and
24 G.S. 57D-4-06.
- 25 (4) Diminish the rights and protections of members under G.S. 57D-3-04(a),
26 except as permitted by and otherwise subject to subsections (b) through (f)
27 of G.S. 57D-3-04.
- 28 (5) Eliminate the right of a member to bring a derivative action under Article 8
29 of this Chapter unless the operating agreement provides an alternative
30 remedy, which may include the right to bring a direct action in lieu of a
31 derivative action or modifying the procedures provided in Article 8 of this
32 Chapter governing derivative actions.
- 33 (6) Eliminate the right of a member to bring an action to have the LLC judicially
34 dissolved under clause (i) in G.S. 57D-6-02(2) unless the operating
35 agreement provides an alternative remedy.
- 36 (7) Are set forth in this section, G.S. 57D-1-01, 57D-2-01(d), 57D-2-02,
37 57D-2-03, 57D-2-20, 57D-3-23, 57D-5-01, 57D-6-01, clause (ii) of
38 57D-6-02(2), 57D-6-07(b) and (f), and all sections and subsections of Article
39 9 of this Chapter other than G.S. 57D-9-21(b), (c) and (e), 57D-9-22(b),
40 57D-9-23(b), 57D-9-31(b)-(e), 57D-9-41(b), (d) and (f), and 57D-9-42(b).

41 (c) Oral or implied provisions in the operating agreement may not supplant, vary,
42 disclaim, or nullify any contrary or inconsistent written provisions in the operating agreement
43 to the detriment of the rights of persons who are not parties to or otherwise bound by the
44 operating agreement.

45 (d) In the event of a conflict between the operating agreement and a provision in any
46 document filed by the LLC with the Secretary of State:

- 47 (1) The operating agreement shall prevail as to members, managers and
48 company officials.
- 49 (2) The document filed by the LLC with the Secretary of State shall prevail as to
50 persons who are not parties to or otherwise bound by the operating

1 agreement to the extent that they reasonably rely on the document filed by
2 the LLC with the Secretary of State.

3 (e) Except as provided in or permitted by this Chapter or other applicable law, the laws
4 of agency and contract, including the implied contractual covenant of good faith and fair
5 dealing and the requirement that the terms of an operating agreement not be unconscionable at
6 the time they are made, govern the administration and enforcement of operating agreements.

7 **"§ 57D-2-31. Parties to, and other persons subject to or having rights under, the**
8 **operating agreement.**

9 (a) The LLC is deemed to be a party to the operating agreement and, therefore, is bound
10 by and may enforce the provisions thereunder applicable to the LLC.

11 (b) A person who becomes an interest owner is deemed to assent to, and is bound by,
12 and, subject to Article 5 of this Chapter, is entitled to the rights applicable to the interest
13 owner's ownership interest provided under, and is otherwise deemed to be a party to, the
14 operating agreement.

15 (c) A person need not be an interest owner to be a party to the operating agreement.

16 (d) An operating agreement may require amendments to the operating agreement be
17 approved by persons who are not interest owners and may provide rights to persons who are not
18 interest owners and not otherwise parties to the operating agreement.

19 (e) Any person bound by the operating agreement is bound by any amendment adopted,
20 as provided in the operating agreement.

21 **"§ 57D-2-32. Remedies for breach of operating agreement or occurrence of identified**
22 **events; reliance on operating agreement.**

23 (a) An operating agreement may subject interest owners and other persons who are
24 parties to or otherwise bound by the operating agreement to specified remedies for breach of
25 the operating agreement or the occurrence of a specified event. Such remedies may include the
26 recovery of reasonable attorney fees, the assessment of interest without the assessment being
27 subject to the laws of usury, and the imposition of penalties that would otherwise be
28 unenforceable as stipulated or liquidated damages.

29 (b) Unless otherwise provided in the operating agreement, an interest owner or other
30 person who is a party to or bound by the operating agreement will not be liable to the LLC or
31 an interest owner or other person who is a party to the operating agreement for that person's
32 reliance on the provisions of the operating agreement.

33 **"Part 4. Registered Office and Registered Agent.**

34 **"§ 57D-2-40. Registered office and registered agent.**

35 Each LLC must maintain a registered office and registered agent as required by Article 4 of
36 Chapter 55D of the General Statutes and is subject to service on the Secretary of State under
37 that Article.

38 **"§§ 57D-2-41 through 57D-2-49: Reserved for future codification purposes.**

39 **"Article 3.**

40 **"Membership and Management.**

41 **"Part 1. Membership.**

42 **"§ 57D-3-01. Admission of members; economic interest owners.**

43 (a) A person becomes a member through the following:

44 (1) In the case of a person executing the articles of organization in the capacity
45 of a member as provided in G.S. 57D-2-21(a)(2), or otherwise being named
46 in the articles of organization as a member, at the time the articles of
47 organization become effective under G.S. 55D-13.

48 (2) In the case of a person acquiring an ownership interest from the LLC, (i)
49 upon being identified as a member by the organizers as provided in
50 G.S. 57D-2-20(c) or (ii) upon the unanimous approval of the members as
51 provided in G.S. 57D-3-03(2).

- 1 (3) In the case of an economic interest owner, in the manner provided in
2 G.S. 57D-5-04(a) or G.S. 57D-6-01(3).
- 3 (4) In the case of an eligible entity converting or merging into the LLC, as
4 provided in the plan of conversion or plan of merger upon such plan
5 becoming effective as provided in G.S. 57D-9-23(a)(5) or
6 G.S. 57D-9-43(a)(6).
- 7 (b) A person becomes an economic interest owner through the following:
- 8 (1) In the case of a person acquiring an economic interest from the LLC, upon
9 the unanimous approval of the members.
- 10 (2) In the case of a person acquiring an economic interest, or portion thereof,
11 from an interest owner, as provided in G.S. 57D-5-02.
- 12 (3) In the case of an eligible entity converting or merging into the LLC, as
13 provided in the plan of conversion or plan of merger upon such plan
14 becoming effective as provided in G.S. 57D-9-23(a)(5) or
15 G.S. 57D-9-43(a)(6).
- 16 (c) To be a member, a person need not make, or have the obligation to make, any
17 contributions to the LLC or share in any profits or losses of, or distributions from, the LLC or
18 otherwise own an economic interest in the LLC.

19 **"§ 57D-3-02. Cessation of membership.**

- 20 (a) A person ceases to be a member upon the occurrence of any of the following events:
- 21 (1) The person does any of the following:
- 22 a. Becomes a debtor in bankruptcy.
- 23 b. Executes an assignment for the benefit of creditors, including the
24 execution of a deed of trust or deed of assignment for the benefit of
25 creditors causing all debts of the person to become due and payable
26 under G.S. 23-1.
- 27 c. Petitions for, consents to, or acquiesces in the appointment of a
28 trustee, receiver, or liquidator of the person or all or substantially all
29 of the person's property.
- 30 (2) In the case of an individual, the person's death or being adjudicated by a
31 court of competent jurisdiction as incompetent to manage his or her person
32 or property.
- 33 (3) In the case of a member with an economic interest, the transfer or
34 abandonment of the person's entire economic interest, excluding the
35 liquidation of a member's economic interest in connection with the
36 dissolution and winding up of the LLC under G.S. 57D-6-08(2), regardless
37 of whether the transferee is or becomes a member.
- 38 (4) The person abandoning all of the rights of his ownership interest except his
39 economic interest, or any portion thereof.
- 40 (b) Upon the occurrence of any of the events described in subdivisions (1) and (2) of
41 subsection (a) of this section with respect to a member, that person or that person's estate, as
42 applicable, will automatically become an economic interest owner entitled only to the
43 economic interest attributable to the person's ownership interest, but that person or that person's
44 estate, as applicable, and any other person who ceases to be a member shall remain liable to the
45 LLC for any obligation the person may have under G.S. 57D-4-02, 57D-4-06, and
46 57D-6-12(a)(2).

47 **"§ 57D-3-03. Approval of members.**

48 The approval of all members is required to do any of the following:

- 49 (1) Adopt or amend an operating agreement.
- 50 (2) Admit any person as a member.

- (3) Other than in the ordinary course of business, transfer in one transaction or a series of related transactions all or substantially all of the assets of the LLC prior to the dissolution of the LLC.
- (4) Dissolve the LLC under circumstances other than those for which the LLC may be dissolved under Article 6 of this Chapter.
- (5) Convert the LLC into a different eligible entity under Article 9 of this Chapter.
- (6) Merge the LLC with or into another eligible entity under Article 9 of this Chapter.

"§ 57D-3-04. Information Rights.

(a) Subject to the other provisions of this section, each member may inspect and copy or otherwise obtain from the LLC any of the following:

- (1) A copy of the articles of organization and any other writing constituting all or part of the operating agreement, including any executed power of attorney under which all or any part of the operating agreement was adopted, that are in effect or were in effect at any time during any of the LLC's preceding four fiscal years.
- (2) Either, as the LLC may elect, (i) a copy of any federal, state, or local income tax returns of the LLC, including any amendments and supplements made to those returns, filed with taxing authorities that pertain to any of the LLC's preceding four fiscal years or (ii) financial statements of the LLC of the type described in subsections (a) and (b) of G.S. 55-16-20 that pertain to any of the LLC's preceding four fiscal years.
- (3) A list of the names and last known business, residence, or mailing addresses of the LLC's current interest owners, their status as members or economic interest owners, the date on which each became an interest owner, and, if applicable, the dates on which a person's status as a member changed to that of an economic interest owner or the person's status as an economic interest owner changed to that of a member.
- (4) Information, the type and detail of which may be prescribed by the operating agreement, from which (i) the member's capital interest may be ascertained and (ii) unless and to the extent the operating agreement does not provide otherwise, each of the other interest owners' capital interests may be ascertained, including the amount of money and a description and statement of the agreed value of any other property or services that each person who has been an interest owner has paid or otherwise transferred or has agreed to pay or otherwise transfer, and the extent to which that agreement by the interest owner has been fulfilled, to or for the benefit of the LLC in exchange for a capital interest.
- (5) Information from which the status of the business and the financial condition of the LLC may be ascertained.

(b) Inspection rights and rights to copy LLC records may be exercised through a member's agent.

(c) In connection with any member or manager or other company official exercising management or other control rights or performing that person's duties to the LLC or the members, the LLC shall provide that person with, or access to, all information related to the applicable matter that is known by the LLC and is material to the proper exercise and performance of those rights and duties.

(d) To exercise inspection and other information rights, a member must sign and deliver written notice of exercise to the LLC at least seven days before the date on which the inspection is to take place. That notice must state (i) the records or other information to be

1 inspected and copied or otherwise provided by the LLC and (ii) the purpose for, and intended
2 use of, the information. Within the period provided in the exercise notice, the LLC shall either
3 comply with the member's demand or deliver written notice to the member of the extent to
4 which the LLC declines to make available any of the demanded information and the reasons for
5 that decision.

6 (e) The exercise of a member's rights to inspect and copy the LLC's records is to take
7 place at the LLC's principal office, or other location or locations selected by the LLC, during
8 the LLC's regular hours of operation unless the LLC directs otherwise. The LLC may require a
9 member to pay the labor, material, and other costs it incurs or would otherwise incur to comply
10 with the member's demand to inspect and copy the LLC's records.

11 (f) The LLC (i) need not disclose to any member or any agent or representative of a
12 member any information related to any other interest owner, except to the extent required by
13 subdivision (3) of subsection (a) of this section, but subject to the restrictions that may be
14 imposed under clauses (ii) and (iii) of this subsection, or is not otherwise related to the
15 member's ownership interest; (ii) may impose conditions, restrictions, limitations, and
16 standards on the exercise of a member's inspection and other information rights, including
17 redacting names and other confidential information, providing summaries of documents, or
18 requiring the member to enter an agreement to not disclose and otherwise maintain the
19 confidentiality of the information provided; and (iii) need not disclose, or otherwise make
20 available, to a member, manager, or other company official trade secrets or other confidential
21 information of a nature that its disclosure could adversely affect the LLC, to the extent that the
22 managers or other applicable company officials determine the information cannot be
23 adequately safeguarded by other means, until either there no longer is a risk that its disclosure
24 will adversely affect the LLC or the LLC becomes able to protect itself in some other way.

25 **"§§ 57D-3-05 through 57D-3-19: Reserved for future codification purposes.**

26 "Part 2. Managers.

27 **"§ 57D-3-20. Management; managers.**

28 (a) The management of an LLC and its business is vested in the managers.

29 (b) Each manager has equal rights to participate in the management of the LLC and its
30 business. Management decisions approved by a majority of the managers are controlling. The
31 managers may make management decisions without a meeting and without notice.

32 (c) Subject to the direction and control of a majority of the managers as provided in
33 G.S. 57D-3-20(b), each manager may act on behalf of the LLC in the ordinary course of the
34 LLC's business.

35 (d) All members by virtue of their status as members are managers of the LLC, together
36 with any other person or persons who may be designated as a manager in, or in the manner
37 provided in, the operating agreement. If the operating agreement provides or otherwise
38 contemplates that members are not necessarily managers by virtue of their status as members,
39 then those persons designated as managers in, or in the manner provided in, the operating
40 agreement will be managers. The operating agreement may provide that the LLC is to be
41 managed by one or more company officials who are not designated as managers. All members
42 will be managers for any period during which the LLC would otherwise not have any managers
43 or other company officials.

44 (e) A person shall continue to serve as a manager until the earliest of the following
45 occurs: (i) the person's resignation as a manager; (ii) any event described in G.S. 57D-3-02(a)
46 with respect to the person, substituting therein the term "manager" in lieu of the term "member"
47 for purposes of this subsection; or (iii) that person, or the member or all of a class or group of
48 less than all of the members who appointed the person to be a manager, ceases to be a member.

49 **"§ 57D-3-21. Duties of company officials; standards of conduct.**

50 (a) The managers shall manage the LLC and conduct the LLC's business in accordance
51 with the operating agreement.

(b) Each manager shall discharge that person's duties (i) in good faith; (ii) with the care an ordinary prudent person in a like position would exercise under similar circumstances; and (iii) subject to the operating agreement, in a manner the manager believes to be in the best interests of the LLC. In discharging such duties, a manager is entitled to rely on information, opinions, reports, or statements, including financial statements or other financial data, if prepared or presented by any person or group of persons the manager believes to be reliable and competent in such matters and the manager does not have actual knowledge concerning the matter in question that makes such reliance unwarranted.

(c) A manager is not liable to the LLC for any act or omission as a manager if the manager acts in compliance with this section.

"§ 57D-3-22. Delegation of authority of managers and other company officials.

The managers having general power to manage the LLC may delegate authority to act on behalf of the LLC to persons other than managers. The delegation of authority may be general or limited to specific matters. No such delegation of authority will cause any manager to cease to be a manager or cause the person to whom authority is so delegated to be a manager. Any duties of the managers will apply with respect to their delegation to, and direction and control of, any person to whom they delegate any of their responsibilities.

"§ 57D-3-23 Application to company officials.

G.S. 57D-3-20(e), 57D-3-21, and 57D-3-22 shall apply to company officials who are not managers by substituting the term "company official" in lieu of the term "manager" in each place where the term appears in those provisions.

"Part 3. Liability.

"§ 57D-3-30. Liability of members, managers, and other company officials to third parties.

A person who is an interest owner, manager, or other company official is not liable for the obligations of the LLC solely by reason of being an interest owner, manager, or other company official.

"§ 57D-3-31. Indemnification.

(a) An LLC shall indemnify a person who is wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a member or a manager or other company official if the person also is or was an interest owner at the time to which the claim relates, acting within the person's scope of authority as a manager, member, or other company official against expenses incurred by the person in connection with the proceeding.

(b) An LLC shall reimburse a person who is or was a member for any payment made, and indemnify the person for any obligation, including any judgment, settlement, penalty, fine, or other cost, incurred or borne in the authorized conduct of the LLC's business or preservation of the LLC's business or property, whether acting in the capacity of a manager, member, or other company official, if, in making the payment or incurring the obligation, the person complied with the duties and standards of conduct (i) under G.S. 57D-3-21, as modified or eliminated by the operating agreement, or (ii) otherwise imposed by this Chapter or other applicable law.

"Article 4.

"Contributions and Distributions.

"§ 57D-4-01. Form of contributions.

An interest owner may make contributions to the LLC in any form, including (i) money or other property, services rendered, or any other direct or indirect benefit to the LLC and (ii) promissory notes or other obligations to transfer money or other property, perform services, or provide any other direct or indirect benefits to the LLC.

"§ 57D-4-02. Liability for contributions.

If an interest owner has contributed a promissory note or other obligation to transfer money or other property or to perform services or provide other benefits to the LLC and the interest owner would, but for this section, be excused from the performance of that obligation by reason of the interest owner's death or disability or other supervening impossibility or impracticability of performance under contract or other applicable law, the LLC may require the interest owner to pay to the LLC an amount of money equal to the value of the unperformed portion of the promised performance or exercise remedies available under other applicable law.

"§ 57D-4-03. Interim distributions.

Distributions to interest owners before the dissolution and winding up of the LLC, or, as provided in G.S. 57D-6-08(2), after the dissolution of the LLC, may be made at such times and in such amounts as determined by the LLC, in proportion to the ratios that the aggregate contribution amounts of the interest owners bear to one another, determined immediately before the time that the distributions are to be made.

"§ 57D-4-04. Distribution in kind.

An LLC may distribute property other than money if the interest owners receive interests of identical character in, or units of identical character of, such property in the same proportions as if the distribution were being made in money equal to the net value of the property being distributed.

"§ 57D-4-05. Restrictions on making distributions.

(a) No distribution may be made by an LLC if, after giving effect to the distribution, either of the following would occur:

(1) The LLC would not be able to pay its debts as they become due in the ordinary course of business.

(2) The LLC's total liabilities would exceed the value of the LLC's assets.

(b) For purposes of subsection (a) of this section, the following applies:

(1) An LLC may determine the value of its assets, the amount of its liabilities, and the time payments of its liabilities are to be made using accounting practices and principles that are reasonable under the circumstances.

(2) The amount of a liability for which the creditor's recourse is limited to specific collateral will not exceed the value of the collateral.

(c) Except as provided in subsection (e) of this section, the effect of a distribution under subsection (a) of this section is measured (i) in the case of any distribution of indebtedness, as of the date the indebtedness is distributed and (ii) in all other cases, either as of the date the distribution is authorized if the distribution occurs within 120 days after the date authorization is made or as of the date the distribution is made if payment occurs more than 120 days after the date authorization is made.

(d) Except as provided in subsection (e) of this section, an LLC's indebtedness issued as a distribution made in accordance with this section is a liability of the LLC to be paid under the law applicable to debtors and creditors.

(e) An LLC's indebtedness issued as a distribution is not a liability of the LLC for purposes of subsection (a) of this section if its terms provide that payment of principal and interest are to be made only to the extent that at the time of such payment a distribution to interest owners could then be made under this section. Subsection (a) of this section applies to each payment of principal or interest made under any indebtedness described in the preceding sentence and not to the issuance of the indebtedness.

"§ 57D-4-06. Liability for wrongful distributions.

(a) If a distribution is made in violation of G.S. 57D-4-05, then each manager or other company official who alone or with other company officials had the authority to and did approve the distribution is personally liable to the LLC, but not any other person, for the amount of the distribution that exceeds the amount that could have been distributed without violating G.S. 57D-4-05 only if it is established that the company official did not act in

compliance with G.S. 57D-3-21, without regard to any modification or elimination of such duties and standards of conduct under the operating agreement. Except as otherwise provided in G.S. 57D-11-03(d), a proceeding under this subsection is barred unless it is commenced within two years after the distribution.

(b) Each manager or other company official held liable under subsection (a) of this section for a wrongful distribution is entitled to the following:

- (1) Contribution from each other manager or other company official who could be held liable under subsection (a) of this section for the wrongful distribution.
- (2) Reimbursement from each interest owner for the amount the interest owner received knowing that the distribution was made in violation of G.S. 57D-4-05.

"§ 57D-4-07. Right to distribution.

An interest owner who is entitled to receive a distribution has the status of, and is entitled to all remedies available to, a creditor of the LLC with respect to the distribution.

"Article 5.

"Transfer of Ownership Interests; Withdrawal.

"§ 57D-5-01. Nature of ownership interest.

An ownership interest is personal property.

"§ 57D-5-02. Transfer of economic interests.

An economic interest is transferable in whole or in part. The transfer of an economic interest, or portion thereof, does not entitle the transferee to become or exercise any rights of a member other than to receive the economic interest or the portion thereof assigned to the transferee.

"§ 57D-5-03. Rights of judgment creditor.

(a) On application to a court of competent jurisdiction by any judgment creditor of an interest owner, the court may charge the economic interest of an interest owner with the payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the right to receive the distributions that otherwise would be paid to the interest owner with respect to the economic interest.

(b) A charging order is a lien on the judgment debtor's economic interest to the extent provided in this section from the time that such charging order is served upon the LLC in accordance with Rule 4(j)(8) of the Rules of Civil Procedure. If more than one charging order is properly served upon the LLC with respect to the same member's economic interest, the liens shall have priority in the order in which the charging orders were served, except that a charging order in favor of a judgment creditor that has previously delivered to the LLC garnishment process relating to the same member's economic interest pursuant to G.S. 1-440.25 shall relate back to the date of service of the garnishment process.

(c) This Chapter does not deprive any interest owner of a right, including any benefit, of any exemption law applicable to the interest owner's ownership interest.

(d) The entry of a charging order is the exclusive remedy by which a judgment creditor of an interest owner may satisfy the judgment from or with the judgment debtor's ownership interest.

"§ 57D-5-04. Certain rights and liabilities of economic interest owners and transferors of ownership interests.

(a) An economic interest owner may become a member only with that person's approval and through any of the following:

- (1) As provided in the operating agreement.
- (2) By the approval of the members as provided in G.S. 57D-3-03(2).
- (3) In the manner permitted under G.S. 57D-6-01(3) if the LLC ceases to have any members.

(b) Except as provided in the following sentence of this subsection, a transferee of an ownership interest, or portion thereof, who is or becomes a member has, to the extent transferred to the transferee, (i) the rights and powers and is subject to the restrictions and liabilities of a member under the operating agreement and this Chapter with respect to the transferred ownership interest and (ii) is liable for any obligations of the transferor to make contributions under G.S. 57D-4-02 with respect to the transferred ownership interest. A transferee of an ownership interest, or portion thereof, is not liable for obligations of the transferor under G.S. 57D-4-06 or obligations that are unknown to the transferee at the time the transferee became a member.

(c) Whether or not a transferee of an ownership interest, or portion thereof, is or becomes a member, (i) the transferor is not released from liability that the transferor may have under G.S. 57D-4-02, G.S. 57D-4-06, or under the operating agreement and (ii) the transferee takes the ownership interest subject to those liabilities.

"§ 57D-5-05. No right to voluntarily withdraw capital or terminate obligations.

Except as otherwise required by this Chapter or other applicable law, an interest owner may not (i) withdraw, or compel the company to purchase or otherwise liquidate, all or any portion of the equity owner's capital interest or (ii) extinguish, abandon, or otherwise diminish the interest owner's obligations in respect of the interest owner's ownership interest.

"Article 6.

"Dissolution.

"§ 57D-6-01. Dissolution.

An LLC is dissolved upon the occurrence of any of the following:

- (1) An event causing the LLC to dissolve under the operating agreement.
- (2) If the LLC never had a member, as approved by the organizers under G.S. 57D-2-20(c).
- (3) If the LLC ever had a member, the 90th day after the day on which the LLC ceases to have any members, unless within that 90-day period, one or more persons are admitted as a member or members by the person, including the former member, owning or otherwise controlling the ownership interest of the last member.
- (4) Entry of a decree of judicial dissolution under G.S. 57D-6-05.
- (5) Subject to G.S. 57D-6-06(c), the filing by the Secretary of State of a certificate of dissolution under G.S. 57D-6-06.

"§ 57D-6-02. Grounds for judicial dissolution.

The superior court may dissolve an LLC in a proceeding brought by either of the following:

- (1) The Attorney General, if it is established that (i) the LLC obtained its articles of organization through fraud or (ii) the LLC continued to exceed or abuse the authority conferred on it by law 20 or more days after the date the Attorney General delivered to the LLC written notice of the LLC's unauthorized acts.
- (2) A member, if it is established that (i) it is not practicable to conduct the LLC's business in conformance with the operating agreement and this Chapter or (ii) liquidation of the LLC is necessary to protect the rights and interests of the member.

"§ 57D-6-03. Procedure for judicial dissolution.

(a) A proceeding under G.S. 57D-6-02 to dissolve an LLC is to be brought against the LLC. The party bringing the dissolution proceeding may not join an interest owner or company official as a party to the proceeding unless, and to the extent, relief is sought against the interest owner or company official for that person's own actions.

(b) Venue for a proceeding brought under G.S. 57D-6-02 to dissolve an LLC lies in (i) the county in this State where the LLC's principal office is located, which the party bringing the

dissolution proceeding may assume to be the principal place of business disclosed in the LLC's most recent annual report or, if no annual report for the LLC has ever been filed by the Secretary of State, as provided in the LLC's articles of organization or (ii) if the LLC has no principal office in this State, and the most recent filings of the Secretary of State do not state that the LLC's principal office is located in this State, the county in this State where those filings state the LLC's registered office is or was last located.

(c) In connection with a proceeding brought under G.S. 57D-6-02 to dissolve an LLC, the court may issue injunctions, appoint one or more persons to serve as receiver with powers and duties the court may grant under G.S. 57D-6-04, or take other action required to manage the LLC and its assets.

(d) In any proceeding brought by a member under clause (ii) of G.S. 57D-6-02(2) in which the court determines that dissolution is necessary, the court will not order dissolution if, after the court's decision, the LLC or one or more other members elect to purchase the ownership interest of the complaining member at its fair value in accordance with any procedures the court may provide.

"§ 57D-6-04. Receivership.

(a) The court in a proceeding brought under G.S. 57D-6-02 to dissolve an LLC, or in a proceeding brought under G.S. 57D-6-07(c), may appoint one or more persons to serve as a receiver to manage the business of the LLC pending the court's decision on dissolution and, if dissolution is decreed by the court, to wind up the LLC. Before appointing a person to serve as a receiver of an LLC, the court shall hold a hearing on the subject after delivering notice, or causing the party who brought the dissolution proceeding to deliver notice, of the hearing to all parties and any other interested persons designated by the court.

(b) The court may require the receiver to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver in its appointing order, which the court from time to time may amend. The powers may include the authority to do any of the following:

(1) Dispose of all or any portion of the assets of the LLC wherever located, at a public or private sale.

(2) Sue and defend in the receiver's own name as receiver of the LLC.

(3) Exercise all of the powers of the LLC to the extent necessary to manage the business of the LLC or wind up the LLC following dissolution.

(d) The court may order the LLC to compensate the receiver and reimburse the receiver's expenses, including the fees and expenses of attorneys and other professionals retained by the receiver.

"§ 57D-6-05. Decree of judicial dissolution.

(a) If, after a hearing, the court determines that one or more grounds for judicial dissolution described in G.S. 57D-6-02 exist and the alternative to judicial dissolution under G.S. 57D-6-03(d) is not applicable, it may enter a decree dissolving the LLC, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State for filing.

(b) After entering the decree of dissolution, the court shall direct the winding up of the LLC in accordance with G.S. 57D-6-07 and G.S. 57D-6-08 and may direct notification of claimants in accordance with G.S. 57D-6-10, 57D-6-11, and 57D-6-13.

"§ 57D-6-06. Administrative dissolution.

(a) The Secretary of State may administratively dissolve an LLC if the Secretary of State determines that the LLC has done any of the following:

(1) The LLC has not paid within 60 days after they are due any penalties, fees, or other payments due under this Chapter.

(2) The LLC does not deliver its annual report to the Secretary of State on or before the 60th day after it is due.

(3) The LLC has been without a registered agent or registered office in this State for 60 days or more.

(4) The LLC has not notified the Secretary of State within 60 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(5) The LLC knowingly fails or refuses to answer completely and accurately within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter.

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

(c) An LLC administratively dissolved under this section may apply to the Secretary of State for reinstatement. The procedures for reinstatement and for the appeal of any denial of the LLC's application for reinstatement are the same as those applicable to a domestic corporation under G.S. 55-14-22, 55-14-23, and 55-14-24. If, at the time the LLC applies for reinstatement, the name of the LLC is not distinguishable from the name of another entity authorized to be used under G.S. 55D-21, then the LLC must change its name to a name that is distinguishable on the records of the Secretary of State from the name of the other entity before the Secretary of State may prepare a certificate of reinstatement. The effect of reinstatement of an LLC is the same as for a domestic corporation under G.S. 55-14-22.

"§ 57D-6-07. Winding up.

(a) After its dissolution, an LLC shall wind up. The winding up may include continuing the business of the LLC for a period of time.

(b) Subject to subsection (c) of this section, the managers or other applicable company officials shall wind up the LLC after its dissolution. If the dissolved LLC has no managers or other applicable company officials, the person, including a former member, owning or otherwise controlling the ownership interest of the person who was the last member of the LLC may serve, or appoint one or more persons to serve, as manager to wind up the LLC.

(c) On application of the person, including a former member, owning or otherwise controlling the ownership interest of the last member, the superior court may wind up the LLC, or appoint a receiver under G.S. 57D-6-04 to wind up the LLC. Venue for a proceeding on such application lies in (i) the county in this State where the LLC's principal office is located, which the person bringing the dissolution proceeding may assume to be the principal place of business disclosed in the LLC's most recent annual report or, if no annual report has ever been filed for the LLC by the Secretary of State, as provided in the LLC's articles of organization, or (ii) if the LLC has no principal office in this State and the most recent filings of the Secretary of State do not state that the LLC's principal office is located in this State, the county in this State where those filings state the LLC's registered office is or was last located. The court shall order notice of the proceeding be given by the person making the application to all interested persons designated by the court.

(d) The person or persons charged with winding up the LLC shall collect the LLC's assets, dispose of the LLC's properties that will not be distributed in kind, discharge or make provision for discharging the LLC's liabilities, and distribute the LLC's remaining assets as provided in G.S. 57D-6-08(2).

(e) The dissolution of the LLC does not transfer title to the LLC's assets, prevent transfer of ownership interests, or subject its managers or other company officials to standards of conduct different from those prescribed in Article 3 of this Chapter.

(f) The dissolution of the LLC does not prevent commencement of a proceeding by or against the LLC in its own name, abate or suspend a proceeding by or against the LLC, or terminate the authority of the registered agent of the LLC.

"§ 57D-6-08. Marshalling of assets.

During the winding up of an LLC, the LLC's assets are to be applied as follows:

(1) First, to creditors, including interest owners, managers, and other company officials who are creditors, in satisfaction, whether by payment or making provision for payment, of all liabilities of the LLC.

(2) The balance to the interest owners as distributions made in the manner provided in G.S. 57D-4-03.

"§ 57D-6-09. Articles of dissolution.

Upon dissolution of an LLC, the LLC shall deliver articles of dissolution to the Secretary of State for filing. The articles of dissolution must provide the following information:

(1) The name of the LLC.

(2) The effective date of the dissolution.

(3) Any other information the LLC elects to provide.

"§ 57D-6-10. Known claims against dissolved LLC.

(a) A dissolved LLC for which articles of dissolution, a certificate of dissolution, or a decree of dissolution filed by the Secretary of State has become effective may dispose of known claims against it by notifying claimants in writing of the dissolution. The notice must do the following:

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

(2) Provide an address where claims may be sent.

(3) State the deadline, which may not be fewer than 120 days from the date of the notice, by which the dissolved LLC must receive the claim.

(4) State that the claim will be barred if not received by the deadline.

(b) A claim against the dissolved LLC is barred if either of the following occurs:

(1) The LLC does not receive the claim by the deadline from a claimant who received notice under subsection (a) of this section.

(2) A claimant whose claim was rejected by written notice from the dissolved LLC does not commence a proceeding in a proper forum to enforce the claim within 90 days from the date of receipt of the rejection notice.

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

"§ 57D-6-11. Unknown and certain other claims against dissolved LLC.

(a) A dissolved LLC for which articles of dissolution, a certificate of dissolution, or a decree of dissolution filed by the Secretary of State has become effective may publish notice of its dissolution and request that persons with claims against the LLC present them in accordance with the notice. The notice must meet the following requirements:

(1) Be published one time in a newspaper of general circulation in the county in this State where the LLC's principal office is or was last located, or, if the LLC never had a principal office in this State, the county in this State where the LLC's registered office is or was last located.

(2) Describe the information that must be included in a claim and provide an address where the claim may be sent.

(3) State that a claim against the LLC will be barred unless a proceeding to enforce the claim is commenced in a proper forum within five years after the publication of the notice.

(b) If the dissolved LLC publishes a newspaper notice in accordance with subsection (a) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding in a proper forum to enforce the claim against the dissolved LLC within five years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under G.S. 57D-6-10.

(2) A claimant whose claim was timely sent to the dissolved LLC but not acted on.

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of the filing by the Secretary of State of the articles of dissolution.

"§ 57D-6-12. Enforcement of claims.

(a) A claim against a dissolved LLC under G.S. 57D-6-10 or G.S. 57D-6-11 may be enforced against either of the following:

(1) Against the dissolved LLC to the extent of its undistributed assets, including coverage under any insurance policy.

(2) Except as provided in G.S. 57D-6-13(d), against the interest owners of the dissolved LLC in proportion to but not in excess of the distributions, if any, made to each interest owner following the LLC's dissolution.

(b) G.S. 57D-6-10 and G.S. 57D-6-11 do not extend any applicable period of limitation.

"§ 57D-6-13. Court proceedings for contingent claims.

(a) A dissolved LLC that has published a notice under G.S. 57D-6-11 may file an application with the superior court of the county in this State where the LLC's principal office is or was last located or, if the LLC never had a principal office in this State, the county in this State where the LLC's registered office is or was last located, for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved LLC or that are based on an event occurring after dissolution but that, based on the facts known to the dissolved LLC, are estimated to arise after dissolution. Provisions need not be made for any claim that is or is anticipated to be barred under G.S. 57D-6-11(b).

(b) Within 10 days after the filing of the application, the dissolved LLC shall deliver notice of the proceeding to each claimant holding a claim described in subsection (a) of this section whose contingent claim is shown on the records of the dissolved LLC.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The dissolved LLC shall pay the fees and expenses of the guardian, including expert witness fees.

(d) Provision by the dissolved LLC for security in the amount and the form ordered by the court under subsection (a) of this section satisfies the dissolved LLC's obligations with respect to claims described in subsection (a) of this section, and the claims may not be enforced against an interest owner who receives assets in liquidation of the LLC.

"Article 7.

"Foreign LLCs.

"Part 1. Certificate of Authority.

"§ 57D-7-01. Authority to transact business.

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

(b) Without excluding other activities that may not constitute transacting business in this State, a foreign LLC is not considered to be transacting business in this State for the purposes of this Chapter by reason of conducting in this State any one or more of the following activities:

(1) Maintaining or defending any proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

- (2) Holding meetings of its members, managers, or other company officials or carrying on other activities concerning its internal affairs.
- (3) Maintaining bank accounts or borrowing money in this State, with or without providing security for repayment or other performance and without regard to the frequency of such transactions.
- (5) Maintaining offices or agencies for the exchange or other transfer and registration of all or any class or portion of its membership or other equity or beneficial ownership interests or securities, or appointing and maintaining trustees or depositories with relation to its membership or other equity or beneficial ownership interests or securities.
- (6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance to be made outside of the territory of this State to become binding contracts.
- (7) Making or investing in loans with or without security, including servicing of mortgages or deeds of trust through independent agencies within the territory of this State, conducting foreclosure proceedings and selling or acquiring property in foreclosure sales, and managing or renting property acquired in foreclosure sales in connection with, and in furtherance of, efforts to sell and otherwise liquidate such property, provided no office or agency of the foreign LLC is maintained in this State.
- (8) Taking security for or collecting debts due the foreign LLC or enforcing any rights the foreign LLC may have in property subject to or otherwise providing security with respect to the repayment or other performance of the debt obligations.
- (9) Transacting business in interstate commerce.
- (10) Conducting an isolated transaction completed within a period of six months but not repeated transactions of a similar nature.
- (11) Selling property or services through independent contractors.
- (12) Owning real or personal property.

"§ 57D-7-02. Consequences of transacting business without authority.

(a) No foreign LLC transacting business in this State without permission obtained through a certificate of authority may maintain any proceeding in any court of this State unless the foreign LLC has obtained a certificate of authority prior to trial. An issue arising under this subsection must be raised by motion and determined by the trial judge prior to trial.

(b) A foreign LLC failing to obtain a certificate of authority as required by this Chapter is liable to this State for the years, including any partial year, during which it transacted business in this State without a certificate of authority in an amount equal to all fees and taxes that would have been imposed by law on the foreign LLC had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign LLC is liable for a civil penalty of ten dollars (\$10.00) for each day, but not to exceed a total of one thousand dollars (\$1,000) for each year, including any partial year, it transacts business in this State without a certificate of authority. The Attorney General may bring actions to recover all amounts due this State under the provisions of this subsection. The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

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

(d) The Secretary of State shall require every foreign LLC transacting business in this State to comply with the provisions of this Chapter. The Secretary of State may conduct such investigations as may be necessary to ascertain compliance by foreign LLCs with this Chapter.

"§ 57D-7-03. Application for certificate of authority.

(a) A foreign LLC may apply for a certificate of authority to transact business in this State by delivering an application to the Secretary of State for filing. The application must provide the following information:

- (1) The name of the foreign LLC and, if different, a name that satisfies the requirements of Article 3 of Chapter 55D of the General Statutes.
- (2) The name of the jurisdiction under whose law it is organized.
- (3) The street address, and the mailing address if different from the street address, of its principal office, if any, and the county in which the principal office, if any, is located.
- (4) The street address, and the mailing address if different from the street address, of its registered office in this State and the name of its registered agent at that office.
- (5) The names, titles, and business addresses of the foreign LLC's principal company officials.

(b) A foreign LLC shall deliver with the completed application for the certificate of authority a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of limited liability company records in the jurisdiction under whose law it is organized.

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

- (1) File the application and the certificate of existence, or a document of similar import as described in subsection (b) of this section, as provided in G.S. 55D-15.
- (2) Issue a certificate of authority to transact business in this State to which the Secretary of State shall affix the exact or conformed copy of the application.
- (3) Send to the foreign LLC or its representative the certificate of authority, together with the exact or conformed copy of the application affixed thereto.

"§ 57D-7-04. Amended certificate of authority.

(a) A foreign LLC authorized to transact business in this State shall obtain an amended certificate of authority from the Secretary of State if it changes either of the following:

- (1) Its name.
- (2) The jurisdiction of its organization.

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

- (1) The name of the foreign LLC and, if different, the name provided in the foreign LLC's certificate of authority that the foreign LLC is authorized to use to transact business in this State.
- (2) The name of the jurisdiction under whose law it is organized.
- (3) The date it was originally authorized to transact business in this State.
- (4) A statement of the change or changes being made.

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

"§ 57D-7-05. Effect of certificate of authority.

(a) A certificate of authority authorizes the foreign LLC to which it is issued to transact business in this State subject to the right of the State to revoke the certificate as provided in this Chapter. A foreign LLC may qualify in this State as executor, administrator, or guardian, or as trustee under the will of any person domiciled in this State at the time of that person's death

only in accordance with applicable provisions of Article 24 of Chapter 53 of the General Statutes.

(b) A foreign LLC qualifying as testamentary trustee or executor under the provisions of this section shall appoint a process agent and file such appointment with the court as required by G.S. 28A-4-2(4).

(c) Except as otherwise provided by this Chapter, a foreign LLC with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, an LLC of like character.

"§ 57D-7-06. Registered office and registered agent of foreign LLC.

Each foreign LLC authorized to transact business in this State must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article.

"§§ 57D-7-07 through 57D-7-19: Reserved for future codification purposes.

"Part 2. Withdrawal.

"§ 57D-7-20. Withdrawal of foreign LLC.

(a) A foreign LLC authorized to transact business in this State may not withdraw from this State until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign LLC authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must state the following:

- (1) The name of the foreign LLC and, if different, the name provided in the foreign LLC's certificate of authority that the foreign LLC is authorized to use to transact business in this State.
- (2) The name of the jurisdiction under whose law it is organized.
- (3) That the foreign LLC is not transacting business in this State and that it surrenders its authority to transact business in this State.
- (4) That the foreign LLC revokes the authority of its registered agent to accept service of process and consents to service of process in any proceeding based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign LLC was authorized to transact business in this State, being made on such foreign LLC by service thereof on the Secretary of State.
- (5) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under subdivision (4) of this subsection.
- (6) A commitment to deliver to the Secretary of State for filing a statement of any subsequent change in its mailing address.

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

- (1) File the application for the certificate of withdrawal as provided in G.S. 55D-15.
- (2) Issue a certificate of withdrawal to which the Secretary of State shall affix the exact or conformed copy of the application.
- (3) Send to the foreign LLC or its representative the certificate of withdrawal together with the exact or conformed copy of the application affixed thereto.

(d) After the withdrawal of the foreign LLC is effective, service of process on the Secretary of State in accordance with subsection (b) of this section may be made by delivering to the Secretary of State, or to any clerk authorized by the Secretary of State to accept service of process, duplicate copies of that process and the fee required by G.S. 57D-1-22(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall mail a

copy of the process by registered or certified mail, return receipt requested, to the foreign LLC at the mailing address designated pursuant to subsection (b) of this section.

"§ 57D-7-21. Withdrawal of foreign LLC by reason of a merger, consolidation, or conversion; qualification of successor.

(a) Whenever a foreign LLC authorized to transact business in this State ceases its separate existence as a result of a statutory merger, consolidation, or other reorganization permitted by the law of the jurisdiction under which it is organized, or converts into another type of entity as permitted by that law, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign LLC by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or other reorganization or conversion or a certificate reciting the facts of the merger, consolidation, or other reorganization or conversion, duly authenticated by the Secretary of State or other official having custody of limited liability company records in the jurisdiction under the law of which the foreign LLC was organized. If the surviving or resulting entity is not authorized to transact business in this State, the application for the certificate of withdrawal must state, and therefore modify the information described below that otherwise is required to be provided under G.S. 57D-7-20(b) to the extent of conflict, the following:

- (1) The name of the foreign LLC and, if different, the name provided in the foreign LLC's certificate of authority that the foreign LLC is authorized to use to transact business in this State.
- (2) The name of the jurisdiction under whose law it is organized.
- (3) The type of entity and name of the surviving or resulting entity.
- (4) That the surviving or resulting entity is not transacting business in this State and the foreign LLC surrenders its authority to transact business in this State.
- (5) That the surviving or resulting entity revokes the authority of the foreign LLC's registered agent to accept service of process and consents to service of process in any proceeding based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign LLC was authorized to transact business in this State, being made on the surviving or resulting entity by service thereof on the Secretary of State.
- (6) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under subdivision (5) of this subsection.
- (7) A commitment to deliver to the Secretary of State for filing a statement of any subsequent change in the surviving or resulting entity's mailing address.

(b) If the Secretary of State finds that the articles or certificate described in subsection (a) of this section relating to the merger, consolidation, or other reorganization or conversion and the application for the certificate of withdrawal conform to law, the Secretary of State shall do the following:

- (1) File the articles or certificate and the application for the certificate of withdrawal as provided in G.S. 55D-15.
- (2) Issue a certificate of withdrawal.
- (3) Send to the surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto.

(c) After the withdrawal of the foreign LLC is effective, service of process on the Secretary of State in accordance with subsection (a) of this section is to be made by delivering to the Secretary of State, or to any clerk authorized by the Secretary of State to accept service of process, duplicate copies of process and the fee required by G.S. 57D-1-22(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall immediately

mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (a) of this section.

"§ 57D-7-22. Authority of Attorney General.

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

"§§ 57C-7-23 through 57C-7-29: Reserved for future codification purposes.

"Part 3. Revocation of Certificate of Authority.

"§ 57D-7-30. Grounds for revocation.

(a) The Secretary of State may commence a proceeding under G.S. 57D-7-31 to revoke the certificate of authority of a foreign LLC authorized to transact business in this State if any of the following occurs:

- (1) The foreign LLC is delinquent in delivering its annual report.
- (2) The foreign LLC does not pay within 60 days after they are due any penalties, fees, or other payments due under this Chapter.
- (3) The foreign LLC is without a registered agent or registered office in this State for 60 days or more.
- (4) The foreign LLC does not inform the Secretary of State under G.S. 55D-31 or G.S. 55D-32 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance.
- (5) A company official or agent of the foreign LLC signed a document that the company official or agent knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing.
- (6) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of the records of the limited liability companies in the state or country under whose law the foreign LLC is organized stating that it has been dissolved or merged into another entity.
- (7) The foreign LLC is exceeding the authority conferred upon it by this Chapter.
- (8) The foreign LLC knowingly fails or refuses to answer truthfully and fully within the time prescribed in this Chapter interrogatories propounded by the Secretary of State in accordance with the provisions of this Chapter.

(b) Nothing herein repeals or modifies any provision of the Revenue Act relating to the suspension of the certificate of authority of foreign LLCs for failure to comply with the provisions thereof.

"§ 57D-7-31. Procedure for and effect of revocation.

(a) If the Secretary of State determines that one or more grounds exist under G.S. 57D-7-30 for revocation of a certificate of authority, the Secretary of State shall mail to the foreign LLC written notice of that determination.

(b) If the foreign LLC does not correct each ground for revocation or demonstrate to the satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after notice is mailed, the Secretary of State may revoke the foreign LLC's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and mail a copy to the foreign LLC.

(c) The authority of a foreign LLC to transact business in this State ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's revocation of a foreign LLC's certificate of authority appoints the Secretary of State as the foreign LLC's agent for service of process in any

proceeding based on a cause of action arising in this State or arising out of business transacted in this State during the time the foreign LLC was authorized to transact business in this State. The Secretary of State shall then proceed in accordance with G.S. 55D-33.

(e) Revocation of a foreign LLC's certificate of authority does not terminate the authority of the registered agent of the foreign LLC.

(f) The foreign LLC will not be granted a new certificate of authority until each ground for revocation has been substantially corrected to the satisfaction of the Secretary of State.

"§ 57D-7-32. Appeal from revocation.

(a) A foreign LLC may appeal the Secretary of State's revocation of its certificate of authority to the Superior Court of Wake County within 30 days after the certificate of revocation is mailed to the foreign LLC by the Secretary of State. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to set aside the revocation. Copies of the foreign LLC's certificate of authority and the Secretary of State's certificate of revocation are to be attached to the petition. No service of process on the Secretary of State is required except for the filing of the petition as set forth in this subsection. The appeal to the superior court will be determined by a judge of the superior court upon such further evidence, notice, and opportunity to be heard, if any, as the court may deem appropriate under the circumstances. The foreign LLC will have the burden of establishing that it is entitled to have the revocation set aside.

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

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

"§ 57D-7-33. Inapplicability of Administrative Procedure Act.

The Administrative Procedure Act shall not apply to any proceeding or appeal provided for in G.S. 57D-7-30 through G.S. 57D-7-32.

"Article 8.

"Derivative Actions.

"§ 57D-8-01. Member derivative actions.

(a) Subject to the provisions of G.S. 57D-8-02 and G.S. 57D-8-03, a member may bring a derivative action if the following conditions are met:

(1) Either (i) the member was a member of the LLC at the time of the act or omission for which the proceeding is brought or (ii) all or any portion of the member's ownership interest devolves by operation of law from an ownership interest that was owned by a member at that time.

(2) The member made written demand on the LLC to take suitable action, and either (i) the LLC notified the member that the member's demand was rejected, (ii) 90 days have expired from the date the demand was made, or (iii) irreparable injury to the LLC would result by waiting for the expiration of the 90-day period.

(b) For purposes of this Article, a "derivative action" or a "derivative proceeding" is a proceeding brought in the superior court of this State in the right of an LLC or, to the extent provided in G.S. 57D-8-06, in the right of a foreign LLC, to recover a judgment in favor of the LLC or, if applicable, the foreign LLC.

"§ 57D-8-02. Stay of proceedings.

If the LLC commences an inquiry into the allegations set forth in the demand or complaint, the court may stay a derivative proceeding.

"§57D-8-03. Dismissal.

(a) The court shall dismiss a derivative proceeding on motion of the LLC if one of the groups specified in subsection (b) or (f) of this section determines after conducting an inquiry

upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interest of the LLC.

(b) The inquiry and determination with respect to the demanded action is to be made either (i) pursuant to subsection (f) of this section or (ii) by either of the following:

(1) A majority vote or other approval of those persons who have the authority, individually or collectively, to cause the LLC to bring an action in the superior court of this State for the recovery or other remedy sought in the derivative action and are independent.

(2) A majority vote of a committee composed of two or more independent persons appointed by a majority vote or other approval of those persons described in subdivision (b)(1) of this section.

(c) For purposes of this section, none of the following factors by itself will necessarily preclude a person from being considered to be independent:

(1) The nomination or election of the person by persons who are defendants in the derivative proceeding or against whom action is demanded.

(2) The naming of the person as a defendant in the derivative proceeding or as a person against whom action is demanded.

(3) The approval by the person of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the person.

(d) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a member, the complaint must allege particular facts that if proved would preclude the court from dismissing the derivative proceeding under subsection (a) of this section. Defendants may make a motion to dismiss a complaint under subsection (a) of this section for failure to comply with this subsection. Prior to the court's ruling on such a motion to dismiss, the plaintiff may engage in discovery only to the extent it is germane and necessary to develop facts that establish that the dismissal of the derivative proceeding under subsection (a) of this section is unwarranted.

(e) If a majority of the persons having the authority to cause the LLC to bring a proceeding in the superior court of this State for the recovery or other remedy sought in the derivative action are independent, then the plaintiff will have the burden of proving that the requirements of subsection (a) of this section have not been met, but if a majority of such persons are not independent, then the LLC has the burden of proving that the requirements of subsection (a) of this section have been met.

(f) The court may appoint a panel composed of one or more independent persons on motion of the LLC to make a determination whether the maintenance of the derivative proceeding is in the best interest of the LLC. The plaintiff has the burden of proving that the requirements of subsection (a) of this section have not been met.

"§ 57D-8-04. Discontinuance or settlement.

(a) A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the LLC's members, the court shall direct that notice be given to the members who would be affected.

(b) The court shall determine the manner and form of the notice and the manner in which costs of the notice will be borne.

"§ 57D-8-05. Payment of expenses.

On termination of the derivative proceeding, the court may do any of the following:

(1) Order the LLC to pay the plaintiff's expenses, including attorneys' fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the LLC.

- (2) Order the plaintiff to pay any defendant's expenses, including attorneys' fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without cause or for an improper purpose.
- (3) Order a party to pay an opposing party's expenses, including attorneys' fees, incurred as a result of the filing of a pleading, motion, or other paper, if the court, after inquiry, finds that the pleading, motion, or other paper was not well grounded in fact or was not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it was interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

"§ 57D-8-06. Applicability to foreign LLCs.

In any derivative proceeding in the right of a foreign LLC, the matters covered by this Article will be governed by the law of the jurisdiction of the foreign LLC's organization except for the matters governed by G.S. 57D-8-02, 57D-8-04, and 57D-8-05.

"§ 57D-8-07. Privileged communications.

In any derivative proceeding, no member is entitled to obtain or have access to any communication within the scope of the LLC's attorney-client privilege that could not be obtained by, or would not be accessible to, a party in a proceeding other than on behalf of the LLC.

"Article 9.

"Conversion and Merger.

"Part 1. Definitions.

"§ 57D-9-01. Definitions.

Unless otherwise specifically provided, the following definitions apply in this Article:

- (1) Articles of organization and conversion. – The document filed by the Secretary of State under G.S. 57D-9-22 for the purpose of converting an eligible entity into an LLC.
- (2) Converting entity. – An eligible entity that converts into another eligible entity pursuant to Part 2 or Part 3 of this Article 9.
- (3) Converting LLC. – A converting entity that is an LLC.
- (4) Eligible entity. – A corporation, including a professional corporation as defined in G.S. 55B-2 and a foreign professional corporation defined in G.S. 55B-16, a domestic or foreign nonprofit corporation, a limited liability company, a domestic or foreign limited partnership, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State.
- (5) Merging entity. – An eligible entity that is a party to a merger.
- (6) Merging LLC. – A merging entity that is an LLC.
- (7) Surviving entity. – The eligible entity into which a converting entity converts or into which an eligible entity is merged.

"Part 2. Conversion to an LLC.

"§ 57D-9-20. Conversion.

An eligible entity other than an LLC may convert to an LLC if both of the following requirements are met:

- (1) The conversion is permitted by the law governing the organization and internal affairs of the converting entity.
- (2) The converting entity complies with the requirements of this Part and, to the extent applicable, the law governing its organization and internal affairs immediately before the conversion.

"§ 57D-9-21. Plan of conversion.

- 1 (a) The converting entity must approve a written plan of conversion containing the
2 following:
- 3 (1) The name, type of entity, and jurisdiction whose law governs the
4 organization and internal affairs of the converting entity immediately before
5 the conversion.
- 6 (2) A statement that the converting entity will deliver to the Secretary of State
7 for filing articles of organization and conversion for the purpose of
8 converting the eligible entity into an LLC.
- 9 (3) The name the entity will have when the conversion becomes effective.
- 10 (4) The terms and conditions of the conversion.
- 11 (5) The manner and basis for converting the interests in the converting entity
12 into ownership interests, obligations, or securities of the surviving entity or
13 into cash or other property or any combination thereof.
- 14 (b) The plan of conversion may contain other provisions relating to the conversion.
- 15 (c) The provisions of the plan of conversion, other than the provisions required by
16 subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts
17 objectively ascertainable outside the plan of conversion if the plan of conversion provides the
18 manner in which the facts will operate on the affected provisions. The facts may include, for
19 example, any of the following:
- 20 (1) Statistical or market indices, market prices of any security or group of
21 securities, interest rates, currency exchange rates, or similar economic or
22 financial data.
- 23 (2) A determination or action by the converting entity or by any other person,
24 group, or body.
- 25 (3) The terms of, or actions taken under, an agreement to which the converting
26 entity is a party or any other agreement or document.
- 27 (d) The plan of conversion must be approved in accordance with the law governing the
28 organization and internal affairs of the converting entity immediately before the conversion.
- 29 (e) After a plan of conversion has been approved as provided in subsection (d) of this
30 section, but before articles of conversion become effective, the plan of conversion may be
31 amended or abandoned to the extent permitted by the law that governs the organization and
32 internal affairs of the converting entity.
- 33 **"§ 57D-9-22. Filing of articles of organization and conversion by the converting entity.**
- 34 (a) After a plan of conversion has been approved by the converting entity as provided in
35 G.S. 57D-9-21, the converting entity shall deliver articles of organization and conversion to the
36 Secretary of State for filing. The articles of organization and conversion must contain (i) the
37 information required by G.S. 57D-2-21 and (ii) the following information:
- 38 (1) The name, type of entity, and jurisdiction whose law governs the
39 organization and internal affairs of the converting entity immediately before
40 the conversion.
- 41 (2) A statement that the articles of organization and conversion are being
42 submitted for the purpose of converting the eligible entity into an LLC.
- 43 (3) The name the entity will have when the conversion becomes effective.
- 44 (4) The mailing address of the converting entity immediately before the
45 conversion and, if different, the mailing address it will have when the
46 conversion becomes effective.
- 47 (5) A statement that a plan of conversion has been approved by the converting
48 entity as required by law.
- 49 (b) If the plan of conversion is abandoned after the articles of organization and
50 conversion have been delivered to the Secretary of State but before the articles of organization
51 and conversion become effective, the converting entity must deliver to the Secretary of State

for filing prior to the time the articles of organization and conversion become effective an amendment withdrawing such articles.

(c) Certificates of conversion must be registered as provided in G.S. 47-18.1.

"§ 57D-9-23. Effective date; Effects of conversion.

(a) The conversion takes effect when the articles of organization and conversion of the converting entity filed by the Secretary of State become effective, at which time the following shall occur:

- (1) The converting entity ceases its prior form of organization and continues in existence as the surviving entity.
- (2) The title to all real estate and other property owned by the converting entity continues to be vested in the surviving entity without reversion or impairment.
- (3) All liabilities of the converting entity continue as liabilities of the surviving entity.
- (4) A proceeding pending by or against the converting entity remains pending by or against the surviving entity as if the conversion did not occur.
- (5) The equity or beneficial ownership interests in the converting entity that are to be converted into ownership interests, obligations, or securities of the surviving entity or into the right to receive cash or other property are thereupon so converted, and the former holders of equity or beneficial ownership interests in the converting entity are entitled only to the rights provided, including by reference, in the plan of conversion and the surviving entity's operating agreement.

(b) The conversion does not affect the liability or absence of liability of an equity or beneficial owner of the converting entity for any acts, omissions, or obligations of the converting entity made or incurred prior to the effectiveness of the conversion. A conversion under this Part does not constitute a dissolution or termination of the converting entity.

"§§ 57D-9-24 through 57D-9-29: Reserved for future codification purposes.

"Part 3. Conversion of an LLC.

"§ 57D-9-30. Conversion.

An LLC may convert to a different eligible entity if both of the following requirements are met:

- (1) The conversion is permitted by the law that will govern the organization and internal affairs of the surviving entity.
- (2) The converting LLC complies with the requirements of this Part and, to the extent applicable, the law that will govern the organization and internal affairs of the surviving entity.

"§ 57D-9-31. Plan of conversion.

(a) The converting LLC must approve a written plan of conversion containing the following:

- (1) The name of the converting LLC immediately before the conversion.
- (2) The name the surviving entity will have, the type of entity it will be, and the jurisdiction whose law will govern its organization and internal affairs when the conversion becomes effective.
- (3) The terms and conditions of the conversion.
- (4) The manner and basis for converting the ownership interests in the converting LLC into interests, obligations, or securities of the surviving entity or into cash or other property or any combination thereof.

(b) The plan of conversion may contain other provisions pertaining to the conversion.

(c) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts

objectively ascertainable outside the plan of conversion if the plan of conversion provides the manner in which the facts will operate on the affected provisions. The facts may include, for example, any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the converting LLC or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the converting LLC is a party or any other agreement or document.

(d) The converting LLC shall provide a copy of the plan of conversion to each member of the converting LLC prior to its approval. Under G.S. 57D-3-03(5), all of the members of the converting LLC must approve the plan of conversion. In addition, any economic interest owner of the converting LLC who because of the conversion will become personally liable upon the conversion for liabilities of the surviving entity, whether arising before or after the conversion, must approve the plan of conversion.

(e) After a plan of conversion has been approved by the converting LLC as provided in subsection (d) of this section, but before the articles of conversion become effective, the plan of conversion may be amended or abandoned as follows:

- (1) The plan of conversion may be amended as provided in the plan of conversion or, if not so provided, as approved by the converting LLC in the manner provided in subsection (d) of this section.
- (2) The plan of conversion may be abandoned, subject to any contractual rights, as provided in the plan of conversion or, if not so provided, as approved by the converting LLC in the manner provided in subsection (d) of this section.

"§ 57D-9-32. Articles of conversion.

(a) After a plan of conversion has been approved by the converting LLC as provided in G.S. 57D-9-31, the converting LLC shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion must contain the following information:

- (1) The name of the converting LLC immediately before the conversion.
- (2) The name the surviving entity will have, the type of entity it will be, and the jurisdiction whose law will govern its organization and internal affairs upon the conversion becoming effective.
- (3) The mailing address of the converting LLC immediately before the conversion and, if different, the mailing address the surviving entity will have when the conversion becomes effective.
- (4) A statement that a plan of conversion has been approved by the converting LLC as required by law.
- (5) If the surviving entity is not authorized to transact business in this State, a statement that the surviving entity (i) consents to service of process in any proceeding based on any cause of action arising in respect of the converting LLC being made on the surviving entity by service on the Secretary of State and (ii) commits to deliver to the Secretary of State for filing a statement of any change in the surviving entity's mailing address to which the Secretary of State may mail a copy of process served on the Secretary of State.

(b) If the converting LLC is converting to an eligible entity whose formation, or whose status as a registered limited liability partnership as defined in G.S. 59-32, requires the filing of a document by the Secretary of State, then notwithstanding subsection (a) of this section, that document must be delivered to and filed by the Secretary of State with the articles of conversion.

(c) If the plan of conversion is abandoned after the articles of conversion have been filed by the Secretary of State but before the articles of conversion become effective, the converting LLC must deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment of the articles of conversion withdrawing the articles of conversion.

(d) The conversion takes effect in accordance with the law that will govern the organization and internal affairs of the surviving entity.

(e) Certificates of conversion must be registered as provided in G.S. 47-18.1.

"§ 57D-9-33. Effects of conversion.

(a) When the conversion takes effect, the following shall occur:

(1) The converting LLC ceases its prior form of organization and continues in existence as the surviving entity.

(2) The title to all real estate and other property owned by the converting LLC continues to be vested in the surviving entity without reversion or impairment.

(3) All liabilities of the converting LLC continue as liabilities of the surviving entity.

(4) A proceeding pending by or against the converting LLC remains pending by or against the surviving entity as if the conversion did not occur.

(5) The ownership interests in the converting LLC that are to be converted into equity or beneficial ownership interests, obligations, or securities of the surviving entity or into the right to receive cash or other property are thereupon so converted, and the former holders of ownership interests in the converting LLC are entitled only to the rights provided, including, by reference, in the plan of conversion.

(b) The conversion does not affect the liability or absence of liability of any interest owner of the converting LLC for any acts, omissions, or obligations of the converting LLC made or incurred prior to the effectiveness of the conversion. A conversion under this Part does not constitute a dissolution or termination of the converting LLC.

(c) If the surviving entity is not a domestic corporation or a domestic limited partnership, at the time the conversion takes effect, the surviving entity is deemed to consent to each of the following:

(1) That it may be served with process in this State in any proceeding to enforce any obligation of (i) the converting LLC, if before the conversion the converting LLC was subject to suit in this State on the obligation or (ii) the surviving entity arising from the conversion.

(2) That it has appointed the Secretary of State as its agent for service of process in any such proceeding. Service of process on the Secretary of State must be made by delivering to the Secretary of State, or to any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 57D-1-22(b). Upon receipt of service of process on behalf of a surviving entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving entity. If the surviving entity is authorized to transact business in this State, the address for mailing will be its principal office designated in the latest document filed by the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving entity is not authorized to transact business in this State, the address for mailing will be the mailing address of the surviving entity provided under G.S. 57D-9-32(a)(3).

"§§ 57D-9-34 through 57D-9-29: Reserved for future codification purposes.

"Part 4. Merger.

"§ 57D-9-40. Merger.

An LLC may merge with one or more other eligible entities if both of the following requirements are met:

- (1) The merger is permitted by the law governing the organization and internal affairs of each other merging entity.
- (2) Each merging entity complies with the requirements of this Part and, to the extent applicable, the law other than this Part governing the organization and internal affairs of each merging entity.

"§ 57D-9-41. Plan of merger.

(a) Each merging entity must approve a written plan of merger containing the following:

- (1) The name, type of entity, and jurisdiction whose law governs the organization and internal affairs of each merging entity immediately before the merger.
- (2) The name of the surviving entity.
- (3) The terms and conditions of the merger.
- (4) The manner and basis for converting the interests in each merging entity into interests, obligations, or securities of the surviving entity or into cash or other property or any combination thereof.
- (5) If the surviving entity is an LLC, any amendments to its articles of organization that are to be made in connection with the merger.

(b) The plan of merger may contain other provisions pertaining to the merger.

(c) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger provides the manner in which the facts will operate on the affected provisions. The facts may include, for example, any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the merging LLC or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the merging LLC is a party, or any other agreement or document.

(d) A merging LLC shall provide a copy of the plan of merger to each member of the merging LLC prior to its approval. Under G.S. 57D-3-03(6), all of the members of the merging LLC must approve the plan of merger. In addition, any economic interest owner of the merging LLC who because of the merger will become personally liable upon the merger for liabilities of the merging LLC, any other merging entity, or the surviving entity, whether arising before or after the merger, must approve the plan of merger.

(e) The plan of merger must be approved in accordance with the law governing the organization and internal affairs of each merging entity.

(f) After a plan of merger has been approved but before the articles of merger become effective, the plan of merger may be amended or abandoned as follows:

- (1) The plan of merger may be amended as provided in the plan of merger or, if not so provided, in the manner provided in subsections (d) and (e) of this section.

- (2) The plan of merger may be abandoned, subject to any contractual rights, as provided in the plan of merger or, if not so provided, in the manner provided in subsections (d) and (e) of this section.

"§ 57D-9-42. Articles of merger.

(a) After a plan of merger has been approved by each merging entity as provided in G.S. 57D-9-41, the surviving entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall state the following:

- (1) The name, type of entity, and jurisdiction whose law governs the organization and internal affairs of each merging entity immediately before the merger.
- (2) The name of the surviving entity.
- (3) The mailing address of each merging entity immediately before the merger and the mailing address the surviving entity will have when the merger becomes effective.
- (4) If the surviving entity is an LLC, any amendment to its articles of organization as provided in the plan of merger.
- (5) A statement that the plan of merger has been approved by each merging entity in the manner required by law.
- (6) If the surviving entity is not authorized to transact business in this State, a statement that the surviving entity (i) consents to service of process in any proceeding based on any cause of action arising in respect of a merging LLC being made on the surviving entity by service on the Secretary of State and (ii) commits to deliver to the Secretary of State for filing a statement of any change in the surviving entity's mailing address to which the Secretary of State may mail a copy of process served on the Secretary of State.

(b) If the plan of merger is amended after the articles of merger have been filed but before the articles of merger become effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger stating that they have been abandoned.

(c) A merger takes effect when the articles of merger become effective, which in the case of a merging LLC is when the articles of merger filed by the Secretary of State become effective.

(d) Certificates of merger must be registered as provided in G.S. 47-18.1.

"§ 57D-9-43. Effects of merger.

(a) When the merger takes effect, the following shall occur:

- (1) Each merging entity other than the surviving entity merges into the surviving entity, and the separate existence of each merging entity other than the surviving entity ceases.
- (2) The title to all real estate and other property owned by each merging entity is vested in the surviving entity without reversion or impairment.
- (3) The surviving entity has all liabilities of each merging entity.
- (4) A proceeding pending by or against any merging entity remains pending by or against such merging entity as if the merger did not occur or the surviving entity may be substituted in the proceeding for a merging entity whose separate existence ceases in the merger.

- (5) If an LLC is the surviving entity, its articles of organization will be amended to the extent provided in the articles of merger.
- (6) The equity or beneficial ownership interests in, and the obligations and securities of, each merging entity that are to be converted into interests, obligations, or securities of the surviving entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the equity and beneficial ownership interests are entitled only to the rights provided to them in the plan of merger or, in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of Chapter 55 of the General Statutes.
- (7) If the surviving entity is not a domestic corporation, the surviving entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging entity that is a domestic corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 of Chapter 55 of the General Statutes as if it were a domestic corporation.
- (b) The merger does not affect the liability or absence of liability of any holder of an interest in a merging entity for any acts, omissions, or obligations of any merging entity made or incurred prior to the effectiveness of the merger. The cessation of the separate existence of a merging entity in the merger does not constitute a dissolution or termination of the merging entity.
- (c) If the surviving entity is not a domestic eligible entity when the merger takes effect, the surviving entity is deemed to consent to each of the following:
- (1) That it may be served with process in this State in any proceeding to enforce
(i) any obligation of a domestic merging entity if before the merger the domestic merging entity was subject to suit in this State on the obligation,
(ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii)
any obligation of the surviving entity arising from the merger.
- (2) That it has appointed the Secretary of State as its agent for service of process in any such proceeding. Service of process on the Secretary of State is made by delivering to the Secretary of State, or to any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process and the fee required by G.S. 57C-1-22(b). Upon receipt of service of process on behalf of a surviving entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving entity. If the surviving entity is authorized to transact business in this State, the address for mailing will be its principal office designated in the latest document filed by the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving entity is not authorized to transact business in this State, the address for mailing will be the mailing address of the surviving entity provided under G.S. 57D-9-42(a).

"§§ 57D-9-44 through 57D-9-49: Reserved for future codification purposes.

"Article 10.

"Miscellaneous.

"§ 57D-10-01. Purpose; public policy.

- (a) This Chapter is to be applied to promote its purposes and policies.

(b) The purpose of this Chapter is to provide a flexible framework under which one or more persons may organize and manage one or more businesses as they determine to be appropriate with minimum prescribed formalities or constraints.

(c) It is the policy of this Chapter to give the maximum effect to the principle of freedom of contract and the enforceability of operating agreements.

"§ 57D-10-02. Rules of construction; coordination with other law.

(a) Unless displaced by this Chapter, the rules of law and equity supplement this Chapter.

(b) The rule that statutes in derogation of the common law are to be strictly construed does not apply to this Chapter.

(c) This Chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Section 7003(b).

(d) G.S. 25-9-406 and G.S. 25-9-408 do not apply to any ownership interest or any portion thereof, including any economic interest. To the extent of any conflict or inconsistency between this subsection and G.S. 25-9-406 and G.S. 25-9-408, this subsection prevails. Accordingly, neither G.S. 25-9-406 nor G.S. 25-9-408 will render invalid, unenforceable, or ineffective any contrary or inconsistent provision contained in an operating agreement.

(e) In this Chapter, unless otherwise specified or indicated by the context, including as may otherwise be provided in the operating agreement under Part 3 of Article 2 of this Chapter, without the need for repetitious use of qualifiers, further statement, or clarification in the text of any provision of this Chapter, the following rules of construction shall apply:

(1) The provisions of this Chapter are to be applied in a manner that is reasonable under the circumstances.

(2) References to "members," "interest owners," "managers," "company officials," "operating agreement," "articles of organization," and other terms that relate to limited liability companies are deemed to refer to an LLC or foreign LLC as the context indicates.

(3) The words "this Chapter," "hereof," "hereby," "hereunder," and "herein," and words of similar impact are to be read to refer to Chapter 57D of the General Statutes as a whole and not to any particular provision of this Chapter.

(4) The word "including" is to be read as if it is followed by the words "without limitation" and, therefore, denotes examples that are only illustrative and does not narrow or limit the scope of the standard, concept, or other applicable subject being described or illustrated.

(5) The words "or" and "any" are not exclusive.

(6) The captions and headings of provisions of this Chapter are for convenience of reference only and are not to be construed as part of this Chapter or serve to limit or expand the scope of the provisions.

(f) Action validly taken pursuant to one provision of this Chapter is not rendered invalid solely because it is substantively the same or similar to an action that could be taken pursuant to some other provision of this Chapter but fails to satisfy one or more requirements prescribed by that other provision.

(g) An operating agreement that provides for the application of the law of this State is governed by and will be construed under the laws of this State in accordance with its terms.

"§§ 57D-10-04 through 57D-10-09: Reserved for future codification purposes.

"Article 11.

"Transition Provisions.

"§ 57D-11-01. Applicability of act.

The provisions of this Chapter apply to every LLC, whether formed on, before, or after January 1, 2014, and the interest owners of every LLC, except to the extent expressly excepted by this Chapter.

"§ 57D-11-02. Application to qualified foreign LLCs.

A foreign LLC authorized to transact business in this State immediately before the repeal of Chapter 57C of the General Statutes is subject to this Chapter but is not required to obtain a new certificate of authority to transact business under this Chapter. The certificate of authority of such a foreign LLC issued under former Chapter 57C of the General Statutes before its repeal is to be deemed to have been issued under this Chapter.

"§ 57D-11-03. Saving provisions.

(a) The existence of LLCs formed before January 1, 2014, shall not be impaired by the repeal of Chapter 57C of the General Statutes or the enactment of this Chapter, by any change made by this Chapter in the requirements for the formation of LLCs, nor by any amendment or repeal by this Chapter of the laws under which they were formed or created, and, except as otherwise expressly provided in this Chapter, the repeal of former Chapter 57C of the General Statutes shall not affect any liability or penalty incurred under the provisions of that chapter prior to its repeal.

(b) Any proceeding commenced before January 1, 2014, may be completed in accordance with the law then in effect.

(c) An LLC dissolved before January 1, 2014, may wind up or complete its winding up, as the case may be, pursuant to Article 6 and other applicable provisions of this Chapter.

(d) A proceeding under G.S. 57D-4-06(a) in respect of an LLC formed before January 1, 2014, will not be barred if it is commenced no later than (i) two years after the distribution or (ii) the earlier of January 1, 2016, or three years after the distribution.

(e) References in the articles of organization or operating agreements of an LLC made before January 1, 2014, to provisions of Chapter 57C of the General Statutes are to be deemed, to the extent applicable or the context does not clearly indicate otherwise, to be made to the corresponding provisions of this Chapter."

SECTION 3. G.S. 55-1-40 reads as rewritten:

"§ 55-1-40. Chapter definitions.

In this Chapter unless otherwise specifically provided:

...
(6b) "Domestic limited liability company" has the same meaning as the term "LLC" in G.S. 57C-1-03; G.S. 57D-1-03.

...
(10a) "Foreign limited liability company" has the same meaning as the term "foreign LLC" in G.S. 57C-1-03; G.S. 57D-1-03.

...."

SECTION 4. G.S. 55A-1-40 reads as rewritten:

"§ 55A-1-40. Chapter definitions.

In this Chapter unless otherwise specifically provided:

...
(8a) "Domestic limited liability company" has the same meaning as the term "LLC" in G.S. 57C-1-03; G.S. 57D-1-03.

...
(11a) "Foreign limited liability company" has the same meaning as the term "foreign LLC" in G.S. 57C-1-03; G.S. 57D-1-03.

...."

SECTION 5. G.S. 55A-11-02(a) reads as rewritten:

"(a) Without the prior approval of the superior court in a proceeding in which the Attorney General has been given written notice, a charitable or religious corporation may merge only ~~with~~ with any of the following:

- (1) A charitable or religious ~~corporation~~ corporation.
- (2) A foreign corporation that would qualify under this Chapter as a charitable or religious ~~corporation~~ corporation.
- (3) A wholly owned foreign or domestic corporation (business or nonprofit) which is not a charitable or religious corporation, or an unincorporated entity, provided the charitable or religious corporation is the survivor in the merger and continues to be a charitable or religious corporation after the ~~merger~~ or merger.
- (4) A business or nonprofit corporation (foreign or domestic) other than a charitable or religious corporation, or an unincorporated entity, provided that: (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the charitable or religious corporation or the fair market value of the charitable or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under G.S. 55A-14-03(a)(1) and (2) had it dissolved; (ii) it shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and (iii) the merger is approved by a majority of directors of the charitable or religious corporation who are not and will not become members, as "member" is defined in G.S. 55A-1-40(16) or ~~G.S. 57C-1-03~~ G.S. 57D-1-03, partners, limited partners, or shareholders in or directors, managers, officers, employees, agents, or consultants of the survivor in the merger.

...."

SECTION 6. G.S. 55D-1 reads as rewritten:

"§ 55D-1. Applicable definitions.

The following definitions apply in this Chapter:

- (5) "Foreign limited liability company" ~~is defined in G.S. 57C-1-03(8)~~ has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.
- (10) "Limited liability company" or "domestic limited liability company" ~~is defined in G.S. 57C-1-03(11)~~ has the same meaning as the term "LLC" in G.S. 57D-1-03.

...."

SECTION 7. 55D-10 reads as rewritten:

"§ 55D-10. Filing requirements.

(a) To be entitled to filing by the Secretary of State under Chapter 55, 55A, 55B, ~~57C, 57D,~~ or 59 of the General Statutes, a document must satisfy the requirements of this section, and of any other section of the General Statutes that adds to or varies these requirements.

(b) The document must meet all of the following requirements:

- (1) The document must be one that is required or permitted by Chapter 55, 55A, 55B, ~~57C, 57D,~~ or 59 of the General Statutes to be filed in the office of the Secretary of State.

- (2) The document must contain the information required by Chapter 55, 55A, 55B, ~~57C, 57D~~, or 59 of the General Statutes for that document. It may contain other information as well.
- (3) The document must be typewritten, printed, or in an electronic form acceptable to the Secretary of State.
- (4) The document must be in the English language. A name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of ~~existence~~ existence, or a document of similar import, required of foreign corporations, foreign nonprofit corporations, foreign limited liability companies, and foreign limited liability partnerships need not be in English if accompanied by a reasonably authenticated English translation.
- (5) A document submitted by an entity must be executed by a person authorized to execute documents (i) under G.S. 55-1-20 if the entity is a domestic or foreign corporation, (ii) under G.S. 55A-1-20 if the entity is a domestic or foreign nonprofit corporation, (iii) under ~~G.S. 57C-1-20~~ G.S. 57D-1-20 if the entity is a domestic or foreign limited liability company, (iv) under G.S. 59-204 if the entity is a domestic or foreign limited partnership, or (v) under G.S. 59-35.1 if the entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of the State.

...."

SECTION 8. G.S. 55D-13(c) reads as rewritten:

"(c) Except as provided in G.S. 55-2-03(b), 55A-2-03(b), and ~~57C-2-20(b), 57D-2-20(b)~~, the fact that a document has become effective under this section does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document."

SECTION 9. G.S. 55D-15 reads as rewritten:

"§ 55D-15. Filing duty of Secretary of State.

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of this Chapter and of Chapter 55, 55A, 55B, ~~57C, 57D~~, or 59 of the General Statutes, the Secretary of State shall file it. Documents filed with the Secretary of State under this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor law, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.

...

(d) The Secretary of State's duty is to review and file documents that satisfy the requirements of this Chapter and of Chapter 55, 55A, 55B, ~~57C, 57D~~, or 59 of the General Statutes. The Secretary of State's filing or refusing to file a document does not do any of the following:

- (1) Except as provided in G.S. 55-2-03(b), 55A-2-03(b), or ~~57C-2-20(b), 57D-2-20(b)~~, affect the validity or invalidity of the document in whole or part.
- (2) Relate to the correctness or incorrectness of information contained in the document.
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect."

SECTION 10. G.S. 55D-17 reads as rewritten:

"§ 55D-17. Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature and the seal of office (both of which may be in facsimile or in any electronic form approved by the Secretary of State) and certifying that the copy is a true copy

of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed under this Chapter, Chapter 55, 55A, 55B, ~~57C, 57D~~, or 59 of the General Statutes, or any predecessor law, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original."

SECTION 11. G.S. 55D-20 reads as rewritten:

"§ 55D-20. Name requirements.

(a) In addition to the requirements of any other applicable section of the General Statutes:

- (1) The name of a corporation must contain the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd."
- (2) The name of a limited liability company must contain the words "limited liability company" or the abbreviation "L.L.C." or "LLC", or the combination "ltd. liability co.", "limited liability co.", or "ltd. liability company". Notwithstanding the prior sentence, any limited liability company whose name contained the words "low-profit limited liability company" or the abbreviation "L3C" pursuant to subdivision (6) of this subsection prior to its repeal on January 1, 2014, may continue to use that name unless the limited liability company amends its articles of organization to change its name.
- (3) The name of a limited partnership that is not a limited liability limited partnership must contain the words "limited partnership", the abbreviation "L.P." or "LP", or the combination "ltd. partnership".
- (4) The name of a limited liability limited partnership must contain the words "registered limited liability limited partnership" or "limited liability limited partnership" or the abbreviation "L.L.L.P.", "R.L.L.P.", "LLLP", or "RLLLP".
- (5) A registered limited liability partnership's name must contain the words "registered limited liability partnership" or "limited liability partnership" or the abbreviation "L.L.P.", "R.L.L.P.", "LLP" or "RLLP".
- ~~(6) The name of a low-profit limited liability company must contain the words "low-profit limited liability company" or the abbreviation "L3C".~~

(b) In addition to the requirements of subsection (a) of this section, the name of a limited partnership shall not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership has been carried on under that name before the admission of that limited partner.

(c) The name of a corporation, nonprofit corporation, or limited liability company shall not contain language stating or implying that the entity is organized for a purpose other than that permitted by G.S. 55-3-01, 55A-3-01, or ~~57C-2-01~~57D-2-01 and by its articles of incorporation or organization.

(d) The use of assumed names or fictitious names, as provided for in Chapter 66, is not affected by this Chapter or by Chapter 55, 55A, ~~57C, 57D~~, or 59 of the General Statutes.

(e) The filing of any document, the reservation or registration of any name under this Chapter or under Chapter 55, 55A, 55B, ~~57C, 57D~~, or 59 of the General Statutes, or the issuance of a certificate of authority to transact business or conduct affairs or a statement of foreign registration does not authorize the use in this State of a name in violation of the rights of any third party under the federal trademark act, the trademark act of this State, or other statutory or common law, and is not a defense to an action for violation of any of those rights."

SECTION 12. G.S. 55D-21(d) reads as rewritten:

"(d) Except as otherwise provided in this subsection, the name of a corporation dissolved under Article 14 of Chapter 55 of the General Statutes, of a nonprofit corporation dissolved under Article 14 of Chapter 55A of the General Statutes, of a limited liability company dissolved under Article 6 of Chapter ~~57C~~57D of the General Statutes, of a limited partnership dissolved under Part 8 of Article 5 of Chapter 59 of the General Statutes, or of a limited liability partnership whose registration as a limited liability partnership has been cancelled under G.S. 59-84.2 or revoked under G.S. 59-84.4, may not be used by another entity until one of the following occurs:

...."

SECTION 13. G.S. 55D-22(b) reads as rewritten:

"(b) If a foreign corporation, foreign nonprofit corporation, foreign limited liability company, or foreign limited partnership authorized to transact business or conduct affairs in this State, or a foreign limited liability partnership maintaining a statement of foreign registration, changes its name to one that does not satisfy the requirements of this Article, it may not transact business or conduct affairs in this State under the changed name until it adopts a name satisfying the requirements of this Article and obtains an amended certificate of authority or statement of foreign registration under G.S. 55-15-04, 55A-15-04, ~~57C-7-05~~57D-7-04, 59-91, or 59-905, as applicable."

SECTION 14. G.S. 55D-31(c) reads as rewritten:

"(c) A domestic corporation, limited liability company, limited liability limited partnership, registered limited liability partnership, foreign corporation, foreign limited liability company, or foreign limited liability partnership may change its registered office or registered agent by including in its annual report required by G.S. 55-16-22, ~~57C-2-23~~57D-2-24, 59-84.4, or 59-210 the information and any written consent required by subsection (a) of this section."

SECTION 15. G.S. 59-32 reads as rewritten:

"§ 59-32. Definition of terms.

As used in this Chapter, except as otherwise defined in Article 5 of this Chapter for purposes of that Article, unless the context otherwise requires:

...

(4b) "Domestic limited liability company" has the same meaning as ~~in~~ G.S. 57C-1-03; the term "LLC" in G.S. 57D-1-03.

...

(4f) "Foreign limited liability company" has the same meaning as ~~in~~ G.S. 57C-1-03; the term "foreign LLC" in G.S. 57D-1-03.

...."

SECTION 16. G.S. 59-102 reads as rewritten:

"§ 59-102. Definitions.

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

...

(3b) "Domestic limited liability company" has the same meaning as ~~in~~ G.S. 57C-1-03; the term "LLC" in G.S. 57D-1-03.

...

(4b) "Foreign limited liability company" has the same meaning as ~~in~~ G.S. 57C-1-03; the term "foreign LLC" in G.S. 57D-1-03.

...."

SECTION 17. G.S. 66-260(11)n. reads as rewritten:

"(11) "Telephonic seller" or "seller" means a person who, directly or through salespersons, causes a telephone solicitation or attempted telephone solicitation to occur. "Telephonic seller" and "seller" do not include any of the following:

...

- n. A foreign corporation, limited liability company, or limited partnership that has obtained and maintained a certificate of authority to transact business or conduct affairs in this State pursuant to Chapter 55, 55A, or ~~57C~~57D or Article 5 of Chapter 59 of the General Statutes and that only transacts business or conducts affairs in this State using the name set forth in the certificate of authority.

...."

SECTION 18. G.S. 66-352(a) reads as rewritten:

"(a) Notice of Franchise. – A person who intends to provide cable service over a cable system in an area must file a notice of franchise with the Secretary before providing the service. A person who files a notice of franchise must pay a fee in the amount set in ~~G.S. 57C-1-22~~G.S. 57D-1-22 for filing articles of organization."

SECTION 19. G.S. 66-353 reads as rewritten:

"§ 66-353. Annual service report.

A holder of a State-issued franchise must file an annual service report with the Secretary. The report must be filed on or before July 31 of each year. The report must be accompanied by a fee in the amount set in ~~G.S. 57C-1-22~~G.S. 57D-1-22 for filing an annual report. The report must include all of the following:

...."

SECTION 20. G.S. 87-10.1 reads as rewritten:

"§ 87-10.1. Licensing of nonresidents.

(a) Definitions. – The following definitions apply in this section:

- (1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (2) Foreign corporation. – Defined in G.S. 55-1-40.
- (3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.
- (4) Foreign limited liability company. – ~~Defined in G.S. 57C-1-03.~~ Has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.
- (5) Foreign partnership. – Either of the following that does not have a permanent place of business in this State:
 - a. A foreign limited partnership as defined in G.S. 59-102.
 - b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – The Board shall not issue a certificate of license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a certificate of license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter ~~57C~~57D of the General Statutes.

...."

SECTION 21. G.S. 87-22.2 reads as rewritten:

"§ 87-22.2. Licensing of nonresidents.

(a) Definitions. – The following definitions apply in this section:

- (1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (2) Foreign corporation. – Defined in G.S. 55-1-40.
- (3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

- (4) Foreign limited liability company. – ~~Defined in G.S. 57C-1-03.~~ Has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.
- (5) Foreign partnership. – Either of the following that does not have a permanent place of business in this State:
- a. A foreign limited partnership as defined in G.S. 59-102.
 - b. A general partnership formed under the laws of a jurisdiction other than this State.
- (b) Licensing. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter ~~57C~~57D of the General Statutes.

...."

SECTION 22. G.S. 87-44.2 reads as rewritten:

"§ 87-44.2. Licensing of nonresidents.

- (a) Definitions. – The following definitions apply in this section:
- (1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
 - (2) Foreign corporation. – Defined in G.S. 55-1-40.
 - (3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.
 - (4) Foreign limited liability company. – ~~Defined in G.S. 57C-1-03.~~ Has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.
 - (5) Foreign partnership. – Either of the following that does not have a permanent place of business in this State:
 - a. A foreign limited partnership as defined in G.S. 59-102.
 - b. A general partnership formed under the laws of a jurisdiction other than this State.
- (b) Licensing. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter ~~57C~~57D of the General Statutes.

...."

SECTION 23. G.S. 89C-18.1 reads as rewritten:

"§ 89C-18.1. Licensing of nonresidents.

- (a) Definitions. – The following definitions apply in this section:
- (1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
 - (2) Foreign corporation. – Defined in G.S. 55-1-40.
 - (3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.
 - (4) Foreign limited liability company. – ~~Defined in G.S. 57C-1-03.~~ Has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.
 - (5) Foreign partnership. – Either of the following that does not have a permanent place of business in this State:
 - a. A foreign limited partnership as defined in G.S. 59-102.
 - b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – The Board shall not renew a certificate of licensure for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not renew a certificate of licensure for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter ~~57C~~57D of the General Statutes.

...."

SECTION 24. G.S. 89F-6 reads as rewritten:

"§ 89F-6. Corporate, limited liability company, partnership, or sole proprietorship practice of soil science.

A corporation organized under Chapter 55B of the General Statutes, a limited liability company organized under Chapter ~~57C~~57D of the General Statutes, a partnership, or a sole proprietorship may engage in the practice of soil science in this State. A licensed soil scientist shall be in responsible charge of all practice of soil science by the corporation, limited liability company, partnership, or sole proprietorship."

SECTION 25. G.S. 105-114.1(a)(4) reads as rewritten:

"(a) Definitions. – The following definitions apply in this section:

...

(4) Governing law. – ~~A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable. The law under which a limited liability company is organized.~~

...."

SECTION 26. G.S. 105-122.1 reads as rewritten:

"§ 105-122.1. Credit for additional annual report fees paid by limited liability companies subject to franchise tax.

A limited liability company subject to tax under this Article is allowed a credit against the tax imposed by this Article equal to the difference between the annual report fee for corporations under G.S. 55-1-22(a)(23) and the annual report fee for limited liability companies under ~~G.S. 57C-1-22(a)~~G.S. 57D-1-22. The credit allowed by this section may not exceed the amount of tax imposed by this Article for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

SECTION 27. G.S. 105-130.2(11) reads as rewritten:

"(11) Limited liability company. – Either a domestic limited liability company organized under Chapter ~~57C~~57D of the General Statutes or a foreign limited liability company authorized by that Chapter to transact business in this State that is classified for federal income tax purposes as a corporation. As applied to a limited liability company that is a corporation under this Part, the term "shareholder" means a member of the limited liability company and the term "corporate officer" means a member or manager of the limited liability company."

SECTION 28. G.S. 105-134.1(7a) reads as rewritten:

"(7a) Limited liability company. – Either a domestic limited liability company organized under Chapter ~~57C~~57D of the General Statutes or a foreign limited liability company authorized by that Chapter to transact business in this State that is classified for federal income tax purposes as a partnership. As applied to a limited liability company that is a partnership under this Part, the term "partner" means a member of the limited liability company."

SECTION 29. G.S. 105-163.1(8) reads as rewritten:

"(8) Nonresident entity. – Any of the following:

a. A foreign limited liability company, ~~as defined in G.S. 57C-1-03,~~ defined using the same definition for the term

"foreign LLC" in G.S. 57D-1-03, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C57D of the General Statutes.

b. A foreign limited partnership as defined in G.S. 59-102 or a general partnership formed under the laws of any jurisdiction other than this State, unless the partnership maintains a permanent place of business in this State.

c. A foreign corporation, as defined in G.S. 55-1-40, that has not obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes."

SECTION 30. G.S. 117-18.1(a)(4) reads as rewritten:

"(a) Electric membership corporations may form, organize, acquire, hold, dispose of, and operate any interest up to and including full controlling interest in separate business entities that provide energy services and products, telecommunications services and products, water, and wastewater collection and treatment, so long as those other business entities meet all of the following conditions:

...

(4) They are organized and operated pursuant to Chapter 55 or Chapter 57C57D of the General Statutes.

...."

SECTION 31. G.S. 25-9-406(i) reads as rewritten:

"(i) Inapplicability. – This section does not apply to an assignment of a health-care-insurance ~~receivable~~ receivable or an interest in a partnership or limited liability company. Subsection (f) of this section does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (f) of this section:

(1) North Carolina Structured Settlement Act (Article 44B of Chapter 1 of the General Statutes).

(2) North Carolina Crime Victims Compensation Act (Chapter 15B of the General Statutes).

(3) North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes).

(4) North Carolina Firemen's and Rescue Squad Workers' Pension Fund (Article 86 of Chapter 58 of the General Statutes).

(5) Employment Security Law (Chapter 96 of the General Statutes).

(6) North Carolina Workers' Compensation Fund Act (Article 1 of Chapter 97 of the General Statutes).

(7) Programs of Public Assistance (Article 2 of Chapter 108A of the General Statutes).

(8) North Carolina State Lottery Act (Chapter 18C of the General Statutes).

...."

SECTION 32. G.S. 25-9-408(f) reads as rewritten:

"(f) Inapplicability. – This section does not apply to an assignment of an interest in a partnership or limited liability company. Subsection (c) of this section does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (c) of this section:

(1) North Carolina Structured Settlement Act (Article 44B of Chapter 1 of the General Statutes).

- 1 (2) North Carolina Crime Victims Compensation Act (Chapter 15B of the
2 General Statutes).
3 (3) North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the
4 General Statutes).
5 (4) North Carolina Firemen's and Rescue Squad Workers' Pension Fund (Article
6 86 of Chapter 58 of the General Statutes).
7 (5) Employment Security Law (Chapter 96 of the General Statutes).
8 (6) North Carolina Workers' Compensation Fund Act (Article 1 of Chapter 97 of
9 the General Statutes).
10 (7) Programs of Public Assistance (Article 2 of Chapter 108A of the General
11 Statutes).
12 (8) North Carolina State Lottery Act (Chapter 18C of the General Statutes)."

13 **SECTION 33.** The Revisor of Statutes may cause to be printed all relevant
14 portions of the explanatory comments of the drafters of this act as the Revisor deems
15 appropriate.

16 **SECTION 34.** Except as otherwise provided, this act becomes effective January 1,
17 2014.