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HOUSE FILE 2369  
BY COMMITTEE ON JUDICIARY AND  
LAW ENFORCEMENT

(SUCCESSOR TO HSB 611)

Passed House, Date 3/11/92 (p. 543) Passed Senate, Date 3/31/92 <sup>(P. 1106)</sup>  
Vote: Ayes 94 Nays 6 Vote: Ayes 44 Nays 0

Approved April 27, 1992

*Motion to reconsider 3/11 (p. 556)*

*" presented 3/16*

*Referred House 3/16/92 (p. 625)* A BILL FOR

*93-2*  
*Motion to reconsider 3/17 (p. 655)*  
*2/25 3/17*

1 An Act authorizing limited liability companies in Iowa and  
2 including penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2369

SUBCHAPTER I  
GENERAL PROVISIONS  
PART 1

Section 1. Section 4.1, subsection 13, Code 1991, is amended to read as follows:

13. PERSON. Unless otherwise provided by law, "person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

Sec. 2. NEW SECTION. 490A.100 SHORT TITLE.

This chapter is entitled and may be cited as the "Iowa Limited Liability Company Act."

Sec. 3. NEW SECTION. 490A.101 RESERVATION OF POWER TO AMEND OR REPEAL.

The general assembly has the power to amend or repeal all or part of this chapter at any time and all domestic and foreign limited liability companies subject to this chapter shall be governed by the amendment or repeal.

Sec. 4. NEW SECTION. 490A.102 DEFINITIONS.

In this chapter, unless the context otherwise requires:

1. "Articles of organization" means documents filed under section 490A.301 for the purpose of forming a limited liability company and includes amended and restated articles of organization, and articles of merger.

2. "Bankruptcy" means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code.

3. "Capital contribution" means any cash, property, or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in the capacity of a member.

4. "Constituent entity" means each limited liability company, limited partnership, or corporation which is party to

1 a plan of merger pursuant to subchapter XII.

2 5. "Corporation" means a domestic corporation formed under  
3 the law of this state or subject to the law of this state, or  
4 a foreign corporation as defined in this chapter.

5 6. "Court" includes every court having jurisdiction of the  
6 case.

7 7. "Distribution" means a direct or indirect transfer of  
8 money or other property, or incurrence of indebtedness by a  
9 limited liability company to or for the benefit of its members  
10 in respect of their interests.

11 8. "Entity" includes corporation and foreign corporation;  
12 nonprofit corporation; profit and nonprofit unincorporated  
13 association; business trust, estate, partnership, limited  
14 liability company, trust, and two or more persons having a  
15 joint or common economic interest; and state, United States,  
16 and foreign government.

17 9. "Foreign corporation" means a corporation for profit  
18 incorporated under a law other than the law of this state.

19 10. "Foreign limited liability company" means a limited  
20 liability company organized under a law other than the law of  
21 this state.

22 11. "Foreign limited partnership" means a limited  
23 partnership organized under a law other than the law of this  
24 state.

25 12. "Individual" includes the estate of an incompetent, a  
26 ward, or a deceased individual.

27 13. "Limited liability company" or "domestic limited  
28 liability company" means an entity that is an unincorporated  
29 association having two or more members, and that is organized  
30 under or subject to this chapter.

31 14. "Limited partnership" means a limited partnership  
32 organized under the law of this state or a foreign limited  
33 partnership as defined in this section.

34 15. "Manager" or "managers" means a person or persons  
35 designated by the members of a limited liability company to

1 manage the limited liability company as provided in the  
2 articles of organization or an operating agreement.

3 16. "Member" means a person with a membership interest in  
4 a limited liability company.

5 17. "Membership interest" or "interest" means a member's  
6 share of the profits and the losses of the limited liability  
7 company and the right to receive distributions of the limited  
8 liability company's assets, and any right to vote or  
9 participate in management.

10 18. "Operating agreement" means any agreement of the  
11 members as to the affairs of a limited liability company and  
12 the conduct of its business.

13 19. "Person" has the same meaning as specified in section  
14 4.1, subsection 13.

15 20. "Principal office" means the office, in or out of this  
16 state, where the principal executive offices of a domestic or  
17 foreign limited liability company are located.

18 21. "Secretary of state" means the Iowa secretary of  
19 state.

20 22. "State," when referring to a part of the United  
21 States, includes a state, commonwealth, and their agencies and  
22 governmental subdivisions; and a territory or insular  
23 possession, and their agencies and governmental subdivisions,  
24 of the United States.

25 23. "Surviving Entity" means the constituent entity  
26 surviving the merger, as identified in the articles of merger  
27 provided for in subchapter XII.

28 24. "United States" includes a district, authority,  
29 bureau, commission, department, and any other agency of the  
30 United States.

31 PART 2

32 Sec. 5. NEW SECTION. 490A.120 FILING REQUIREMENTS.

33 1. A document must satisfy the requirements of this  
34 section, and of any other section that adds to or varies these  
35 requirements, to be entitled to filing.

1     2. The document must be one that this chapter requires or  
2 permits to be filed with the secretary of state.

3     3. The document must contain the information required by  
4 this chapter. It may contain other information as well.

5     4. The document must be typewritten or printed. The  
6 typewritten or printed portion shall be in black. Manually  
7 signed photocopies, or other reproduced copies, including  
8 facsimiles and other electronically or computer-generated  
9 copies of typewritten or printed documents may be filed.

10    5. The document must be in the English language. A  
11 limited liability company name need not be in English if  
12 written in English letters or Arabic or Roman numerals. The  
13 articles of organization, duly authenticated by the official  
14 having custody of the applicable records in the state or  
15 country under whose law the limited liability company is  
16 formed, which are required of foreign limited liability  
17 companies, need not be in English if accompanied by a  
18 reasonably authenticated English translation.

19    6. The document must be executed by one of the following  
20 persons:

21    a. A manager, or if no managers have been selected, by any  
22 member of the limited liability company.

23    b. If the limited liability company has not been formed,  
24 by the person forming the limited liability company.

25    c. If the limited liability company is in the hands of a  
26 receiver, trustee, or other court-appointed fiduciary, that  
27 fiduciary.

28    7. The person executing the document shall sign it and  
29 state beneath or opposite the person's signature the person's  
30 name and the capacity in which the person signs.

31    8. If, pursuant to any provision of this chapter, the  
32 secretary of state has prescribed a mandatory form for the  
33 document, the document shall be in or on the prescribed form.

34    9. The document must be delivered to the secretary of  
35 state for filing and must be accompanied by the correct filing

1 fee.

2 Sec. 6. NEW SECTION. 490A.121 FILING DUTY OF SECRETARY  
3 OF STATE.

4 1. If a document delivered to the office of the secretary  
5 of state for filing satisfies the requirements of section  
6 490A.120, the secretary of state shall file it and issue any  
7 necessary certificate.

8 2. The secretary of state files a document by stamping or  
9 otherwise endorsing "filed", together with the secretary of  
10 state's name and official title and the date and time of  
11 receipt, on both the document and the receipt for the filing  
12 fee, and recording the document in the records of the  
13 secretary of state. After filing a document, and except as  
14 provided in section 490A.503, the secretary of state shall  
15 deliver the document, with the filing fee receipt, or  
16 acknowledgment of receipt if no fee is required, attached, to  
17 the domestic or foreign limited liability company or its  
18 representative.

19 3. If the secretary of state refuses to file a document,  
20 the secretary of state shall return it to the domestic or  
21 foreign limited liability company or its representative within  
22 ten days after the document was received by the secretary of  
23 state, together with a brief, written explanation of the  
24 reason for the refusal.

25 4. The secretary of state's duty to file documents under  
26 this section is ministerial. Filing or refusing to file a  
27 document does not:

28 a. Affect the validity or invalidity of the document in  
29 whole or part.

30 b. Relate to the correctness or incorrectness of  
31 information contained in the document.

32 c. Create a presumption that the document is valid or  
33 invalid or that information contained in the document is  
34 correct or incorrect.

35 Sec. 7. NEW SECTION. 490A.122 EFFECTIVE TIME AND DATE OF

1 DOCUMENTS.

2 1. Except as provided in subsection 2 and section  
3 490A.123, subsection 3, a document accepted for filing is  
4 effective at the later of the following times:

5 a. At the time of filing on the date it is filed, as  
6 evidenced by the secretary of state's date and time  
7 endorsement on the original document.

8 b. At the time specified in the document as its effective  
9 time on the date it is filed.

10 2. A document may specify a delayed effective time and  
11 date, and if it does so the document becomes effective at the  
12 time and date specified. If a delayed effective date but no  
13 time is specified, the document is effective at the close of  
14 business on that date. A delayed effective date for a  
15 document shall not be later than the ninetieth day after the  
16 date it is filed.

17 Sec. 8. NEW SECTION. 490A.123 CORRECTING FILED

18 DOCUMENTS.

19 1. A domestic or foreign limited liability company may  
20 correct a document filed by the secretary of state if the  
21 document satisfies one or both of the following requirements:

22 a. Contains an incorrect statement.

23 b. Was defectively executed, attested, sealed, verified,  
24 or acknowledged.

25 2. A document is corrected by complying with both of the  
26 following:

27 a. By preparing articles of correction that satisfy all of  
28 the following requirements:

29 (1) Describe the document, including its filing date, or  
30 attach a copy of it to the articles.

31 (2) Specify the incorrect statement and the reason it is  
32 incorrect or the manner in which the execution was defective.

33 (3) Correct the incorrect statement or defective  
34 execution.

35 b. By delivering the articles to the secretary of state

1 for filing.

2 3. Articles of correction are effective on the effective  
3 date of the document they correct except as to persons relying  
4 on the uncorrected document and adversely affected by the  
5 correction. AS to those persons, articles of correction are  
6 effective when filed.

7 Sec. 9. NEW SECTION. 490A.124 FEES.

8 1. The secretary of state shall collect the following fees  
9 when documents described in this subsection are delivered to  
10 the secretary's office for filing:

- |    |   |        |     |
|----|---|--------|-----|
| 11 | a. Articles of organization .....                       | \$     | 50  |
| 12 | b. Application for use of indistinguishable name ..     | \$     | 10  |
| 13 | c. Application for reserved name .....                  | \$     | 10  |
| 14 | d. Notice of transfer of reserved name .....            | \$     | 10  |
| 15 | e. Application for registered name per month or part    |        |     |
| 16 | thereof .....   | \$     | 2   |
| 17 | f. Application for renewal of registered name .....     | \$     | 20  |
| 18 | g. Statement of change of registered agent or           |        |     |
| 19 | registered office or both .....                         | No fee |     |
| 20 | h. Agent's statement of change of registered            |        |     |
| 21 | office for each affected limited liability company .... | No fee |     |
| 22 | i. Agent's statement of resignation .....               | No fee |     |
| 23 | j. Amendment of articles of organization .....          | \$     | 50  |
| 24 | k. Restatement of articles of organization with         |        |     |
| 25 | amendment of articles .....                             | \$     | 50  |
| 26 | l. Articles of merger .....                             | \$     | 50  |
| 27 | m. Articles of dissolution .....                        | \$     | 5   |
| 28 | n. Articles of revocation of dissolution .....          | \$     | 5   |
| 29 | o. Certificate of administrative dissolution .....      | No fee |     |
| 30 | p. Application for reinstatement following              |        |     |
| 31 | administrative dissolution .....                        | \$     | 5   |
| 32 | q. Certificate of reinstatement .....                   | No fee |     |
| 33 | r. Certificate of judicial dissolution .....            | No fee |     |
| 34 | s. Application for certificate of authority .....       | \$     | 100 |
| 35 | t. Application for amended certificate of               |        |     |



1	authority .....	\$ 100
2	u. Application for certificate of withdrawal .....	\$ 10
3	v. Certificate of revocation of authority to	
4	transact business .....	No fee
5	w. Articles of correction .....	\$ 5
6	x. Application for certificate of existence or	
7	authorization .....	\$ 5
8	y. Any other document required or permitted to	
9	be filed by this chapter .....	\$ 5

10     2. The secretary of state shall collect a fee of five  
11 dollars each time process is served on the secretary under  
12 this chapter. The party to a proceeding causing service of  
13 process is entitled to recover this fee as costs if the party  
14 prevails in the proceeding.

15     3. The secretary of state shall collect the following fees  
16 for copying and certifying the copy of any filed document  
17 relating to a domestic or foreign corporation:

- 18     a. One dollar a page for copying.
- 19     b. Five dollars for the certificate.

20     Sec. 10. NEW SECTION. 490A.125 FORMS.

- 21     1. The secretary of state may prescribe and furnish on
- 22 request forms including but not limited to the following:
- 23     a. An application for a certificate of existence.
- 24     b. A foreign limited liability company's application for a
- 25 certificate of authority to transact business in this state.
- 26     c. A foreign limited liability company's application for a
- 27 certificate of withdrawal.

28     If the secretary of state so requires, use of these listed  
29 forms prescribed by the secretary of state is mandatory.

30     2. The secretary of state may prescribe and furnish on  
31 request forms for other documents required or permitted to be  
32 filed by this chapter but their use is not mandatory.

33     Sec. 11. NEW SECTION. 490A.126 APPEAL FROM SECRETARY OF  
34 STATE'S REFUSAL TO FILE DOCUMENT.

35     1. If the secretary of state refuses to file a document

1 delivered to the secretary's office for filing, the domestic  
2 or foreign limited liability company may appeal the refusal,  
3 within thirty days after the return of the document, to the  
4 district court for the county in which the limited liability  
5 company's principal office or, if none in this state, its  
6 registered office is or will be located. The appeal is  
7 commenced by petitioning the court to compel filing the  
8 document and by attaching to the petition the document and the  
9 secretary of state's explanation of the refusal to file.

10 2. The court may summarily order the secretary of state to  
11 file the document or take other action the court considers  
12 appropriate.

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

15 Sec. 12. NEW SECTION. 490A.127 EVIDENTIARY EFFECT OF  
16 COPY OF FILED DOCUMENT.

17 A certificate attached to a copy of a document filed by the  
18 secretary of state, bearing the secretary of state's  
19 signature, which may be in facsimile, and the seal of the  
20 secretary of state, is conclusive evidence that the original  
21 document is on file with the secretary of state.

22 Sec. 13. NEW SECTION. 490A.128 CERTIFICATE OF EXISTENCE.

23 1. Anyone may apply to the secretary of state to furnish a  
24 certificate of existence for a domestic limited liability  
25 company or a certificate of authorization for a foreign  
26 limited liability company.

27 2. A certificate of existence or authorization must set  
28 forth all of the following:

29 a. The domestic limited liability company's name or the  
30 foreign limited liability company's name used in this state.

31 b. That one of the following applies:

32 (1) If it is a domestic limited liability company, that it  
33 is duly organized under the law of this state, the date of its  
34 organization, and the period of its duration.

35 (2) If it is a foreign limited liability company, that it

1 is authorized to transact business in this state.

2 c. That all fees required by this chapter have been paid.

3 d. That articles of dissolution have not been filed.

4 e. Other facts of record in the office of the secretary of  
5 state that may be requested by the applicant.

6 3. Subject to any qualification stated in the certificate,  
7 a certificate of existence or authorization issued by the  
8 secretary of state may be relied upon as conclusive evidence  
9 that the domestic or foreign limited liability company is in  
10 existence or is authorized to transact business in this state.

11 Sec. 14. NEW SECTION. 490A.129 PENALTY FOR SIGNING FALSE  
12 DOCUMENT.

13 1. A person commits an offense if that person signs a  
14 document the person knows is false in any material respect  
15 with intent that the document be delivered to the secretary of  
16 state for filing.

17 2. An offense under this section is a serious misdemeanor  
18 punishable by a fine of not to exceed one thousand dollars.

19 Sec. 15. NEW SECTION. 490A.130 SECRETARY OF STATE --  
20 POWERS.

21 The secretary of state has the power reasonably necessary  
22 to perform the duties required of the secretary of state by  
23 this chapter.

24 SUBCHAPTER II  
25 PURPOSES AND POWERS

26 Sec. 16. NEW SECTION. 490A.201 PURPOSES.

27 1. A limited liability company organized under this  
28 chapter has the purpose of engaging in any lawful business  
29 unless a more limited purpose is set forth in the articles of  
30 organization.

31 2. A limited liability company engaging in a business that  
32 is subject to regulation under another statute of this state  
33 may organize under this chapter only if permitted by, and  
34 subject to all limitations of, the other statute.

35 Sec. 17. NEW SECTION. 490A.202 POWERS.

1 Unless its articles of organization provide otherwise, a  
2 limited liability company has the same powers as an individual  
3 to do all things necessary or convenient to carry out its  
4 business and affairs, including without limitation power to do  
5 all of the following:

6 1. Sue and be sued, complain, and defend in its name.

7 2. Transact its business, carry on its operations, and  
8 have and exercise the powers granted by this chapter in any  
9 state and in any foreign country.

10 3. Purchase, receive, lease, or otherwise acquire, and  
11 own, hold, improve, use, and otherwise deal with, real or  
12 personal property, or any legal or equitable interest in  
13 property, wherever located.

14 4. Sell, convey, transfer, mortgage, pledge, lease,  
15 exchange, and otherwise dispose of all or any part of its  
16 property.

17 5. Purchase, receive, subscribe for, or otherwise acquire  
18 and hold, to sell, mortgage, lend, pledge, or otherwise  
19 dispose of, and deal in and with, shares or other interests  
20 in, or obligations of any other person.

21 6. Make contracts and guaranties, incur liabilities,  
22 borrow money, issue its notes, bonds, and other obligations,  
23 which may be convertible into or include the option to  
24 purchase other securities of the limited liability company,  
25 and secure any of its obligations by mortgage, deed of trust,  
26 or pledge of any of its property, franchises, or income.

27 7. Lend money, invest and reinvest its funds, and receive  
28 and hold real and personal property as security for repayment.

29 8. Elect and appoint managers, employees, and agents of  
30 the limited liability company, define their duties, fix their  
31 compensation, and lend them money and credit.

32 9. Pay pensions and establish pension plans, pension  
33 trusts, profit sharing plans, and benefit and incentive plans  
34 for all or any of its current or former members, managers,  
35 employees, and agents.

1 10. Make donations for the public welfare or for  
2 religious, charitable, scientific, or educational purposes.

3 11. Make payments or donations, or do any other act, not  
4 inconsistent with law, that furthers the business and affairs  
5 of the limited liability company.

6 12. Cease its activities and dissolve.

7 13. Be a promoter, stockholder, partner, member,  
8 associate, agent, or manager of any corporation, partnership,  
9 limited liability company, joint venture, trust, or other  
10 entity.

11 14. Make and amend operating agreements, not inconsistent  
12 with its articles of organization or with the law of this  
13 state, for the administration and regulation of its affairs.

14 15. Transact any lawful business that a corporation,  
15 partnership, or other entity may conduct under the law of this  
16 state subject, however, to any and all laws and restrictions  
17 that govern or limit the conduct of such activity by such  
18 corporation, partnership, or other entity.

19 16. Have and exercise all powers necessary or convenient  
20 to effect any or all of the purposes for which the limited  
21 liability company is organized.

22 SUBCHAPTER III

23 FORMATION

24 Sec. 18. NEW SECTION. 490A.301 FORMATION.

25 One or more persons may form a limited liability company by  
26 executing and delivering articles of organization to the  
27 secretary of state for filing. Such person or persons need  
28 not be members of the limited liability company after  
29 formation has occurred.

30 Sec. 19. NEW SECTION. 490A.302 LIABILITY.

31 All persons purporting to act as or on behalf of a limited  
32 liability company, knowing there is no organization under this  
33 chapter, are jointly and severally liable for all liabilities  
34 created while so acting.

35 Sec. 20. NEW SECTION. 490A.303 ARTICLES OF ORGANIZATION.

1 1. The articles of organization must set forth all of the  
2 following:

3 a. A name for the limited liability company that satisfies  
4 the requirements of section 490A.401.

5 b. The street address of the limited liability company's  
6 initial registered office and the name of its initial  
7 registered agent at that office.

8 c. The street address of the principal office of the  
9 limited liability company, which may be the same as the  
10 registered office, but need not be within this state.

11 d. The period of its duration which shall not be  
12 perpetual.

13 2. The articles of organization may set forth any other  
14 provision not inconsistent with law, including, but not  
15 limited to, a statement of whether there are limitations on  
16 the authority of members to bind the limited liability  
17 company.

18 3. The articles of organization need not set forth any of  
19 the powers enumerated in this chapter.

20 4. The articles of organization or an operating agreement  
21 may provide that a member's interest in a limited liability  
22 company may be evidenced by a certificate of membership  
23 interest issued by the limited liability company and may also  
24 provide for assignment or transfer of any membership interest  
25 represented by such a certificate and make other provisions  
26 with respect to such a certificate.

27 SUBCHAPTER IV

28 NAMES

29 Sec. 21. NEW SECTION. 490A.401 NAME.

30 1. A limited liability company name must contain the words  
31 "Limited Company" or the abbreviation "L.C." or words or  
32 abbreviations of like import in another language.

33 2. A limited liability company name shall not contain any  
34 of the following:

35 a. The words "Corporation", "Incorporated", "Limited

1 Partnership" or the abbreviations "Corp.", "Inc." or "L.P." or  
2 words or abbreviations of like import in another language.

3 b. Any word or phrase the use of which is prohibited by  
4 law for such a limited liability company.

5 3. Except as authorized by subsections 4 and 5, a limited  
6 liability company name must be distinguishable upon the  
7 records of the secretary of state from all of the following:

8 a. The name of a limited liability company, limited  
9 partnership, or corporation organized under the law of this  
10 state or registered as a foreign limited liability company,  
11 foreign limited partnership, or foreign corporation in this  
12 state.

13 b. A name reserved in the manner provided under the law of  
14 this state.

15 c. The fictitious name adopted by a foreign corporation,  
16 foreign limited partnership, or foreign limited liability  
17 company authorized to transact business in this state, because  
18 its real name is unavailable.

19 d. The corporate name of a nonprofit corporation  
20 incorporated or authorized to transact business in this state.

21 4. A limited liability company may apply to the secretary  
22 of state for authorization to use a name that is not  
23 distinguishable upon the secretary's records from one or more  
24 of the names described in subsection 3. The secretary of  
25 state shall authorize use of the name applied for if one of  
26 the following conditions applies:

27 a. The other entity consents to the use in writing and  
28 submits an undertaking in form satisfactory to the secretary  
29 of state to change its name to a name that is distinguishable  
30 upon the records of the secretary of state from the name of  
31 the applying limited liability company.

32 b. The applicant delivers to the secretary of state a  
33 certified copy of the final judgment of a court of competent  
34 jurisdiction establishing the applicant's right to use the  
35 name applied for in this state.

1 5. A limited liability company may use the name, including  
2 the fictitious name, of another entity that is used in this  
3 state if the other entity is formed under the law of this  
4 state or is authorized to transact business in this state and  
5 the proposed user limited liability company meets one of the  
6 following conditions:

- 7 a. Has merged with the other entity.  
8 b. Has been formed by reorganization of the other entity.  
9 c. Has acquired all or substantially all of the assets,  
10 including the name, of the other entity.

11 6. This chapter does not control the use of fictitious  
12 names; however, if a limited liability company uses a  
13 fictitious name in this state it shall deliver to the  
14 secretary of state for filing a certified copy of the  
15 resolution of the limited liability company adopting the  
16 fictitious name.

17 Sec. 22. NEW SECTION. 490A.402 RESERVED NAME.

18 1. A person may reserve the exclusive use of a limited  
19 liability company name, including a fictitious name for a  
20 foreign limited liability company whose limited liability  
21 company name is not available, by delivering an application to  
22 the secretary of state for filing. The application must set  
23 forth the name and address of the applicant and the name  
24 proposed to be reserved. If the secretary of state finds that  
25 the limited liability company name applied for is available,  
26 the secretary of state shall reserve the name for the  
27 applicant's exclusive use for a nonrenewable one hundred  
28 twenty-day period.

29 2. The owner of a reserved limited liability company name  
30 may transfer the reservation to another person by delivering  
31 to the secretary of state a signed notice of the transfer that  
32 states the name and address of the transferee.

33 SUBCHAPTER V  
34 REGISTERED OFFICE AND AGENT

35 Sec. 23. NEW SECTION. 490A.501 REGISTERED OFFICE AND



1 REGISTERED AGENT.

2 Each limited liability company must continuously maintain  
3 in this state each of the following:

4 1. A registered office that may be the same as any of its  
5 places of business.

6 2. A registered agent who may be any of the following:

7 a. An individual who is a resident of this state and whose  
8 business office is identical with the registered office.

9 b. A domestic corporation, domestic limited liability  
10 company, or not-for-profit domestic corporation whose business  
11 office is identical with the registered office.

12 c. A foreign corporation, foreign limited liability  
13 company, or not-for-profit foreign corporation authorized to  
14 transact business in this state whose business office is  
15 identical with the registered office.

16 Sec. 24. NEW SECTION. 490A.502 CHANGE OF REGISTERED  
17 OFFICE OR REGISTERED AGENT.

18 1. Each limited liability company may change its  
19 registered office or registered agent by delivering to the  
20 secretary of state for filing a statement of change that sets  
21 forth the following:

22 a. The name of the limited liability company or foreign  
23 limited liability company.

24 b. The street address of its current registered office.

25 c. If the current registered office is to be changed, the  
26 street address of the new registered office.

27 d. The name of its current registered agent.

28 e. If the current registered agent is to be changed, the  
29 name of the new registered agent and the new agent's written  
30 consent either on the statement or attached to it, to the  
31 appointment.

32 f. That after the change or changes are made, the street  
33 address of its registered office and the business office of  
34 its registered agent will be identical.

35 2. A statement of change shall forthwith be filed in the

1 office of the secretary of state by a limited liability  
2 company whenever its registered agent dies, resigns, or ceases  
3 to satisfy the requirements of section 490A.501.

4 3. If a registered agent changes the registered agent's  
5 business address to another place, the registered agent may  
6 change the business address and the address of the registered  
7 agent by filing a statement as required in subsection 1 for  
8 each limited liability company, or a single statement for all  
9 limited liability companies named in the notice, except that  
10 it need be signed only by the registered agent or agents and  
11 need not be responsive to subsection 1, paragraph "e", and  
12 must recite that a copy of the statement has been mailed to  
13 each limited liability company named in the notice.

14 Sec. 25. NEW SECTION. 490A.503 RESIGNATION OF REGISTERED  
15 AGENT.

16 1. A registered agent may resign the agent's agency  
17 appointment by signing and delivering to the secretary of  
18 state for filing the signed original and two exact copies or  
19 conformed copies of a statement of resignation. The statement  
20 may include a statement that the registered office is also  
21 discontinued. After filing the statement the secretary of  
22 state shall mail one copy to the registered office, if not  
23 discontinued, and the other copy to the limited liability  
24 company at its principal office.

25 2. The agency appointment is terminated, and the  
26 registered office discontinued if so provided, on the thirty-  
27 first day after the date on which the statement was filed.

28 Sec. 26. NEW SECTION. 490A.504 SERVICE ON LIMITED  
29 LIABILITY COMPANY.

30 1. A domestic or foreign limited liability company's  
31 registered agent is the limited liability company's agent for  
32 service of process, notice, or demand required or permitted by  
33 law to be served on the limited liability company.

34 2. If a limited liability company has no registered agent,  
35 or the agent cannot with reasonable diligence be served, the

1 limited liability company may be served by registered or  
2 certified mail, return receipt requested, addressed to the  
3 limited liability company at its principal office. Service is  
4 perfected under this subsection at the earliest of:

5 a. The date the limited liability company receives the  
6 mail.

7 b. The date shown on the return receipt, if signed on  
8 behalf of the limited liability company.

9 c. Five days after its deposit in the United States mail,  
10 as evidenced by the postmark, if mailed postpaid and correctly  
11 addressed.

12 3. This section does not prescribe the only means, or  
13 necessarily the required means, of serving a domestic or  
14 foreign limited liability company.

15 SUBCHAPTER VI  
16 RELATIONSHIP OF A  
17 LIMITED LIABILITY COMPANY  
18 AND ITS MEMBERS TO THIRD PERSONS

19 Sec. 27. NEW SECTION. 490A.601 LIABILITY TO THIRD  
20 PARTIES.

21 Except as otherwise provided by this chapter or as  
22 expressly provided in the articles of organization, no member  
23 or manager of a limited liability company is personally liable  
24 for the acts or debts of the limited liability company.

25 Sec. 28. NEW SECTION. 490A.602 PARTIES TO ACTIONS.

26 A member of a limited liability company is not a proper  
27 party to a proceeding by or against a limited liability  
28 company, except where either of the following applies:

29 1. The object is to enforce a member's right against or  
30 liability to the limited liability company.

31 2. As provided in subchapter 10.

32 SUBCHAPTER VII  
33 RELATIONSHIP OF MEMBERS TO EACH OTHER

34 Sec. 29. NEW SECTION. 490A.701 VOTING RIGHTS OF MEMBERS.

35 1. Unless otherwise provided in the articles of

1 organization or an operating agreement, the members of a  
2 limited liability company shall vote in proportion to their  
3 capital contributions to the limited liability company, as  
4 adjusted from time to time to reflect any additional  
5 contributions or withdrawals.

6 2. Unless otherwise provided in the articles of  
7 organization or an operating agreement, a unanimous vote shall  
8 be required to approve the following matters:

9 a. The dissolution and winding up of the limited liability  
10 company.

11 b. The sale, exchange, lease, mortgage, pledge, or other  
12 transfer of all or substantially all of the assets of the  
13 limited liability company.

14 c. Merger of the limited liability company with another  
15 entity.

16 d. An amendment to the articles of organization or  
17 operating agreement.

18 Sec. 30. NEW SECTION. 490A.702 MANAGEMENT OF LIMITED  
19 LIABILITY COMPANY.

20 Unless the articles of organization or an operating  
21 agreement provides for management of a limited liability  
22 company by a manager or managers, management of a limited  
23 liability company shall be vested in its members.

24 Sec. 31. NEW SECTION. 490A.703 OPERATING AGREEMENT.

25 1. The members of a limited liability company may enter  
26 into an operating agreement to establish or regulate the  
27 affairs of the limited liability company, the conduct of its  
28 business and the relations of its members. An operating  
29 agreement may contain any provisions regarding the affairs of  
30 a limited liability company and the conduct of its business to  
31 the extent that such provisions are not inconsistent with law  
32 or the articles of organization.

33 2. An operating agreement must initially be agreed to by  
34 all of the members. Unless the articles of organization  
35 specifically permit otherwise, an operating agreement shall be

1 in writing.

2 3. A court may enforce an operating agreement by  
3 injunction or by other relief that the court determines to be  
4 fair and appropriate in the circumstances. As an alternative  
5 to injunctive or other equitable relief, when the provisions  
6 of section 490A.1302 are applicable, the court may order  
7 dissolution of the limited liability company.

8 Sec. 32. NEW SECTION. 490A.704 WITHDRAWAL OF MEMBER.

9 A member may withdraw from a limited liability company at  
10 the time or upon the happening of events specified in writing  
11 in the articles of organization or an operating agreement. If  
12 the articles of organization or an operating agreement does  
13 not specify in writing the time or the events upon the  
14 happening of which a member may withdraw, a member may  
15 withdraw upon not less than six months' prior written notice  
16 to each member at the member's address on the books of the  
17 limited liability company.

18 Sec. 33. NEW SECTION. 490A.705 MANAGEMENT OF A LIMITED  
19 LIABILITY COMPANY BY A MANAGER OR MANAGERS.

20 1. The articles of organization or an operating agreement  
21 of a limited liability company may apportion responsibility  
22 for managing a limited liability company among one or more  
23 managers who may be, but need not be, members.

24 2. The articles of organization or an operating agreement  
25 may prescribe qualifications for managers.

26 3. The number of managers shall be fixed by or in the  
27 manner provided in the articles of organization or an  
28 operating agreement. The number of managers may be increased  
29 or decreased by amendment to, or in the manner provided in,  
30 the articles of organization or an operating agreement.

31 4. Unless otherwise provided in the articles of  
32 organization or an operating agreement, managers shall be  
33 elected by the majority vote of the members.

34 5. Unless otherwise provided in the articles of  
35 organization or an operating agreement, any vacancy occurring

1 in the office of manager shall be filled by a majority vote of  
2 the members.

3 6. All managers or any lesser number may be removed in the  
4 manner provided in the articles of organization or an  
5 operating agreement. If the articles of organization or an  
6 operating agreement does not provide for the removal of  
7 managers, then all managers or any lesser number may be  
8 removed with or without cause by a majority vote of the  
9 members.

10 7. Unless otherwise provided in the articles of  
11 organization or an operating agreement, if the limited  
12 liability company has more than one manager, all decisions of  
13 the managers shall be by majority vote of the managers.

14 8. Unless the articles of organization or an operating  
15 agreement require a different number, a quorum for a meeting  
16 of managers consists of a majority of the managers.

17 Sec. 34. NEW SECTION. 490A.706 GENERAL STANDARDS OF  
18 CONDUCT FOR MANAGERS.

19 1. A manager shall discharge that manager's duties as a  
20 manager in good faith, with the care an ordinary prudent  
21 person in a like position would exercise under similar  
22 circumstances, and in a manner the manager believes to be in  
23 the best interests of the limited liability company.

24 2. In discharging the manager's duties, a manager is  
25 entitled to rely on information, opinions, reports, or  
26 statements, including financial statements and other financial  
27 data, if prepared or presented by any of the following:

28 a. One or more managers or employees of the limited  
29 liability company whom the manager reasonably believes to be  
30 reliable and competent in the matters presented.

31 b. Legal counsel, public accountants, or other persons as  
32 to matters the manager reasonably believes are within the  
33 person's professional or expert competence.

34 c. A committee of managers of which the manager is not a  
35 member if the manager reasonably believes the committee merits

1 confidence.

2 3. A manager is not acting in good faith if the manager  
3 has knowledge concerning the matter in question that makes  
4 reliance otherwise permitted by subsection 2 unwarranted.

5 4. A manager is not liable for any action taken as a  
6 manager or any failure to take any action, if the manager  
7 performed the duties of the manager's office in compliance  
8 with this section, or if, and to the extent that, liability  
9 for any such action or failure to act has been limited by the  
10 articles of organization pursuant to section 490A.707.

11 Sec. 35. NEW SECTION. 490A.707 LIMITATION OF LIABILITY  
12 OF MANAGERS.

13 The articles of organization may contain a provision  
14 eliminating or limiting the personal liability of a manager to  
15 the limited liability company or its members for monetary  
16 damages for breach of fiduciary duty as a manager, if the  
17 provision does not eliminate or limit the liability of a  
18 manager for any of the following:

19 1. Breach of the manager's duty of loyalty to the limited  
20 liability company or its members.

21 2. Acts or omissions not in good faith or which involve  
22 intentional misconduct or a knowing violation of law.

23 3. Transaction from which the manager derives an improper  
24 personal benefit or a wrongful distribution in violation of  
25 section 490A.807.

26 A provision shall not eliminate or limit the liability of a  
27 manager for an act or omission occurring prior to the date  
28 when the provision in the articles of organization becomes  
29 effective.

30 Sec. 36. NEW SECTION. 490A.708 BUSINESS TRANSACTIONS OF  
31 MANAGERS WITH THE LIMITED LIABILITY COMPANY.

32 1. A conflict of interest transaction is a transaction  
33 with the limited liability company in which a manager of the  
34 limited liability company has a direct or indirect interest.  
35 A conflict of interest transaction is not voidable by the

1 limited liability company solely because of the manager's  
2 interest in the transaction if any one of the following is  
3 true:

4 a. The material facts of the transaction and the manager's  
5 interest were disclosed or known to the managers or a  
6 committee of managers and the managers or a committee of  
7 managers authorized, approved, or ratified the transaction.

8 b. The material facts of the transaction and the manager's  
9 interest were disclosed or known to the members entitled to  
10 vote and they authorized, approved, or ratified the  
11 transaction.

12 c. The transaction was fair to the limited liability  
13 company.

14 2. For purposes of this section, a manager of the limited  
15 liability company has an indirect interest in a transaction if  
16 either:

17 a. Another entity in which the manager has a material  
18 financial interest or in which the manager is a general  
19 partner is a party to the transaction.

20 b. Another entity of which the manager is a director,  
21 officer, manager, or trustee is a party to the transaction and  
22 the transaction is or should be considered by the limited  
23 liability company.

24 3. For purposes of subsection 1, paragraph "a", a conflict  
25 of interest transaction is authorized, approved, or ratified  
26 if it receives the affirmative vote of a majority of the  
27 managers or of the committee of managers, who have no direct  
28 or indirect interest in the transaction, but a transaction may  
29 not be authorized, approved, or ratified under this section by  
30 a single manager. If a majority of the managers who have no  
31 direct or indirect interest in the transaction vote to  
32 authorize, approve, or ratify the transaction, a quorum is  
33 present for the purpose of taking action under this section.  
34 The presence of, or a vote cast by, a manager with a direct or  
35 indirect interest in the transaction does not affect the



1 validity of any action taken under subsection 1, paragraph  
2 "a", if the transaction is otherwise authorized, approved, or  
3 ratified as provided in that subsection.

4 4. For purposes of subsection 1, paragraph "b", a conflict  
5 of interest transaction is authorized, approved, or ratified  
6 if it receives the vote of a majority of the members entitled  
7 to vote under this subsection. Interests owned by or voted  
8 under the control of a manager who has a direct or indirect  
9 interest in the transaction, and interests owned by or voted  
10 under the control of an entity described in subsection 2,  
11 paragraph "a", shall not be counted in a vote of members to  
12 determine whether to authorize, approve, or ratify a conflict  
13 of interest transaction under subsection 1, paragraph "b".  
14 The vote of those members, however, is counted in determining  
15 whether the transaction is approved under other sections of  
16 this chapter. Members, whether or not present, that are  
17 entitled to be counted in a vote on the transaction under this  
18 subsection constitute a quorum for the purpose of taking  
19 action under this section.

20 Sec. 37. NEW SECTION. 490A.709 INFORMATION AND RECORDS.

21 1. Each limited liability company shall keep at its  
22 principal office the following:

23 a. A current list of the full name and last known business  
24 address of each member and manager.

25 b. A copy of the articles of organization and all articles  
26 of amendment thereto.

27 c. Copies of the limited liability company's federal,  
28 state, and local income tax returns and reports, if any, for  
29 the three most recent years.

30 d. Copies of any then-effective written operating  
31 agreement and of any financial statements of the limited  
32 liability company for the three most recent years.

33 e. Unless contained in a written operating agreement, a  
34 writing setting out:

35 (1) The amount of cash and a description and statement of

1 the agreed value of the other property or services contributed  
2 by each member and which each member has agreed to contribute.

3 (2) The times at which or events on the happening of which  
4 any additional contributions agreed to be made by each member  
5 are to be made.

6 (3) Any right of a member to receive, or of the limited  
7 liability company to make, distributions to a member which  
8 include a return of all or any part of the member's  
9 contribution.

10 (4) Any events upon the happening of which the limited  
11 liability company is to dissolve and its affairs be wound up.

12 2. Each member has the right, upon reasonable request and  
13 subject to reasonable standards as may be set forth in an  
14 operating agreement, to do any of the following:

15 a. Inspect and copy any of the limited liability company  
16 records required to be maintained by this section; and

17 b. Obtain from the manager or managers, or if the limited  
18 liability company has no manager or managers, from any member  
19 or other person with access to such information, from time to  
20 time upon reasonable demand any of the following:

21 (1) True and full information regarding the state of the  
22 business and financial condition of the limited liability  
23 company.

24 (2) Promptly after it becomes available, a copy of the  
25 limited liability company's federal, state, and local income  
26 tax returns for each year.

27 (3) Other information regarding the affairs of the limited  
28 liability company as is just and reasonable.

29 SUBCHAPTER VIII

30 FINANCE

31 Sec. 38. NEW SECTION. 490A.801 CONTRIBUTIONS.

32 1. The contributions of a member to a limited liability  
33 company may be in cash, property, or services rendered, or a  
34 promissory note or other binding obligation to contribute cash  
35 or property or to perform services.

1 2. Unless otherwise provided in the articles of  
2 organization or an operating agreement, a member is obligated  
3 to the limited liability company to perform any enforceable  
4 promise to contribute cash or property or to perform services,  
5 even if the member is unable to perform because of death,  
6 disability, or any other reason. If a member does not make  
7 the contribution, the member is obligated at the option of the  
8 limited liability company to contribute cash equal to that  
9 portion of the value of the contribution that has not been  
10 made as stated in the limited liability company records  
11 required to be kept by section 490A.709. A promise by a  
12 member to contribute to a limited liability company is not  
13 enforceable unless set out in a writing signed by the member.

14 3. Unless otherwise provided in the articles of  
15 organization or an operating agreement, the obligation of a  
16 member to make a contribution or return money or other  
17 property paid or distributed in violation of this chapter may  
18 be compromised only by consent of all the members.  
19 Notwithstanding the compromise, a creditor of a limited  
20 liability company who extends credit or otherwise acts in  
21 reliance on the original obligation may enforce the original  
22 obligation.

23 Sec. 39. NEW SECTION. 490A.802 SHARING OF PROFITS AND  
24 LOSSES.

25 The profits and losses of a limited liability company shall  
26 be allocated among the members, and among classes of members,  
27 in the manner provided in writing in the articles of  
28 organization or an operating agreement. If the articles of  
29 organization or an operating agreement do not so provide in  
30 writing, profits and losses shall be allocated on the basis of  
31 their respective capital contributions, as adjusted from time  
32 to time to reflect any additional contributions or  
33 withdrawals.

34 Sec. 40. NEW SECTION. 490A.803 SHARING OF DISTRIBUTIONS.

35 Distributions of cash or other assets of a limited

1 liability company shall be allocated among the members, and  
2 among classes of members, in the manner provided in writing in  
3 the articles of organization or an operating agreement. If  
4 the articles of organization or an operating agreement do not  
5 so provide in writing, distributions shall be made on the  
6 basis of their respective capital contributions, as adjusted  
7 from time to time to reflect any additional contributions or  
8 withdrawals.

9 Sec. 41. NEW SECTION. 490A.804 INTERIM DISTRIBUTIONS.

10 Except as otherwise provided in this chapter, a member is  
11 entitled to receive distributions from a limited liability  
12 company before the member's withdrawal from the limited  
13 liability company and before the dissolution and winding up of  
14 the company to the extent and at the times or upon the  
15 happening of the events specified in the articles of  
16 organization or an operating agreement.

17 Sec. 42. NEW SECTION. 490A.805 DISTRIBUTION UPON  
18 WITHDRAWAL.

19 Except as otherwise provided in this chapter, upon  
20 withdrawal, a withdrawing member is entitled to receive any  
21 distribution to which the member is entitled under the  
22 articles of organization or an operating agreement. If not  
23 otherwise provided in the articles of organization or an  
24 operating agreement, the member is entitled to receive, within  
25 a reasonable time after withdrawal, the fair value of the  
26 member's membership interest as of the date of withdrawal,  
27 based on the member's right to share in distributions from the  
28 limited liability company.

29 Sec. 43. NEW SECTION. 490A.806 DISTRIBUTION IN KIND.

30 Unless otherwise provided in the articles of organization  
31 or an operating agreement, a member, regardless of the nature  
32 of the member's contribution, has no right to demand and  
33 receive any distribution from a limited liability company in  
34 any form other than cash. Unless otherwise provided in the  
35 articles of organization or an operating agreement, a member

1 shall not be compelled to accept a distribution of any asset  
2 in kind from a limited liability company to the extent that  
3 the percentage of the asset distributed to the member exceeds  
4 the percentage of the member's membership interest in the  
5 limited liability company.

6 Sec. 44. NEW SECTION. 490A.807 RESTRICTIONS ON MAKING  
7 DISTRIBUTION.

8 1. A distribution shall not be made if, after giving it  
9 effect, either of the following would result:

10 a. The limited liability company would not be able to pay  
11 its debts as they became due in the usual course of business.

12 b. The limited liability company's total assets would be  
13 less than the sum of its total liabilities plus, unless the  
14 articles of organization or an operating agreement permit  
15 otherwise, the amount that would be needed, if the limited  
16 liability company were to be dissolved at the time of the  
17 distribution, to satisfy the preferential rights upon  
18 dissolution of members whose preferential rights are superior  
19 to the rights of members receiving the distribution.

20 2. The limited liability company may base a determination  
21 that a distribution is not prohibited under subsection 1 of  
22 this section on either of the following:

23 a. Financial statements prepared on the basis of  
24 accounting practices and principles that are reasonable in the  
25 circumstances.

26 b. A fair valuation or other method that is reasonable in  
27 the circumstances.

28 3. The effect of a distribution under subsection 1 of this  
29 section is measured as of one of the following:

30 a. The date the distribution is authorized if the payment  
31 occurs within one hundred twenty days after the date of  
32 authorization.

33 b. The date the payment is made if it occurs more than one  
34 hundred twenty days after the date of authorization.

35 4. A limited liability company's indebtedness to a member

1 incurred by reason of a distribution made in accordance with  
2 this section is at parity with the limited liability company's  
3 indebtedness to its general unsecured creditors, except to the  
4 extent subordinated by agreement.

5 Sec. 45. NEW SECTION. 490A.808 LIABILITY UPON WRONGFUL  
6 DISTRIBUTION.

7 If a member has received a distribution in violation of the  
8 articles of organization or an operating agreement or in  
9 violation of section 490A.807 of this chapter, then the member  
10 is liable to the limited liability company for a period of  
11 five years thereafter for the amount of the distribution  
12 wrongfully made.

13

#### SUBCHAPTER IX

14

#### RIGHTS OF AND ASSIGNMENT BY MEMBERS

15 Sec. 46. NEW SECTION. 490A.901 NATURE OF INTEREST IN  
16 LIMITED LIABILITY COMPANY.

17 A membership interest in a limited liability company is  
18 personal property.

19 Sec. 47. NEW SECTION. 490A.902 ASSIGNMENT OF INTEREST.

20 Unless otherwise provided in the articles of organization  
21 or an operating agreement, a membership interest in a limited  
22 liability company is assignable in whole or in part. An  
23 assignment of an interest in a limited liability company does  
24 not of itself dissolve the limited liability company. An  
25 assignment does not entitle the assignee to participate in the  
26 management and affairs of the limited liability company or to  
27 become or to exercise any rights of a member. Such an  
28 assignment entitles the assignee to receive, to the extent  
29 assigned, only the distribution to which the assignor would be  
30 entitled. Except as provided in the articles of organization  
31 or an operating agreement, a member ceases to be a member upon  
32 assignment of the member's entire membership interest.

33 Unless otherwise provided in the articles of organization  
34 or an operating agreement, the pledge of, or granting of a  
35 security interest, lien, or other encumbrance in or against,

1 any or all of the membership interest of a member shall not  
2 cause the member to cease to be a member and shall not deprive  
3 the member of the power to exercise any rights or powers of a  
4 member.

5 Unless otherwise provided in the articles of organization  
6 or an operating agreement and except to the extent assumed by  
7 agreement, until an assignee of a membership interest becomes  
8 a member, the assignee shall have no liability as a member as  
9 a result of the assignment except for liability for a wrongful  
10 distribution to the assignee described in section 490A.808.

11 Sec. 48. NEW SECTION. 490A.903 RIGHT OF ASSIGNEE TO  
12 BECOME MEMBER.

13 1. Unless otherwise provided in the articles of  
14 organization or an operating agreement, an assignee of an  
15 interest in a limited liability company may become a member  
16 only if the other members unanimously consent. The consent of  
17 a member may be evidenced in any manner specified in the  
18 articles of organization or an operating agreement. In the  
19 absence of such specification consent shall be evidenced by a  
20 written instrument, dated and signed by the requisite number  
21 of members, or evidenced by a vote taken at a meeting of  
22 members called for that purpose.

23 2. An assignee who has become a member has, to the extent  
24 assigned, the rights and powers, and is subject to the  
25 restrictions and liabilities, of a member under the articles  
26 of organization, an operating agreement, and this chapter. An  
27 assignee who becomes a member is liable for any obligations of  
28 the member's assignor to make and return contributions as  
29 provided in subchapter VII and VIII. However, an assignee who  
30 becomes a member is not obligated for liabilities of the  
31 assignor unknown to the assignee at the time the assignee  
32 became a member, and which could not be ascertained from the  
33 articles of organization or an operating agreement.

34 3. If an assignee of an interest in a limited liability  
35 company becomes a member, the assignor is not released from

1 liability to the limited liability company under sections  
2 490A.801 and 490A.808.

3 Sec. 49. NEW SECTION. 490A.904 RIGHTS OF CREDITOR.

4 On application to a court of competent jurisdiction by any  
5 judgment creditor of a member, the court may charge the  
6 interest of the member in the limited liability company with  
7 payment of the unsatisfied amount of the judgment with  
8 interest. To the extent of the amounts so charged, the  
9 judgment creditor has only the rights of an assignee of the  
10 interest in the limited liability company. This chapter does  
11 not deprive any member of the benefit of any exemption laws  
12 applicable to the member's interest in the limited liability  
13 company.

14 Sec. 50. NEW SECTION. 490A.905 POWERS OF ESTATE OF A  
15 DECEASED OR INCOMPETENT MEMBER.

16 If a member who is an individual dies or a court of  
17 competent jurisdiction adjudges the member to be incompetent,  
18 the member's executor, administrator, guardian, conservator,  
19 or other legal representative may exercise all of the member's  
20 rights for the purpose of settling the member's estate or  
21 administering the member's property, including any power under  
22 the articles of organization or an operating agreement of an  
23 assignee to become a member. If a member is a corporation,  
24 trust, or other entity and is dissolved or terminated, the  
25 powers of that member may be exercised by its legal  
26 representative or successor.

27

#### SUBCHAPTER X

28

#### DERIVATIVE ACTIONS

29 Sec. 51. NEW SECTION. 490A.1001 RIGHT OF MEMBER TO BRING  
30 DERIVATIVE ACTION.

31 A member may bring an action in the right of the limited  
32 liability company to recover a judgment in its favor if all of  
33 the following conditions are met:

34 1. Either management of the limited liability company is  
35 vested in a manager or managers who have the sole authority to



1 cause the limited liability company to sue in its own right or  
2 management of the limited liability company is reserved to the  
3 members but the plaintiff does not have the authority to cause  
4 the limited liability company to sue in its own right under  
5 the provisions of the articles of organization or an operating  
6 agreement.

7 2. The plaintiff has made demand on those managers or  
8 those members with such authority requesting that such  
9 managers or such members cause the limited liability company  
10 to sue in its own right.

11 3. The members or managers with such authority have  
12 wrongfully refused to bring the action or, after adequate time  
13 to consider the demand, have failed to respond to the demand.

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

22 5. The plaintiff fairly and adequately represents the  
23 interests of the members in enforcing the right of the limited  
24 liability company.

25 SUBCHAPTER XI

26 AMENDMENT OF ARTICLES OF ORGANIZATION

27 Sec. 52. NEW SECTION. 490A.1101 AMENDMENT OF ARTICLES OF  
28 ORGANIZATION.

29 1. A limited liability company may amend its articles of  
30 organization at any time to add or change a provision that is  
31 required or permitted in the articles of organization or to  
32 delete a provision not required in the articles of  
33 organization by delivering articles of amendment to the  
34 secretary of state for filing. Whether a provision is  
35 required or permitted for the articles of organization is

1 determined as of the effective date of the amendment.

2 2. To amend its articles of organization, a limited  
3 liability company shall deliver to the secretary of state for  
4 filing articles of amendment setting forth all of the  
5 following:

6 a. The name of the limited liability company.

7 b. The text of each amendment adopted.

8 c. The date of each amendment's adoption.

9 d. A statement that the amendment was adopted by a vote of  
10 the members in accordance with this chapter.

11 Sec. 53. NEW SECTION. 490A.1102 RESTATED ARTICLES OF  
12 ORGANIZATION.

13 1. A limited liability company may restate its articles of  
14 organization at any time.

15 2. The restatement may include one or more amendments to  
16 the articles. The restatement must be adopted by a vote of  
17 the members as provided by this chapter.

18 3. A limited liability company restating its articles of  
19 organization shall deliver to the secretary of state for  
20 filing articles of restatement setting forth the name of the  
21 limited liability company and the text of the restated  
22 articles of organization together with a certificate setting  
23 forth the information required by section 490A.1101,  
24 subsection 2.

25 4. Duly adopted restated articles of organization  
26 supersede the original articles of organization and all  
27 amendments to them.

28 5. The secretary of state may certify restated articles of  
29 organization, as the articles of organization currently in  
30 effect, without including the certificate information required  
31 by subsection 3.

32 Sec. 54. NEW SECTION. 490A.1103 AMENDMENT PURSUANT TO  
33 REORGANIZATION.

34 1. A limited liability company's articles of organization  
35 may be amended without action by the members to carry out a

1 plan of reorganization ordered or decreed by a court of  
2 competent jurisdiction under federal statute if the articles  
3 of organization after amendment contain only provisions  
4 required or permitted by section 490A.303.

5 2. The individual or individuals designated by the court  
6 shall deliver to the secretary of state for filing articles of  
7 amendment setting forth all of the following:

8 a. The name of the limited liability company.

9 b. The text of each amendment approved by the court.

10 c. The date of the court's order or decree approving the  
11 articles of amendment.

12 d. The title of the reorganization proceeding in which the  
13 order or decree was entered.

14 e. A statement that the court had jurisdiction of the  
15 proceeding under federal statute.

16 3. This section does not apply after entry of a final  
17 decree in the reorganization proceeding even though the court  
18 retains jurisdiction of the proceeding for limited purposes  
19 unrelated to consummation of the reorganization plan.

20 Sec. 55. NEW SECTION. 490A.1104 EFFECT OF AMENDMENT.

21 An amendment to articles of organization does not affect a  
22 cause of action existing against or in favor of the limited  
23 liability company, a proceeding to which the limited liability  
24 company is a party, or the existing rights of persons other  
25 than members of the limited liability company. An amendment  
26 changing a limited liability company's name does not abate a  
27 proceeding brought by or against the limited liability company  
28 in its former name.

29 SUBCHAPTER XII

30 MERGER

31 Sec. 56. NEW SECTION. 490A.1201 MERGER.

32 Any one or more limited liability companies may merge with  
33 or into any one or more limited liability companies, limited  
34 partnerships, or corporations, provided that no member of a  
35 limited liability company that is a party to the merger will,

1 as a result of the merger, become personally liable for the  
2 liabilities or obligations of any other person or entity  
3 unless that member approves the plan of merger or otherwise  
4 consents to becoming personally liable.

5 Sec. 57. NEW SECTION. 490A.1202 PLAN OF MERGER.

6 1. Each constituent entity must enter into a written plan  
7 of merger, which must be approved in accordance with section  
8 490A.1203.

9 2. The plan of merger must set forth all of the following:

10 a. The name of each constituent entity in the merger and  
11 the name of the surviving entity into which each other  
12 constituent entity proposes to merge.

13 b. The terms and conditions of the proposed merger.

14 c. The manner and basis of converting the interests in  
15 each constituent entity in the merger into interests, shares,  
16 or other securities or obligations of the surviving entity, or  
17 of any other entity, or, in whole or in part, into cash or  
18 other property.

19 d. Such amendments to the articles of organization of a  
20 limited liability company, articles or certificate of  
21 incorporation of a corporation, or certificate of limited  
22 partnership of a limited partnership, as the case may be, of  
23 the surviving entity as are desired to be effected by the  
24 merger, or that no such changes are desired.

25 e. Other provisions relating to the proposed merger as are  
26 deemed necessary or desirable.

27 Sec. 58. NEW SECTION. 490A.1203 ACTION ON PLAN.

28 1. A proposed plan of merger complying with the  
29 requirements of section 490A.1202 shall be approved in the  
30 manner provided by this section:

31 a. A limited liability company which is a party to a  
32 proposed merger shall have the plan of merger authorized and  
33 approved as required by section 490A.701.

34 b. A corporation which is a party to a proposed merger  
35 shall have the plan of merger authorized and approved in the

1 manner and by the vote required by chapter 490.

2 c. A limited partnership which is a party to a proposed  
3 merger shall have the plan of merger authorized and approved  
4 in the manner and by the vote required by its partnership  
5 agreement and in accordance with chapter 545.

6 2. After a merger is authorized, unless the plan of merger  
7 provides otherwise, and at any time before articles of merger  
8 as provided for in section 490A.1204 are filed, the plan of  
9 merger may be abandoned subject to any contractual rights, in  
10 accordance with the procedure set forth in the plan of merger  
11 or, if none is set forth, in one of the following ways:

12 a. By the unanimous consent of the members of each limited  
13 liability company that is a constituent entity, unless the  
14 articles of organization or an operating agreement of any such  
15 limited liability company provides otherwise.

16 b. In the manner determined by the board of directors of  
17 any corporation that is a constituent entity.

18 c. By the limited partners of any limited partnership that  
19 is a constituent entity by the vote, if any, required by its  
20 limited partnership agreement and in accordance with the law  
21 of this state.

22 Sec. 59. NEW SECTION. 490A.1204 ARTICLES OF MERGER.

23 1. After a plan of merger is approved as provided in  
24 section 490A.1203, the surviving entity shall deliver to the  
25 secretary of state for filing articles of merger duly executed  
26 by each constituent entity setting forth all of the following:

27 a. The name of each constituent entity.

28 b. The plan of merger.

29 c. The effective date of the merger if later than the date  
30 of filing of the articles of merger.

31 d. The name of the surviving entity.

32 e. A statement that the plan of merger was duly authorized  
33 and approved by each constituent entity in accordance with  
34 section 490A.1203.

35 2. A merger takes effect upon the later of the effective

1 date of the filing of the articles of merger or the date set  
2 forth in the plan of merger.

3 Sec. 60. NEW SECTION. 490A.1205 EFFECT OF MERGER.

4 When a merger takes effect all of the following apply:

5 1. Every other constituent entity merges into the  
6 surviving entity and the separate existence of every  
7 constituent entity except the surviving entity ceases.

8 2. The title to all real estate and other property owned  
9 by each constituent entity is vested in the surviving entity  
10 without reversion or impairment.

11 3. The surviving entity has all liabilities of each  
12 constituent entity.

13 4. A proceeding pending against any constituent entity may  
14 be continued as if the merger did not occur or the surviving  
15 entity may be substituted in the proceeding for the  
16 constituent entity whose existence ceased.

17 5. The articles or limited partnership agreement of the  
18 surviving entity are amended to the extent provided in the  
19 plan of merger.

20 6. The shares or interests of each constituent entity that  
21 are to be converted into shares, obligations, or other  
22 securities of the surviving or any other entity or into cash  
23 or other property are converted, and the former holders of the  
24 shares or interests are entitled only to the rights provided  
25 in the articles of merger except for dissenters' rights  
26 provided by law.

27 Sec. 61. NEW SECTION. 490A.1206 MERGER WITH FOREIGN  
28 ENTITY.

29 1. Any one or more limited liability companies of this  
30 state may merge with or into one or more foreign liability  
31 companies, foreign corporations, or foreign limited  
32 partnerships, or any one or more foreign liability companies,  
33 foreign corporations, or foreign limited partnerships may  
34 merge with or into any one or more limited liability companies  
35 of this state, if all of the following apply:

1 a. The merger is permitted by the law of the state or  
2 jurisdiction under whose law each foreign constituent entity  
3 is organized or formed and each foreign constituent entity  
4 complies with that law in effecting the merger.

5 b. The foreign constituent entity complies with section  
6 490A.1204 of this division if it is the surviving entity.

7 c. Each domestic constituent entity complies with the  
8 applicable provisions of sections 490A.1202 and 490A.1203 and,  
9 if it is the surviving entity, with section 490A.1204.

10 2. Upon a merger involving one or more domestic limited  
11 liability companies taking effect, if the surviving entity is  
12 to be governed by the law of any state other than this state  
13 or of any foreign country, then the surviving entity shall  
14 agree to both of the following:

15 a. That it may be served with process in this state in any  
16 proceeding for enforcement of any obligation of any  
17 constituent entity, who was a party to the merger, that was  
18 organized under the law of this state, as well as for  
19 enforcement of any obligation of the surviving entity arising  
20 from the merger.

21 b. To irrevocably appoint the secretary of state as its  
22 agent for service of process in any such proceeding, and the  
23 surviving entity shall specify the address to which a copy of  
24 the process shall be mailed to it by the secretary of state.

25 3. The effect of the merger shall be as provided in  
26 section 490A.1205, if the surviving entity is to be governed  
27 by the law of this state. If the surviving entity is to be  
28 governed by the law of any jurisdiction other than this state,  
29 the effect of the merger shall be the same as provided in  
30 subsection 2 of this section, except insofar as the law of the  
31 other jurisdiction provides otherwise.

32 SUBCHAPTER XIII

33 DISSOLUTION

34 Sec. 62. NEW SECTION. 490A.1301 DISSOLUTION -- GENERAL  
35 PROVISIONS.

1 A limited liability company organized under this chapter is  
2 dissolved and its affairs shall be wound up upon the happening  
3 of the first to occur of the following events:

4 1. At the time or on the happening of an event specified  
5 in the articles of organization or an operating agreement to  
6 cause dissolution.

7 2. Upon the unanimous written consent of the members.

8 3. Upon the death, withdrawal, expulsion, bankruptcy, or  
9 dissolution of a member or occurrence of any other event,  
10 except assignment of a membership interest voluntarily or by  
11 operation of law, that terminates the continued membership of  
12 a member in the limited liability company, unless the business  
13 of the limited liability company is continued by the unanimous  
14 consent of the remaining members.

15 4. The entry of a decree of judicial dissolution under  
16 section 490A.1302.

17 Sec. 63. NEW SECTION. 490A.1302 JUDICIAL DISSOLUTION.

18 On application by or for a member, the district court of  
19 the county in which the registered office of the limited  
20 liability company is located may decree dissolution of a  
21 limited liability company if it is not reasonably practicable  
22 to carry on the business in conformity with the articles of  
23 organization and any operating agreement.

24 Sec. 64. NEW SECTION. 490A.1303 WINDING UP.

25 Unless otherwise provided in the articles of organization  
26 or an operating agreement, members who have not wrongfully  
27 dissolved a limited liability company may wind up the limited  
28 liability company's affairs; but the district court of the  
29 county in which the registered office of the limited liability  
30 company is located, on cause shown, may wind up the limited  
31 liability company's affairs on application of any member,  
32 member's legal representative, or member's assignee.

33 Sec. 65. NEW SECTION. 490A.1304 DISTRIBUTION OF ASSETS  
34 UPON DISSOLUTION.

35 Upon the winding up of a limited liability company, the



1 assets of the limited liability company shall be distributed  
2 in the order as follows:

3 1. To creditors, including members who are creditors, to  
4 the extent permitted by law, in satisfaction of liabilities of  
5 the limited liability company other than for distributions to  
6 members under section 490A.803 or section 490A.805.

7 2. Unless otherwise provided in the articles of  
8 organization or an operating agreement, to members and former  
9 members in satisfaction of liabilities for distributions under  
10 section 490A.803 or section 490A.805.

11 3. Unless otherwise provided in the articles of  
12 organization or an operating agreement, to members first for  
13 the return of their capital contributions and second with  
14 respect to their interests in the limited liability company,  
15 in the proportions in which the members share in  
16 distributions.

17 Sec. 66. NEW SECTION. 490A.1305 ARTICLES OF DISSOLUTION.

18 1. Upon the completion of winding up of the limited  
19 liability company, articles of dissolution shall be delivered  
20 to the secretary of state for filing. The winding up of a  
21 limited liability company shall be completed when all debts,  
22 liabilities, and obligations of the limited liability company  
23 have been paid and discharged or reasonably adequate provision  
24 therefor has been made, and all of the remaining property and  
25 assets of the limited liability company have been distributed  
26 to the members. The articles of dissolution shall set forth  
27 all of the following:

28 a. The name of the limited liability company.

29 b. The date of filing of the articles of organization and  
30 each amendment thereto.

31 c. The reason for filing the articles of dissolution.

32 d. The effective date of dissolution if it is not to be  
33 effective on the filing of the articles of dissolution.

34 e. Any other information the members or managers determine  
35 to include.

1 2. The limited liability company is dissolved upon the  
2 effective date of its articles of dissolution.

3 Sec. 67. NEW SECTION. 490A.1306 KNOWN CLAIMS AGAINST  
4 DISSOLVED LIMITED LIABILITY COMPANIES.

5 A dissolved limited liability company may dispose of the  
6 known claims against it in accordance with this section.

7 1. The dissolved limited liability company shall notify  
8 its known claimants in writing of the dissolution at any time  
9 after its effective date. The written notice must do all of  
10 the following:

11 a. Describe information that must be included in a claim.

12 b. Provide a mailing address where a claim may be sent.

13 c. State the deadline, which may not be fewer than one  
14 hundred twenty days from the effective date of the written  
15 notice, by which the dissolved limited liability company must  
16 receive the claim.

17 d. State that the claim will be barred if not received by  
18 the deadline.

19 2. A claim against the dissolved limited liability company  
20 is barred if either of the following occurs:

21 a. A claimant who was given written notice under  
22 subsection 1 does not deliver the claim to the dissolved  
23 limited liability company by the deadline.

24 b. A claimant whose claim was rejected by the dissolved  
25 limited liability company does not commence a proceeding to  
26 enforce the claim within ninety days from the effective date  
27 of the rejection notice.

28 3. For purposes of this section, "claim" does not include  
29 a contingent liability or a claim based on an event occurring  
30 after the effective date of dissolution.

31 Sec. 68. NEW SECTION. 490A.1307 UNKNOWN CLAIMS AGAINST  
32 DISSOLVED LIMITED LIABILITY COMPANY.

33 1. A dissolved limited liability company may also publish  
34 notice of its dissolution and request that persons with claims  
35 against the limited liability company present them in

1 accordance with the notice.

2     2. The notice shall meet all of the following  
3 requirements:

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

8     b. Describe the information that must be included in a  
9 claim and provide a mailing address where the claim may be  
10 sent.

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

15     3. If the dissolved limited liability company publishes a  
16 newspaper notice in accordance with subsection 2, the claim of  
17 each of the following claimants is barred unless the claimant  
18 commences a proceeding to enforce the claim against the  
19 dissolved corporation within five years after the publication  
20 date of the newspaper notice:

21     a. A claimant who did not receive written notice under  
22 section 490A.1306.

23     b. A claimant whose claim was timely sent to the dissolved  
24 limited liability company but not acted on.

25     c. A claimant whose claim is contingent or based on an  
26 event occurring after the effective date of dissolution.

27     4. A claim may be enforced under this section in either of  
28 the following ways:

29     a. Against the dissolved limited liability company, to the  
30 extent of its undistributed assets.

31     b. If the assets have been distributed in liquidation,  
32 against a member of the dissolved limited liability company to  
33 the extent of the member's pro rata share of the claim or the  
34 limited liability company assets distributed to the member in  
35 liquidation, whichever is less, but a member's total liability

1 for all claims under this section shall not exceed the total  
2 amount of assets distributed to the member in liquidation.

3 SUBCHAPTER XIV

4 FOREIGN LIMITED LIABILITY COMPANIES

5 Sec. 69. NEW SECTION. 490A.1401 LAW GOVERNING.

6 The law of the state or other jurisdiction under which a  
7 foreign limited liability company is formed governs its  
8 formation and internal affairs and the liability of its  
9 members and managers. A foreign limited liability company  
10 shall not be denied registration by reason of any difference  
11 between those laws and the laws of this state. A foreign  
12 limited liability company holding a valid registration in this  
13 state shall have no greater rights and privileges than a  
14 domestic limited liability company. The registration shall  
15 not be deemed to authorize the foreign limited liability  
16 company to exercise any of its powers or purposes that a  
17 domestic limited liability company is forbidden by law to  
18 exercise in this state.

19 Sec. 70. NEW SECTION. 490A.1402 REGISTRATION.

20 A foreign limited liability company may apply for a  
21 certificate of registration to transact business in this state  
22 by delivering an application to the secretary of state for  
23 filing. An application for registration as a foreign limited  
24 liability company shall set forth all of the following:

25 1. The name of the foreign limited liability company and,  
26 if different, the name under which it proposes to register and  
27 transact business in this state.

28 2. The state or other jurisdiction in which the foreign  
29 limited liability company was formed and the date of its  
30 formation.

31 3. The street address of the registered office of the  
32 foreign limited liability company in this state, the name of  
33 the registered agent at the office, and a statement that the  
34 registered office and registered agent comply with the  
35 requirements of section 490A.501.

1 4. The address of the office required to be maintained in  
2 the state or other jurisdiction of its formation by the law of  
3 that state or jurisdiction or, if not so required, of the  
4 principal office of the foreign limited liability company.

5 5. A copy of the articles of organization filed in the  
6 foreign limited liability company's state or other  
7 jurisdiction of formation authorizing it to do business in  
8 that state or other jurisdiction, duly authenticated by the  
9 proper officer of the state or other jurisdiction of its  
10 formation.

11 Sec. 71. NEW SECTION. 490A.1403 SERVICE ON FOREIGN  
12 LIMITED LIABILITY COMPANY.

13 1. The registered agent of a foreign limited liability  
14 company authorized to transact business in this state is the  
15 limited liability company's agent for service of process,  
16 notice, or demand required or permitted by law to be served on  
17 the foreign limited liability company.

18 2. A foreign limited liability company may be served by  
19 registered or certified mail, return receipt requested,  
20 addressed to the foreign limited liability company at its  
21 principal office shown in its application for a certificate of  
22 authority if the foreign limited liability company meets any  
23 of the following conditions:

24 a. Has no registered agent or its registered agent cannot  
25 with reasonable diligence be served.

26 b. Has withdrawn from transacting business in this state  
27 under section 490A.1406.

28 c. Has had its certificate of authority revoked under  
29 section 490A.1410.

30 3. Service is perfected under subsection 2 at the earliest  
31 of:

32 a. The date the foreign limited liability company receives  
33 the mail.

34 b. The date shown on the return receipt, if signed on  
35 behalf of the foreign limited liability company.

1 c. Five days after its deposit in the United States mail,  
2 as evidenced by the postmark, if mailed postpaid and correctly  
3 addressed.

4 4. A foreign limited liability company may also be served  
5 in any other manner permitted by law.

6 Sec. 72. NEW SECTION. 490A.1404 NAME.

7 A certificate of registration shall not be issued to a  
8 foreign limited liability company unless the name of the  
9 limited liability company satisfies the requirements of  
10 section 490A.401. To obtain or maintain a certificate of  
11 registration the company shall comply with the following:

12 1. The foreign limited company shall add the words  
13 "Limited Company" or the abbreviation "L.C." to its name for  
14 use in this state.

15 2. If its real name is unavailable in this state, the  
16 foreign limited liability company shall use a fictitious name  
17 that is available, and which satisfies the requirements of  
18 section 490A.401, and shall inform the secretary of state of  
19 the fictitious name.

20 Sec. 73. NEW SECTION. 490A.1405 CHANGE AND AMENDMENT.

21 If any statement in the application for registration of a  
22 foreign limited liability company was false when made or any  
23 arrangements or other facts described have changed, making the  
24 application inaccurate in any respect, the foreign limited  
25 liability company shall promptly deliver to the secretary of  
26 state for filing articles of correction correcting such  
27 statement as required by section 490A.123.

28 Sec. 74. NEW SECTION. 490A.1406 CANCELLATION OF  
29 CERTIFICATE OF REGISTRATION.

30 1. A foreign limited liability company may cancel its  
31 certificate of registration by delivering to the secretary of  
32 state for filing a certificate of cancellation which shall set  
33 forth all of the following:

34 a. The name of the foreign limited liability company and  
35 the name of the state or other jurisdiction under whose

1 jurisdiction it was formed.

2 b. That the foreign limited liability company is not  
3 transacting business in this state and that it surrenders its  
4 registration to transact business in this state.

5 c. That the foreign limited liability company revokes the  
6 authority of its registered agent to accept service on its  
7 behalf and appoints the secretary of state as its agent for  
8 service of process in any proceeding based on a cause of  
9 action arising during the time it was authorized to transact  
10 business in this state.

11 d. A mailing address to which the secretary of state may  
12 mail a copy of any process served on the secretary of state  
13 under paragraph "c" of this subsection.

14 e. A commitment to notify the secretary of state in the  
15 future of any change in the mailing address of the limited  
16 liability company.

17 2. The certificate of registration shall be cancelled upon  
18 the filing of the certificate of cancellation by the secretary  
19 of state.

20 Sec. 75. NEW SECTION. 490A.1407 AUTHORITY TO TRANSACT  
21 BUSINESS REQUIRED.

22 1. A foreign limited liability company shall not transact  
23 business in this state until it obtains a certificate of  
24 authority from the secretary of state.

25 2. The following activities, among others, do not  
26 constitute transacting business within the meaning of  
27 subsection 1:

28 a. Maintaining, defending, or settling any proceeding.

29 b. Holding meetings of the members or managers or carrying  
30 on other activities concerning internal corporate affairs.

31 c. Maintaining bank accounts.

32 d. Maintaining offices or agencies for the transfer,  
33 exchange, and registration of the limited liability company's  
34 own securities or maintaining trustees or depositories with  
35 respect to those securities.

- 1 e. Selling through independent contractors.
- 2 f. Soliciting or obtaining orders, whether by mail or  
3 through employees or agents or otherwise, if the orders  
4 require acceptance outside this state before they become  
5 contracts.
- 6 g. Creating or acquiring indebtedness, mortgages, and  
7 security interests in real or personal property.
- 8 h. Securing or collecting debts or enforcing mortgages and  
9 security interests in property securing the debts.
- 10 i. Owning, without more, real or personal property.
- 11 j. Conducting an isolated transaction that is completed  
12 within thirty days and that is not one in the course of  
13 repeated transactions of a like nature.
- 14 k. Transacting business in interstate commerce.
- 15 3. The list of activities in subsection 2 is not  
16 exhaustive.

17 Sec. 76. NEW SECTION. 490A.1408 CONSEQUENCES OF  
18 TRANSACTING BUSINESS WITHOUT AUTHORITY.

- 19 1. A foreign limited liability company transacting  
20 business in this state without a certificate of authority  
21 shall not maintain a proceeding in any court in this state  
22 until it obtains a certificate of authority.
- 23 2. The successor to a foreign limited liability company  
24 that transacted business in this state without a certificate  
25 of authority and the assignee of a cause of action arising out  
26 of that business shall not maintain a proceeding based on that  
27 cause of action in any court in this state until the foreign  
28 limited liability company or its successor obtains a  
29 certificate of authority.
- 30 3. A court may stay a proceeding commenced by a foreign  
31 limited liability company, its successor, or assignee until it  
32 determines whether the foreign limited liability company or  
33 its successor or assignee requires a certificate of authority.  
34 If it so determines, the court may further stay the proceeding  
35 until the foreign limited liability company or its successor



1 or assignee obtains the certificate.

2 4. A foreign limited liability company is liable for a  
3 civil penalty not to exceed a total of one thousand dollars if  
4 it transacts business in this state without a certificate of  
5 authority. The attorney general may collect penalties due  
6 under this subsection.

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

11 Sec. 77. NEW SECTION. 490A.1409 ACTIONS BY ATTORNEY  
12 GENERAL.

13 The attorney general may bring an action to restrain a  
14 foreign limited liability company from transacting business in  
15 this state in violation of this chapter.

16 Sec. 78. NEW SECTION. 490A.1410 REVOCATION OF  
17 REGISTRATION.

18 1. The certificate of registration of a foreign limited  
19 liability company to transact business in this state may be  
20 revoked by the secretary of state upon the occurrence of any  
21 of the following:

22 a. The foreign limited liability company has failed to:

23 (1) Pay any fees or penalties prescribed by this chapter.

24 (2) Appoint and maintain a registered agent as required  
25 under section 490A.1402.

26 (3) Deliver for filing to the secretary of state a report  
27 upon any change in the name or address of the registered  
28 agent.

29 (4) Deliver to the secretary of state for filing articles  
30 of correction required under section 490A.1405.

31 b. A misrepresentation has been made of any material  
32 matter in any application, report, affidavit, or other  
33 documents submitted by the foreign limited liability company  
34 under this subchapter.

35 2. A certificate of registration of a foreign limited

1 liability company shall not be revoked by the secretary of  
2 state, unless both of the following apply:

3 a. The secretary of state has given the foreign limited  
4 liability company not less than sixty days' notice thereof by  
5 mail addressed to its registered office in this state or, if  
6 the foreign limited liability company fails to appoint and  
7 maintain a registered agent in this state, addressed to the  
8 office required to be maintained pursuant to section  
9 490A.1402.

10 b. During the sixty-day period, the foreign limited  
11 liability company has failed to pay such fees or penalties  
12 prescribed by this chapter, to file a report of change  
13 regarding the registered agent, to file any necessary articles  
14 of correction, or to correct any such misrepresentation.

15 3. Upon the expiration of sixty days after the mailing of  
16 the notice, the authority of the foreign limited liability  
17 company to transact business in this state shall cease.

18 SUBCHAPTER XV

19 PROFESSIONAL LIMITED LIABILITY COMPANIES

20 Sec. 79. NEW SECTION. 490A.1501 DEFINITIONS.

21 As used in this division, unless the context otherwise  
22 requires:

23 1. "Employees" or "agents" does not include clerks,  
24 stenographers, secretaries, bookkeepers, technicians, or other  
25 persons who are not usually and ordinarily considered by  
26 custom and practice to be practicing a profession nor any  
27 other person who performs all that person's duties for the  
28 professional limited liability company under the direct  
29 supervision and control of one or more managers, employees, or  
30 agents of the professional limited liability company who are  
31 duly licensed in this state to practice a profession which the  
32 limited liability company is authorized to practice in this  
33 state. This chapter does not require any such persons to be  
34 licensed to practice a profession if they are not required to  
35 be licensed under any other law of this state.

1 2. "Foreign professional limited liability company" means  
2 a limited liability company organized under laws other than  
3 the laws of this state for a purpose for which a professional  
4 limited liability company may be organized under this chapter.

5 3. "Licensed" includes registered, certified, admitted to  
6 practice, or otherwise legally authorized under the laws of  
7 this state.

8 4. "Profession" means the profession of certified public  
9 accountancy, architecture, chiropractic, dentistry, physical  
10 therapy, psychology, professional engineering, land surveying,  
11 landscape architecture, law, medicine and surgery, optometry,  
12 osteopathy, osteopathic medicine and surgery, accounting  
13 practitioner, podiatry, speech pathology, audiology,  
14 veterinary medicine, pharmacy, and nursing.

15 5. "Professional limited liability company" means a  
16 limited liability company subject to this subchapter, except a  
17 foreign professional limited liability company.

18 6. "Regulating board" means any board, commission, court,  
19 or governmental authority which, under the laws of this state,  
20 is charged with the licensing, registration, certification,  
21 admission to practice, or other legal authorization of the  
22 practitioners of any profession.

23 7. "Voluntary transfer" includes a sale, voluntary  
24 assignment, gift, pledge, or encumbrance; a voluntary change  
25 of legal or equitable ownership or beneficial interest; or a  
26 voluntary change of persons having voting rights with respect  
27 to any membership interest, except as proxies; but does not  
28 include a transfer of an individual's membership interest or  
29 other property to a guardian or conservator appointed for that  
30 individual or the individual's property.

31 Sec. 80. NEW SECTION. 490A.1502 PURPOSES AND POWERS.

32 A professional limited liability company shall be organized  
33 only for the purpose of engaging in the practice of one  
34 specific profession, or two or more specific professions which  
35 could lawfully be practiced in combination by a licensed

1 individual or a partnership of licensed individuals, and for  
2 the additional purpose of doing all lawful things which may be  
3 incidental to or necessary or convenient in connection with  
4 the practice of the profession or professions. The articles  
5 of organization of a professional limited liability company  
6 shall state in substance that the purposes for which the  
7 professional limited liability company is organized are to  
8 engage in the general practice of a specified profession or  
9 professions, or one or more specified branches or divisions  
10 thereof, and to do all lawful things which may be incidental  
11 to or necessary or convenient in connection with the practice  
12 of the profession or professions.

13 Sec. 81. NEW SECTION. 490A.1503 NAME.

14 The name of a professional limited liability company, the  
15 name of a foreign professional limited liability company or  
16 its name as modified for use in this state, and any fictitious  
17 name or trade name adopted by a professional limited liability  
18 company or foreign professional limited liability company  
19 shall contain the words "Professional Limited Liability  
20 Company" or the abbreviation "P.L.C.", and except for the  
21 addition of such words or abbreviation, shall be a name which  
22 could lawfully be used by a licensed individual or by a  
23 partnership of licensed individuals in the practice in this  
24 state of a profession which the professional limited liability  
25 company is authorized to practice. Each regulating board may  
26 by rule adopt additional requirements as to the corporate  
27 names and fictitious or trade names of professional limited  
28 liability companies and foreign professional limited liability  
29 companies which are authorized to practice a profession which  
30 is within the jurisdiction of the regulating board.

31 Sec. 82. NEW SECTION. 490A.1504 WHO MAY ORGANIZE.

32 Two or more individuals having capacity to contract, each  
33 of whom is licensed to practice a profession in this state  
34 which the professional limited liability company is to be  
35 authorized to practice, may act as organizers of a

1 professional limited liability company.

2 Sec. 83. NEW SECTION. 490A.1505 PRACTICE BY PROFESSIONAL  
3 LIMITED LIABILITY COMPANY.

4 Notwithstanding any other statute or rule of law, a  
5 professional limited liability company may practice a  
6 profession, but may do so in this state only through members,  
7 managers, employees, and agents who are licensed to practice  
8 the same profession in this state. In its practice of a  
9 profession, no professional limited liability company shall do  
10 any act which could not lawfully be done by individuals  
11 licensed to practice the profession which the professional  
12 limited liability company is authorized to practice.

13 Sec. 84. NEW SECTION. 490A.1506 PROFESSIONAL REGULATION.

14 A professional limited liability company shall not be  
15 required to register with or to obtain any license,  
16 registration, certificate, or other legal authorization from a  
17 regulating board in order to practice a profession. Except as  
18 provided in this section, this subchapter does not restrict or  
19 limit in any manner the authority or duties of any regulating  
20 board with respect to individuals practicing a profession  
21 which is within the jurisdiction of the regulating board, even  
22 if the individual is a member, manager, employee, or agent of  
23 a professional limited liability company or foreign  
24 professional limited liability company and practices the  
25 individual's profession through such professional limited  
26 liability company.

27 Sec. 85. NEW SECTION. 490A.1507 RELATIONSHIP AND  
28 LIABILITY TO PERSONS SERVED.

29 This subchapter does not modify any law applicable to the  
30 relationship between an individual practicing a profession and  
31 a person receiving professional services, including, but not  
32 limited to, any liability arising out of such practice and any  
33 law respecting privileged communications. This chapter does  
34 not modify or affect the ethical standards or standards of  
35 conduct of any profession, including, but not limited to, any

1 standards prohibiting or limiting the practice of the  
2 profession by a limited liability company or prohibiting or  
3 limiting the practice of two or more professions in  
4 combination. All such standards shall apply to the members,  
5 managers, employees, and agents through whom a professional  
6 limited liability company practices any profession in this  
7 state, to the same extent that the standards apply to an  
8 individual practitioner.

9 Sec. 86. NEW SECTION. 490A.1508 ISSUANCE OF MEMBERSHIP  
10 INTERESTS.

11 Membership interests of a professional limited liability  
12 company shall be issued only to individuals who are licensed  
13 to practice in any state a profession which the professional  
14 limited liability company is authorized to practice.

15 Membership interests of a professional limited liability  
16 company shall not at any time be issued in, transferred into,  
17 or held in joint tenancy, tenancy in common, or any other form  
18 of joint ownership or co-ownership. The Iowa uniform  
19 securities Act shall not be applicable to nor govern any  
20 transaction relating to any membership interests of a  
21 professional limited liability company.

22 Sec. 87. NEW SECTION. 490A.1509 ASSIGNMENT OF MEMBERSHIP  
23 INTERESTS.

24 A member or other person shall not make a voluntary  
25 assignment of a membership interest in a professional limited  
26 liability company to any person, except to the professional  
27 limited liability company or to an individual who is licensed  
28 to practice in this state a profession which the limited  
29 liability company is authorized to practice. The articles of  
30 organization or operating agreement of the professional  
31 limited liability company may contain any additional  
32 provisions restricting the assignment of membership interests.  
33 Unless the articles of organization or an operating agreement  
34 otherwise provide, a voluntary assignment requires the  
35 unanimous consent of the members.

1     Sec. 88. NEW SECTION. 490A.1510 CONVERTIBLE MEMBERSHIP  
2 INTERESTS -- RIGHTS AND OPTIONS.

3     A professional limited liability company shall not create  
4 or issue any interest convertible into a membership interest  
5 of the professional limited liability company. The provisions  
6 of this subchapter with respect to the issuance and transfer  
7 of membership interests apply to the creation, issuance, and  
8 transfer of any rights or options entitling the holder to  
9 purchase from a professional limited liability company any  
10 membership interests of the professional limited liability  
11 company. Rights or options shall not be transferable,  
12 whether voluntarily, involuntarily, by operation of law, or in  
13 any other manner. Upon the death of the holder, or when the  
14 holder ceases to be licensed to practice a profession in this  
15 state which the professional limited liability company is  
16 authorized to practice, the rights or options shall expire.

17     Sec. 89. NEW SECTION. 490A.1511 VOTING TRUST -- PROXY.

18     A member of a professional limited liability company shall  
19 not create or enter into a voting trust or any other agreement  
20 conferring upon any other person the right to vote or  
21 otherwise represent any membership interests of a professional  
22 limited liability company, and no such voting trust or  
23 agreement is valid or effective. Any proxy of a member of a  
24 professional limited liability company shall be an individual  
25 licensed to practice a profession in this state which the  
26 professional limited liability company is authorized to  
27 practice. Any provision in any proxy instrument denying the  
28 right of the member to revoke the proxy at any time or for any  
29 period of time is not valid or effective. This section does  
30 not otherwise limit the right of a member to vote by proxy,  
31 but the articles of organization or operating agreement of the  
32 professional limited liability company may further limit or  
33 deny the right to vote by proxy.

34     Sec. 90. NEW SECTION. 490A.1512 REQUIRED PURCHASE BY  
35 PROFESSIONAL LIMITED LIABILITY COMPANY OF ITS OWN MEMBERSHIP

1 INTERESTS.

2 1. Notwithstanding any other statute or rule of law, a  
3 professional limited liability company shall purchase its own  
4 membership interests as provided in this section; and the  
5 members of a professional limited liability company and their  
6 executors, administrators, legal representatives, and  
7 successors in interest, shall sell and transfer the membership  
8 interests held by them as provided in this section.

9 2. Upon the death of a member, the professional limited  
10 liability company shall immediately purchase all membership  
11 interests held by the deceased member.

12 3. In order to remain a member of a professional limited  
13 liability company, a member shall at all times be licensed to  
14 practice in this state a profession which the professional  
15 limited liability company is authorized to practice. When a  
16 member does not have or ceases to have this qualification, the  
17 professional limited liability company shall immediately  
18 purchase all membership interests held by that member.

19 4. When a person other than a member of record becomes  
20 entitled to have membership interests of a professional  
21 limited liability company transferred into that person's name  
22 or to exercise voting rights, except as a proxy, with respect  
23 to membership interests of the professional limited liability  
24 company, the professional limited liability company shall  
25 immediately purchase the membership interests. Without  
26 limiting the generality of the foregoing, this section shall  
27 be applicable whether the event occurs as a result of  
28 appointment of a guardian or conservator for a member or the  
29 member's property, transfer of membership interests by  
30 operation of law, involuntary transfer of membership  
31 interests, judicial proceedings, execution, levy, bankruptcy  
32 proceedings, receivership proceedings, foreclosure or  
33 enforcement of a pledge or encumbrance, or any other situation  
34 or occurrence. However, this section does not apply to any  
35 voluntary transfer of membership interests as defined in this



1 chapter.

2 5. Membership interests purchased by the professional  
3 limited liability company under this section shall be  
4 transferred to the professional limited liability company as  
5 of the close of business on the date of the death or other  
6 event which requires purchase. The member and the member's  
7 executors, administrators, legal representatives, or  
8 successors in interest, shall promptly do all things which may  
9 be necessary or convenient to cause transfer to be made as of  
10 the transfer date. However, the membership interests shall  
11 promptly be transferred on the books and records of the  
12 professional limited liability company as of the transfer  
13 date, notwithstanding any delay in transferring or  
14 surrendering the membership interests or certificates  
15 representing the membership interests, and the transfer shall  
16 be valid and effective for all purposes as of the close of  
17 business on the transfer date. The purchase price for such  
18 membership interests shall be paid as provided in this  
19 chapter, but the transfer of membership interests to the  
20 professional limited liability company as provided in this  
21 section shall not be delayed or affected by any delay or  
22 default in making payment.

23 6. Notwithstanding subsections 1 through 5, purchase by  
24 the professional limited liability company is not required  
25 upon the occurrence of any event other than death of a member,  
26 if the professional limited liability company is dissolved  
27 within sixty days after the occurrence of the event. The  
28 articles of organization or operating agreement of the  
29 professional limited liability company may provide that  
30 purchase is not required upon the death of a member, if the  
31 professional limited liability company is dissolved within  
32 sixty days after the date of the member's death.

33 7. Unless otherwise provided in the articles of  
34 organization or an operating agreement of the professional  
35 limited liability company or in an agreement among all members

1 of the professional limited liability company all of the  
2 following apply:

3 a. The purchase price for membership interests shall be  
4 their book value as of the end of the month immediately  
5 preceding the death or other event which requires purchase.  
6 Book value shall be determined from the books and records of  
7 the professional limited liability company in accordance with  
8 the regular method of accounting used by the professional  
9 limited liability company, uniformly and consistently applied.  
10 Adjustments to book value shall be made, if necessary, to take  
11 into account work in process and accounts receivable. A final  
12 determination of book value made in good faith by an  
13 independent certified public accountant or firm of certified  
14 public accountants employed by the professional limited  
15 liability company for the purpose shall be conclusive on all  
16 persons.

17 b. The purchase price shall be paid in cash as follows:

18 (1) Upon the death of a member, thirty percent of the  
19 purchase price shall be paid within ninety days after death,  
20 and the balance shall be paid in three equal annual  
21 installments on the first three anniversaries of the death.

22 (2) Upon the happening of any other event referred to in  
23 this section, one-tenth of the purchase price shall be paid  
24 within ninety days after the date of the event, and the  
25 balance shall be paid in three equal annual installments on  
26 the first three anniversaries of the date of the event.

27 c. Interest from the date of death or other event shall be  
28 payable annually on principal payment dates, at the rate of  
29 six percent per annum on the unpaid balance of the purchase  
30 price.

31 d. All persons who are members of the professional limited  
32 liability company on the date of death or other event, and  
33 their executors, administrators, and legal representatives,  
34 shall, to the extent the professional limited liability  
35 company fails to meet its obligations under this section, be

1 jointly liable for the payment of the purchase price and  
2 interest in proportion to their percentage of ownership of the  
3 professional limited liability company's membership interests,  
4 disregarding membership interests of the deceased or  
5 withdrawing member.

6 e. The part of the purchase price remaining unpaid after  
7 the initial payment shall be evidenced by a negotiable  
8 promissory note, which shall be executed by the professional  
9 limited liability company and all members liable for payment.  
10 Any person liable on the note shall have the right to prepay  
11 the note in full or in part at any time.

12 f. If the person making any payment is not reasonably able  
13 to determine which of two or more persons is entitled to  
14 receive a payment, or if the payment is payable to a person  
15 who is unknown, or who is under disability and there is no  
16 person legally competent to receive the payment, or who cannot  
17 be found after the exercise of reasonable diligence by the  
18 person making the payment, it shall be deposited with the  
19 treasurer of state and shall be subject to the provisions of  
20 section 490.1440 with respect to funds deposited with the  
21 treasurer of state upon the voluntary or involuntary  
22 dissolution of a business corporation.

23 8. Notwithstanding the other provisions of this section, no  
24 part of the purchase price shall be required to be paid until  
25 the certificates, if any, representing the membership  
26 interests have been surrendered to the professional limited  
27 liability company.

28 9. Notwithstanding the other provisions of this section,  
29 payment of any part of the purchase price for membership  
30 interests of a deceased member shall not be required until the  
31 executor or administrator of the deceased member provides any  
32 indemnity, release, or other document from any taxing  
33 authority, which is reasonably necessary to protect the  
34 professional limited liability company against liability for  
35 estate, inheritance, and death taxes.

1 10. The articles of organization or an operating agreement  
2 of the professional limited liability company or an agreement  
3 among all members of a professional limited liability company  
4 may provide for a different purchase price, a different method  
5 of determining the purchase price, a different interest rate  
6 or no interest, and other terms, conditions, and schedules of  
7 payment.

8 11. The articles of organization or an operating agreement  
9 of the professional limited liability company or an agreement  
10 among all members of a professional limited liability company  
11 may provide for the optional or mandatory purchase of its own  
12 membership interests by the professional limited liability  
13 company in other situations, subject to any applicable law  
14 regarding such a purchase.

15 Sec. 91. NEW SECTION. 490A.1513 CERTIFICATES  
16 REPRESENTING MEMBERSHIP INTERESTS.

17 Each certificate representing membership interests of a  
18 professional limited liability company shall state in  
19 substance that the certificate represents membership interests  
20 in a professional limited liability company and is not  
21 transferable except as expressly provided in this chapter and  
22 in the articles of organization or an operating agreement of  
23 the professional limited liability company.

24 Sec. 92. NEW SECTION. 490A.1514 MANAGEMENT.

25 All managers of a professional limited liability company  
26 shall at all times be individuals who are licensed to practice  
27 a profession in this state which the limited liability company  
28 is authorized to practice. A person who is not licensed shall  
29 have no authority or duties in the management or control of  
30 the limited liability company. If a manager ceases to have  
31 this qualification, the manager shall immediately and  
32 automatically cease to hold such management position.

33 Sec. 93. NEW SECTION. 490A.1515 MERGER.

34 A professional limited liability company shall not merge  
35 with any entity except another professional limited liability

1 company subject to this subchapter or a professional  
2 corporation subject to chapter 496C. Merger is not permitted  
3 unless the surviving or new professional limited liability  
4 company is a professional limited liability company which  
5 complies with all requirements of this subchapter.

6 Sec. 94. NEW SECTION. 490A.1516 DISSOLUTION OR  
7 LIQUIDATION.

8 Violation of any provision of this subchapter by a  
9 professional limited liability company or any of its members  
10 or managers shall be cause for its involuntary dissolution, or  
11 liquidation of its assets and business by the district court,  
12 as provided in section 490A.1302. Upon the death of the last  
13 remaining member of a professional limited liability company,  
14 or when the last remaining member is not licensed or ceases to  
15 be licensed to practice a profession in this state which the  
16 professional limited liability company is authorized to  
17 practice, or when any person other than the member of record  
18 becomes entitled to have all membership interests of the last  
19 remaining member of the professional limited liability company  
20 transferred into that person's name or to exercise voting  
21 rights, except as a proxy, with respect to such membership  
22 interests, the professional limited liability company shall  
23 not practice any profession and it shall be promptly  
24 dissolved. However, if prior to dissolution all outstanding  
25 membership interests of the professional limited liability  
26 company are acquired by one or more persons licensed to  
27 practice a profession in this state which the professional  
28 limited liability company is authorized to practice, the  
29 professional limited liability company need not be dissolved  
30 and may practice the profession as provided in this  
31 subchapter.

32 Sec. 95. NEW SECTION. 490A.1517 FOREIGN PROFESSIONAL  
33 LIMITED LIABILITY COMPANY.

34 A foreign professional limited liability company may  
35 practice a profession in this state if it complies with the

1 provisions of this chapter and this subchapter. The secretary  
2 of state may prescribe forms for this purpose. A foreign  
3 professional limited liability company may practice a  
4 profession in this state only through members, managers,  
5 employees, and agents who are licensed to practice the  
6 profession in this state. The provisions of this subchapter  
7 with respect to the practice of a profession by a professional  
8 limited liability company apply to a foreign professional  
9 limited liability company. This subchapter does not prohibit  
10 the practice of a profession in this state by an individual  
11 who is a member, manager, employee, or agent of a foreign  
12 professional limited liability company, if the individual  
13 could lawfully practice the profession in this state in the  
14 absence of any relationship to a foreign professional limited  
15 liability company. The preceding sentence applies regardless  
16 of whether or not the foreign professional limited liability  
17 company is authorized to practice a profession in this state.

18 Sec. 96. NEW SECTION. 490A.1518 LIMITED LIABILITY  
19 COMPANIES ORGANIZED UNDER OTHER LAWS.

20 This chapter does not apply to or interfere with the  
21 practice of any profession by or through any professional  
22 limited liability company organized after the effective date  
23 of this Act under any other law of this state or any other  
24 state or country, if the practice is lawful under any other  
25 statute or rule of law of this state. Any such professional  
26 limited liability company may voluntarily elect to adopt this  
27 subchapter and become subject to its provisions, by amending  
28 its articles of organization to be consistent with all  
29 provisions of this subchapter and by stating in its amended  
30 articles of organization that the limited liability company  
31 has voluntarily elected to adopt this subchapter. Any limited  
32 liability company organized under any law of any other state  
33 or country may become subject to the provisions of this  
34 subchapter by complying with all provisions of this subchapter  
35 with respect to foreign professional limited liability

1 companies.

2 SUBCHAPTER XVI

3 PROVISIONS

4 Sec. 97. NEW SECTION. 490A.1601 PROPERTY TITLE RECORDS.

5 When by merger or amendment to the articles of organization  
6 the name of any domestic or foreign limited liability company  
7 is changed, a certificate reciting the change or succession  
8 shall be issued by the secretary of state upon request and  
9 payment of any applicable fee and the certificate may be  
10 admitted to record upon payment of any applicable fee in any  
11 recording office within the jurisdiction of which any property  
12 of the limited liability company is located in order to  
13 maintain the continuity of title records, but no transfer tax  
14 shall be due thereon. If a limited liability company or other  
15 entity is not a domestic limited liability company or other  
16 entity or a foreign limited liability company or other entity  
17 authorized to do business in this state, a similar certificate  
18 by any competent authority of the state of organization or  
19 formation of the limited liability company or other entity may  
20 be admitted to record in any recording office within the  
21 jurisdiction of which any property of the limited liability  
22 company or other entity is located in order to maintain the  
23 continuity of title records upon payment of any applicable  
24 fee, but no transfer tax shall be due thereon.

25 EXPLANATION

26 This bill provides for the creation and operation of  
27 limited liability companies in Iowa, and includes limited  
28 liability companies within the definition of person as used  
29 throughout the Code. Limited liability companies have the tax  
30 characteristics of partnerships and the limited liability  
31 aspects of corporations for the members of the company,  
32 regardless of whether they are involved in the management of  
33 the company.

34 The bill provides procedures for creating limited liability  
35 companies, and for managing, merging with other entities,

1 dissolution of, and other aspects of a limited liability  
2 company's operation.

3 The limited liability Act is structured similar to chapter  
4 490 regarding business corporations.

5 Additional conforming amendments to the Code may be  
6 necessary to fully implement the provisions of this bill.

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HOUSE FILE 2369

H-5273

1 Amend House File 2369 as follows:

2 1. Page 1, by inserting after line 10 the  
3 following:

4 "Sec. \_\_\_\_ . Section 172C.1, subsection 1,  
5 unnumbered paragraph 1, Code Supplement 1991, is  
6 amended to read as follows:

7 "Actively engaged in farming" means that a natural  
8 person who is a shareholder and an officer, director  
9 or employee of the corporation or who is a member or  
10 manager of the limited liability company either:

11 Sec. \_\_\_\_ . Section 172C.1, Code Supplement 1991, is  
12 amended by adding the following new subsection:

13 NEW SUBSECTION. 3A. "Authorized limited liability  
14 company" means a limited liability company other than  
15 a family farm limited liability company founded for  
16 the purpose of farming and the ownership of  
17 agricultural land in which all of the following apply:

18 a. The members do not exceed twenty-five in  
19 number.

20 b. The members are all natural persons or persons  
21 acting in a fiduciary capacity for the benefit of  
22 natural persons or nonprofit corporations.

23 Sec. \_\_\_\_ . Section 172C.1, subsection 5, Code  
24 Supplement 1991, is amended to read as follows:

25 5. The term "beneficial ownership" includes  
26 interests held by a nonresident alien individual  
27 directly or indirectly holding or acquiring a ten  
28 percent or greater share in the partnership, limited  
29 partnership, corporation, limited liability company,  
30 or trust, or directly or indirectly through two or  
31 more such entities. In addition, the term beneficial  
32 ownership shall include interests held by all  
33 nonresident alien individuals if the nonresident alien  
34 individuals in the aggregate directly or indirectly  
35 hold or acquire twenty-five percent or more of the  
36 partnership, limited partnership, corporation, limited  
37 liability company, or trust.

38 Sec. \_\_\_\_ . Section 172C.1, Code Supplement 1991, is  
39 amended by adding the following new subsection:

40 NEW SUBSECTION. 8A. "Family farm limited  
41 liability company" means a limited liability company  
42 which meets all of the following conditions:

43 a. The limited liability company's founded for the  
44 purpose of farming and the ownership of agricultural  
45 land in which the majority of the members are persons  
46 related to each other as spouse, parent, grandparent,  
47 lineal ascendants of grandparents or their spouses and  
48 other lineal descendants of the grandparents or their  
49 spouses, or persons acting in a fiduciary capacity for  
50 persons so related.

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1 b. All of the members of the limited liability  
2 company are natural persons or persons acting in a  
3 fiduciary capacity for the benefit of natural persons  
4 or family trusts as defined in subsection 10 of this  
5 section.

6 c. Sixty percent of the gross revenues of the  
7 limited liability company over the last consecutive  
8 three-year period comes from farming.

9 Sec. \_\_\_\_\_. Section 172C.1, Code Supplement 1991, is  
10 amended by adding the following new subsection:

11 NEW SUBSECTION. 13A. "Limited liability company"  
12 means a limited liability company as defined in  
13 section 490A.102, subsection 10 or 13, which owns or  
14 leases agricultural land or is engaged in farming.

15 Sec. \_\_\_\_\_. Section 172C.1, subsection 16, Code  
16 Supplement 1991, is amended by adding the following  
17 new paragraph:

18 NEW PARAGRAPH. f. A limited liability company  
19 organized in the United States or elsewhere,  
20 beneficial ownership of which is held, directly or  
21 indirectly, by nonresident alien individuals.

22 Sec. \_\_\_\_\_. Section 172C.1, subsection 17, Code  
23 Supplement 1991, is amended to read as follows:

24 17. "Processor" means a person, firm, corporation,  
25 limited liability company, or limited partnership,  
26 which alone or in conjunction with others, directly or  
27 indirectly controls the manufacturing, processing or  
28 preparation for sale of beef or pork products having a  
29 total annual wholesale value of ten million dollars or  
30 more. Any person, firm, corporation, limited  
31 liability company, member, or limited partner with a  
32 ten percent or greater interest in another person,  
33 firm, corporation, limited liability company, or  
34 limited partnership involved in the manufacturing,  
35 processing or preparation for sale of beef or pork  
36 products having a total annual wholesale value of ten  
37 million dollars or more shall also be considered a  
38 processor.

39 Sec. \_\_\_\_\_. Section 172C.2, unnumbered paragraph 1,  
40 Code 1991, is amended to read as follows:

41 In order to preserve free and private enterprise,  
42 prevent monopoly, and protect consumers, it is  
43 unlawful for any processor of beef or pork or limited  
44 partnership in which a processor holds partnership  
45 shares as a general partner or partnership shares as a  
46 limited partner, or limited liability company in which  
47 a processor is a member, to own, control or operate a  
48 feedlot in Iowa in which hogs or cattle are fed for  
49 slaughter. In addition, a processor shall not  
50 directly or indirectly control the manufacturing,

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1 processing, or preparation for sale of pork products  
2 derived from swine if the processor contracted for the  
3 care and feeding of the swine in this state. However,  
4 this section does not apply to a cooperative  
5 association organized under chapter 497, 498, or 499,  
6 if the cooperative association contracts for the care  
7 and feeding of swine with a member of the cooperative  
8 association who is actively engaged in farming. This  
9 section does not apply to an association organized as  
10 a cooperative in which another cooperative association  
11 organized under chapter 497, 498, or 499 is a member,  
12 if the association contracts with a member which is a  
13 cooperative association organized under chapter 497,  
14 498, or 499, which contracts for the care and feeding  
15 of swine with a member of the cooperative who is  
16 actively engaged in farming. This section shall not  
17 preclude a processor, or limited partnership, or  
18 limited liability company from contracting for the  
19 purchase of hogs or cattle, provided that where the  
20 contract sets a date for delivery which is more than  
21 twenty days after the making of the contract it shall:  
22 Sec. \_\_\_\_ . Section 172C.2, subsection 2, Code 1991,  
23 is amended to read as follows:

24 2. Specify the month for the delivery and shall  
25 allow the farmer to set the week for the delivery  
26 within such month and the processor, or limited  
27 partnership, or limited liability company to set the  
28 date for delivery within such week. This section  
29 shall not prevent processors or educational  
30 institutions from carrying on legitimate  
31 educational, or demonstration activities, nor shall  
32 prevent processors from owning and operating  
33 facilities to provide normal care and feeding of  
34 animals for a period not to exceed ten days  
35 immediately prior to slaughter, or for a longer period  
36 in an emergency. Any processor or limited partnership  
37 which owns, controls, or operates a feedlot on August  
38 15, 1975 shall have until July 1, 1985 to dispose of  
39 the property.

40 Sec. \_\_\_\_ . Section 172C.4, unnumbered paragraph 1,  
41 Code Supplement 1991, is amended to read as follows:

42 No A corporation, limited liability company, or  
43 trust, other than a family farm corporation,  
44 authorized farm corporation, family farm limited  
45 liability corporation, authorized limited liability  
46 company, family trust, authorized trust or  
47 testamentary trust shall not, either directly or  
48 indirectly, acquire or otherwise obtain or lease any  
49 agricultural land in this state. However, the  
50 restrictions provided in this section shall not apply

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1 to the following:

2 Sec. \_\_\_\_ . Section 172C.4, subsection 2, paragraph  
3 a, Code Supplement 1991, is amended to read as  
4 follows:

5 a. Research and experimental activities are  
6 undertaken on the agricultural land and commercial  
7 sales of products produced from farming the  
8 agricultural land do not occur or are incidental to  
9 the research or experimental purposes of the  
10 corporation or limited liability company. Commercial  
11 sales are incidental to the research or experimental  
12 purposes of the corporation or limited liability  
13 company when such sales are less than twenty-five  
14 percent of the gross sales of the primary product of  
15 the research.

16 Sec. \_\_\_\_ . Section 172C.4, subsection 2, paragraph  
17 c, Code Supplement 1991, is amended to read as  
18 follows:

19 c. The agricultural land is used by a corporation,  
20 or limited liability company, including any trade or  
21 business which is under common control, as provided in  
22 26 U.S.C. § 414 for the primary purpose of testing,  
23 developing, or producing animals for sale or resale to  
24 farmers as breeding stock. However, after July 1,  
25 1989, to qualify under this paragraph, the following  
26 conditions must be satisfied:

27 (1) The corporation or limited liability company  
28 must not hold the agricultural land other than as a  
29 lessee. The term of the lease must be for not more  
30 than twelve years. The corporation or limited  
31 liability company shall not renew a lease. The  
32 corporation or limited liability company shall not  
33 enter into a lease under this paragraph, if the  
34 corporation has ever entered into another lease under  
35 this paragraph "c", whether or not the lease is in  
36 effect. However, this subparagraph does not apply to  
37 a domestic corporation organized under chapter 504 or  
38 504A.

39 (2) A term or condition of sale, including resale,  
40 of breeding stock must not relate to the direct or  
41 indirect control by the corporation or limited  
42 liability company of the breeding stock or breeding  
43 stock progeny subsequent to the sale.

44 (3) The number of acres of agricultural land held  
45 by the corporation must not exceed six hundred forty  
46 acres.

47 (4) The corporation or limited liability company  
48 must deliver a copy of the lease to the secretary of  
49 state. The secretary of state shall notify the lessee  
50 of receipt of the copy of the lease. However, this

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1 subparagraph does not apply to a domestic corporation  
2 organized under chapter 504 or 504A.

3 Culls and test animals may be sold under this  
4 paragraph "c". For a three-year period beginning on  
5 the date that the corporation or limited liability  
6 company acquires an interest in the agricultural land,  
7 the gross sales for any year shall not be greater than  
8 five hundred thousand dollars. After the three-year  
9 period ends, the gross sales for any year shall not be  
10 greater than twenty-five percent of the gross sales  
11 for that year of the breeding stock, or five hundred  
12 thousand dollars, whichever is less.

13 Sec. \_\_\_\_\_. Section 172C.4, subsection 5, Code  
14 Supplement 1991, is amended to read as follows:

15 5. Agricultural land acquired by a corporation or  
16 limited liability company by process of law in the  
17 collection of debts, or pursuant to a contract for  
18 deed executed prior to August 15, 1975, or by any  
19 procedure for the enforcement of a lien or claim  
20 thereon, whether created by mortgage or otherwise.

21 Sec. \_\_\_\_\_. Section 172C.4, subsection 8, Code  
22 Supplement 1991, is amended to read as follows:

23 8. A corporation or its subsidiary organized under  
24 chapter 490 or a limited liability company organized  
25 under chapter 490A and to which section 312.8 is  
26 applicable.

27 Sec. \_\_\_\_\_. Section 172C.4, unnumbered paragraph 2,  
28 Code Supplement 1991, is amended to read as follows:

29 A corporation, limited liability company, or trust,  
30 other than a family farm corporation, authorized farm  
31 corporation, family farm limited liability company,  
32 authorized limited liability company, family trust,  
33 authorized trust or testamentary trust, violating this  
34 section shall be assessed a civil penalty of not more  
35 than twenty-five thousand dollars and shall divest  
36 itself of any land held in violation of this section  
37 within one year after judgment. The courts of this  
38 state may prevent and restrain violations of this  
39 section through the issuance of an injunction. The  
40 attorney general or a county attorney shall institute  
41 suits on behalf of the state to prevent and restrain  
42 violations of this section.

43 Sec. \_\_\_\_\_. Section 172C.5, subsection 1, unnumbered  
44 paragraph 1, Code Supplement 1991, is amended to read  
45 as follows:

46 An authorized farm corporation, authorized limited  
47 liability company, or authorized trust shall not, on  
48 or after July 1, 1987, and a limited partnership other  
49 than a family farm limited partnership shall not, on  
50 or after July 1, 1988, either directly or indirectly,

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1 acquire or otherwise obtain or lease agricultural  
2 land, if the total agricultural land either directly  
3 or indirectly owned or leased by the authorized farm  
4 corporation, authorized limited liability company,  
5 limited partnership, or authorized trust would then  
6 exceed one thousand five hundred acres.

7 Sec. \_\_\_\_ . Section 172C.5, subsection 2, Code  
8 Supplement 1991, is amended to read as follows:

9 2. A person shall not, after July 1, 1988, become  
10 a stockholder of an authorized farm corporation, a  
11 beneficiary of an authorized trust, member of an  
12 authorized limited liability company, or a limited  
13 partner in a limited partnership which owns or leases  
14 agricultural land if the person is also any of the  
15 following:

- 16 a. A stockholder of an authorized farm  
17 corporation.  
18 b. A beneficiary of an authorized trust.  
19 c. A limited partner in a limited partnership  
20 which owns or leases agricultural land.  
21 d. A member of an authorized limited liability  
22 company.

23 However, this subsection shall not apply to limited  
24 partners in a family farm limited partnership.

25 Sec. \_\_\_\_ . Section 172C.5, subsection 3, paragraph  
26 a, Code Supplement 1991, is amended to read as  
27 follows:

28 a. An authorized farm corporation, authorized  
29 trust, authorized limited liability company, or  
30 limited partnership violating this section shall be  
31 assessed a civil penalty of not more than twenty-five  
32 thousand dollars and shall divest itself of any land  
33 held in violation of this section within one year  
34 after judgment. A civil penalty of not more than one  
35 thousand dollars may be imposed on a person who  
36 becomes a stockholder of an authorized farm  
37 corporation, beneficiary of an authorized trust,  
38 member of an authorized limited liability company, or  
39 limited partner in a limited partnership in violation  
40 of this section. The person shall divest the interest  
41 held by the person in the corporation, trust, limited  
42 liability company, or limited partnership to comply  
43 with this section. The court may determine the method  
44 of divesting an interest held by a person found to be  
45 in violation of this chapter. A financial gain  
46 realized by a person who disposes of an interest held  
47 in violation of this chapter shall be forfeited to the  
48 state's general fund. All court costs and fees shall  
49 be paid by the person holding the interest in  
50 violation of this chapter.

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1 Sec. \_\_\_\_ . Section 172C.5A, subsection 2, Code  
2 1991, is amended by adding the following new  
3 paragraph:

4 NEW PARAGRAPH. d. A person who is a member,  
5 manager, or authorized representative of a limited  
6 liability company, other than a family farm limited  
7 liability company, including an authorized limited  
8 liability company, owning or leasing agricultural land  
9 or engaged in farming in this state.

10 Sec. \_\_\_\_ . Section 172C.5A, subsection 3, Code  
11 1991, is amended to read as follows:

12 3. The report shall contain information for the  
13 last year regarding the reporting entity's  
14 corporation, limited partnership, limited liability  
15 company, or trust, and the agricultural land owned,  
16 leased, or held. However, this subsection shall not  
17 apply to a family farm corporation, a family farm  
18 limited partnership, a family farm limited liability  
19 company, or a family trust. The report shall contain  
20 the following information, if applicable:

21 a. Whether the reporting entity represents a  
22 corporation, trust, limited liability company, or  
23 limited partnership. If the reporting entity  
24 represents a corporation or limited liability company  
25 the report shall specify if the corporation or limited  
26 liability company is foreign or domestic, profit or  
27 nonprofit, or an authorized farm corporation or  
28 authorized limited liability company. If the  
29 reporting entity represents a trust the report shall  
30 specify if the trust is an authorized trust.

31 b. The name of the reporting entity and the name  
32 and address of the person supervising the daily  
33 operations on the agricultural land.

34 c. The name, address, and citizenship if not from  
35 the United States, of each shareholder, limited  
36 partner, member, or beneficiary of a corporation,  
37 trust, limited liability company, or limited  
38 partnership.

39 d. The total approximate number of acres, and the  
40 approximate number of acres by named county, of  
41 agricultural land which is owned, leased, or held by  
42 the corporation, trust, limited liability company, or  
43 limited partnership.

44 e. The approximate number of acres of agricultural  
45 land which is owned and operated by the corporation,  
46 limited liability company, or limited partnership; the  
47 approximate number of acres of agricultural land which  
48 is leased by the corporation, limited liability  
49 company, limited partnership, or trust as a lessee;  
50 the approximate number of acres of agricultural land

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1 which is leased from the corporation, limited  
2 liability company, limited partnership, or trust as a  
3 lessor; and the approximate number of acres of  
4 agricultural land which is held in fee and operated by  
5 a trust.

6 f. The approximate number of acres of agricultural  
7 land which the corporation, limited liability company,  
8 trust, or limited partnership used for the production  
9 of row crops.

10 g. The approximate number of livestock, including  
11 cattle, sheep, swine, or poultry, owned, contracted  
12 for, or kept by the corporation, limited liability  
13 company, trust, or limited partnership, and the  
14 approximate number of offspring produced from the  
15 livestock.

16 Sec. \_\_\_\_ . Section 172C.10, Code 1991, is amended  
17 to read as follows:

18 172C.10 SIGNING REPORTS.

19 Reports by corporations shall be signed by the  
20 president or other officer or authorized  
21 representative. Reports by limited liability  
22 companies shall be signed by a manager or other  
23 authorized representative. Reports by limited  
24 partnerships shall be signed by the president or other  
25 authorized representative of the partnership. Reports  
26 by individuals shall be signed by the individual or an  
27 authorized representative.

28 Sec. \_\_\_\_ . Section 172C.14, Code Supplement 1991,  
29 is amended to read as follows:

30 172C.14 DUTIES OF SECRETARY OF STATE.

31 The secretary of state shall notify the attorney  
32 general when the secretary of state has reason to  
33 believe a violation of this chapter has occurred. It  
34 is the intent of this section that information shall  
35 be made available to members of the general assembly  
36 and appropriate committees of the general assembly in  
37 order to determine the extent of farming being carried  
38 out in this state by corporations and other business  
39 entities and the effect of such farming practices upon  
40 the economy of this state. The reports of  
41 corporations, limited liability companies, limited  
42 partnerships, trusts, contractors, and processors  
43 required in this chapter shall be confidential reports  
44 except as to the attorney general for review and  
45 appropriate action when necessary. The secretary of  
46 state shall assist any committee of the general  
47 assembly existing or established for the purposes of  
48 studying the effects of this chapter and the practices  
49 this chapter seeks to study and regulate."

50 2. By renumbering as necessary.

By BRAMMER of Linn

H-5273 FILED MARCH 12, 1992

*Roller not german 3/12*  
*Roller provided*  
*Adopted as amended by 5316 3/12*



## HOUSE FILE 2369

H-5316

1 Amend the amendment, H-5273, to House File 2369 as  
2 follows:

3 1. By striking page 1, line 4, through page 2,  
4 line 8.

5 2. Page 2, by striking lines 13 and 14, and  
6 inserting the following: "section 490A.102."

7 3. Page 2, line 31, by striking the word  
8 "member,".

9 4. Page 3, by striking lines 17 and 18 and  
10 inserting the following: "preclude a processor or  
11 limited partnership from contracting for the".

12 5. By striking page 3, line 22, through page 8,  
13 line 49, and inserting the following:

14 "Sec. \_\_\_\_ . NEW SECTION. 172C.3A LIMITED  
15 LIABILITY COMPANIES -- PROHIBITIONS.

16 A limited liability company shall not, either  
17 directly or indirectly, hold or acquire or otherwise  
18 obtain, lease, or have a legal or beneficial interest  
19 in any agricultural land in this state. A limited  
20 liability company shall not be a shareholder in a  
21 corporation, a limited partner in a limited  
22 partnership, or beneficiary of a trust which holds or  
23 leases any agricultural land in this state. A limited  
24 liability company violating the provisions of this  
25 section shall be subject to the same penalty as  
26 provided in section 172C.4. The courts of this state  
27 may prevent and restrain violators of this section  
28 through the issuance of an injunction. The attorney  
29 general or a county attorney shall institute suits on  
30 behalf of the state to prevent or restrain violators  
31 of this section."

32 6. By renumbering as necessary.

By OSTERBERG of Linn  
BRAMMER of Linn  
DAGGETT of Adams

H-5316 FILED MARCH 16, 1992

ADOPTED

*Adopted 3/16*

Sen. Judiciary 3/18 (p 879)

HOUSE FILE 2369  
BY COMMITTEE ON JUDICIARY AND  
LAW ENFORCEMENT

(SUCCESSOR TO HSB 611)

(As Amended and Passed by the House March 16, 1992)

Passed House, Date 3/16/92 (p 625) Passed Senate, Date 3/31/92 (p 1106)  
Vote: Ayes 94 Nays 6 Vote: Ayes 44 Nays 0  
Approved April 27, 1992 (p 1834)

A BILL FOR

1 An Act authorizing limited liability companies in Iowa and  
2 including penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments \_\_\_\_\_  
Deleted Language \*

1 SUBCHAPTER I  
2 GENERAL PROVISIONS

3 PART 1

4 Section 1. Section 4.1, subsection 13, Code 1991, is  
5 amended to read as follows:

6 13. PERSON. Unless otherwise provided by law, "person"  
7 means individual, corporation, limited liability company,  
8 government or governmental subdivision or agency, business  
9 trust, estate, trust, partnership or association, or any other  
10 legal entity.

11 Sec. 2. Section 172C.1, Code Supplement 1991, is amended  
12 by adding the following new subsection:

13 NEW SUBSECTION. 13A. "Limited liability company" means a  
14 limited liability company as defined in section 490A.102.

15 Sec. 3. Section 172C.1, subsection 16, Code Supplement  
16 1991, is amended by adding the following new paragraph:

17 NEW PARAGRAPH. f. A limited liability company organized  
18 in the United States or elsewhere, beneficial ownership of  
19 which is held, directly or indirectly, by nonresident alien  
20 individuals.

21 Sec. 4. Section 172C.1, subsection 17, Code Supplement  
22 1991, is amended to read as follows:

23 17. "Processor" means a person, firm, corporation, limited  
24 liability company, or limited partnership, which alone or in  
25 conjunction with others, directly or indirectly controls the  
26 manufacturing, processing or preparation for sale of beef or  
27 pork products having a total annual wholesale value of ten  
28 million dollars or more. Any person, firm, corporation,  
29 limited liability company, or limited partner with a ten  
30 percent or greater interest in another person, firm,  
31 corporation, limited liability company, or limited partnership  
32 involved in the manufacturing, processing or preparation for  
33 sale of beef or pork products having a total annual wholesale  
34 value of ten million dollars or more shall also be considered  
35 a processor.

1 Sec. 5. Section 172C.2, unnumbered paragraph 1, Code 1991,  
2 is amended to read as follows:

3 In order to preserve free and private enterprise, prevent  
4 monopoly, and protect consumers, it is unlawful for any  
5 processor of beef or pork or limited partnership in which a  
6 processor holds partnership shares as a general partner or  
7 partnership shares as a limited partner, or limited liability  
8 company in which a processor is a member, to own, control or  
9 operate a feedlot in Iowa in which hogs or cattle are fed for  
10 slaughter. In addition, a processor shall not directly or  
11 indirectly control the manufacturing, processing, or  
12 preparation for sale of pork products derived from swine if  
13 the processor contracted for the care and feeding of the swine  
14 in this state. However, this section does not apply to a  
15 cooperative association organized under chapter 497, 498, or  
16 499, if the cooperative association contracts for the care and  
17 feeding of swine with a member of the cooperative association  
18 who is actively engaged in farming. This section does not  
19 apply to an association organized as a cooperative in which  
20 another cooperative association organized under chapter 497,  
21 498, or 499 is a member, if the association contracts with a  
22 member which is a cooperative association organized under  
23 chapter 497, 498, or 499, which contracts for the care and  
24 feeding of swine with a member of the cooperative who is  
25 actively engaged in farming. This section shall not preclude  
26 a processor or limited partnership from contracting for the  
27 purchase of hogs or cattle, provided that where the contract  
28 sets a date for delivery which is more than twenty days after  
29 the making of the contract it shall:

30 Sec. 6. NEW SECTION. 172C.3A LIMITED LIABILITY COMPANIES -  
31 - PROHIBITIONS.

32 A limited liability company shall not, either directly or  
33 indirectly, hold or acquire or otherwise obtain, lease, or  
34 have a legal or beneficial interest in any agricultural land  
35 in this state. A limited liability company shall not be a

1 shareholder in a corporation, a limited partner in a limited  
2 partnership, or beneficiary of a trust which holds or leases  
3 any agricultural land in this state. A limited liability  
4 company violating the provisions of this section shall be  
5 subject to the same penalty as provided in section 172C.4.  
6 The courts of this state may prevent and restrain violators of  
7 this section through the issuance of an injunction. The  
8 attorney general or a county attorney shall institute suits on  
9 behalf of the state to prevent or restrain violators of this  
10 section.

11 Sec. 7. Section 422.32, subsection 1, Code 1991, is  
12 amended to read as follows:

13 1. The word "corporation" includes joint stock companies,  
14 and associations organized for pecuniary profit, other than  
15 limited liability companies, and publicly traded partnerships  
16 taxed as corporations under the Internal Revenue Code.

17 Sec. 8. NEW SECTION. 490A.100 SHORT TITLE.

18 This chapter is entitled and may be cited as the "Iowa  
19 Limited Liability Company Act."

20 Sec. 9. NEW SECTION. 490A.101 RESERVATION OF POWER TO  
21 AMEND OR REPEAL.

22 The general assembly has the power to amend or repeal all  
23 or part of this chapter at any time and all domestic and  
24 foreign limited liability companies subject to this chapter  
25 shall be governed by the amendment or repeal.

26 Sec. 10. NEW SECTION. 490A.102 DEFINITIONS.

27 In this chapter, unless the context otherwise requires:

28 1. "Articles of organization" means documents filed under  
29 section 490A.301 for the purpose of forming a limited  
30 liability company and includes amended and restated articles  
31 of organization, and articles of merger.

32 2. "Bankruptcy" means, with respect to any person, being  
33 the subject of an order for relief under Title 11 of the  
34 United States Code.

35 3. "Capital contribution" means any cash, property, or

1 services rendered, or a promissory note or other binding  
2 obligation to contribute cash or property or to perform  
3 services, which a member contributes to a limited liability  
4 company in the capacity of a member.

5 4. "Constituent entity" means each limited liability  
6 company, limited partnership, or corporation which is party to  
7 a plan of merger pursuant to subchapter XII.

8 5. "Corporation" means a domestic corporation formed under  
9 the law of this state or subject to the law of this state, or  
10 a foreign corporation as defined in this chapter.

11 6. "Court" includes every court having jurisdiction of the  
12 case.

13 7. "Distribution" means a direct or indirect transfer of  
14 money or other property, or incurrance of indebtedness by a  
15 limited liability company to or for the benefit of its members  
16 in respect of their interests.

17 8. "Entity" includes corporation and foreign corporation;  
18 nonprofit corporation; profit and nonprofit unincorporated  
19 association; business trust, estate, partnership, limited  
20 liability company, trust, and two or more persons having a  
21 joint or common economic interest; and state, United States,  
22 and foreign government.

23 9. "Foreign corporation" means a corporation for profit  
24 incorporated under a law other than the law of this state.

25 10. "Foreign limited liability company" means a limited  
26 liability company organized under a law other than the law of  
27 this state.

28 11. "Foreign limited partnership" means a limited  
29 partnership organized under a law other than the law of this  
30 state.

31 12. "Individual" includes the estate of an incompetent, a  
32 ward, or a deceased individual.

33 13. "Limited liability company" or "domestic limited  
34 liability company" means an entity that is an unincorporated  
35 association having two or more members, and that is organized

1 under or subject to this chapter.

2 14. "Limited partnership" means a limited partnership  
3 organized under the law of this state or a foreign limited  
4 partnership as defined in this section.

5 15. "Manager" or "managers" means a person or persons  
6 designated by the members of a limited liability company to  
7 manage the limited liability company as provided in the  
8 articles of organization or an operating agreement.

9 16. "Member" means a person with a membership interest in  
10 a limited liability company.

11 17. "Membership interest" or "interest" means a member's  
12 share of the profits and the losses of the limited liability  
13 company and the right to receive distributions of the limited  
14 liability company's assets, and any right to vote or  
15 participate in management.

16 18. "Operating agreement" means any agreement of the  
17 members as to the affairs of a limited liability company and  
18 the conduct of its business.

19 19. "Person" has the same meaning as specified in section  
20 4.1, subsection 13.

21 20. "Principal office" means the office, in or out of this  
22 state, where the principal executive offices of a domestic or  
23 foreign limited liability company are located.

24 21. "Secretary of state" means the Iowa secretary of  
25 state.

26 22. "State," when referring to a part of the United  
27 States, includes a state, commonwealth, and their agencies and  
28 governmental subdivisions; and a territory or insular  
29 possession, and their agencies and governmental subdivisions,  
30 of the United States.

31 23. "Surviving Entity" means the constituent entity  
32 surviving the merger, as identified in the articles of merger  
33 provided for in subchapter XII.

34 24. "United States" includes a district, authority,  
35 bureau, commission, department, and any other agency of the

1 United States.

2

PART 2

3 Sec. 11. NEW SECTION. 490A.120 FILING REQUIREMENTS.

4 1. A document must satisfy the requirements of this  
5 section, and of any other section that adds to or varies these  
6 requirements, to be entitled to filing.

7 2. The document must be one that this chapter requires or  
8 permits to be filed with the secretary of state.

9 3. The document must contain the information required by  
10 this chapter. It may contain other information as well.

11 4. The document must be typewritten or printed. The  
12 typewritten or printed portion shall be in black. Manually  
13 signed photocopies, or other reproduced copies, including  
14 facsimiles and other electronically or computer-generated  
15 copies of typewritten or printed documents may be filed.

16 5. The document must be in the English language. A  
17 limited liability company name need not be in English if  
18 written in English letters or Arabic or Roman numerals. The  
19 articles of organization, duly authenticated by the official  
20 having custody of the applicable records in the state or  
21 country under whose law the limited liability company is  
22 formed, which are required of foreign limited liability  
23 companies, need not be in English if accompanied by a  
24 reasonably authenticated English translation.

25 6. The document must be executed by one of the following  
26 persons:

27 a. A manager, or if no managers have been selected, by any  
28 member of the limited liability company.

29 b. If the limited liability company has not been formed,  
30 by the person forming the limited liability company.

31 c. If the limited liability company is in the hands of a  
32 receiver, trustee, or other court-appointed fiduciary, that  
33 fiduciary.

34 7. The person executing the document shall sign it and  
35 state beneath or opposite the person's signature the person's



1 name and the capacity in which the person signs.

2 8. If, pursuant to any provision of this chapter, the  
3 secretary of state has prescribed a mandatory form for the  
4 document, the document shall be in or on the prescribed form.

5 9. The document must be delivered to the secretary of  
6 state for filing and must be accompanied by the correct filing  
7 fee.

8 Sec. 12. NEW SECTION. 490A.121 FILING DUTY OF SECRETARY  
9 OF STATE.

10 1. If a document delivered to the office of the secretary  
11 of state for filing satisfies the requirements of section  
12 490A.120, the secretary of state shall file it and issue any  
13 necessary certificate.

14 2. The secretary of state files a document by stamping or  
15 otherwise endorsing "filed", together with the secretary of  
16 state's name and official title and the date and time of  
17 receipt, on both the document and the receipt for the filing  
18 fee, and recording the document in the records of the  
19 secretary of state. After filing a document, and except as  
20 provided in section 490A.503, the secretary of state shall  
21 deliver the document, with the filing fee receipt, or  
22 acknowledgment of receipt if no fee is required, attached, to  
23 the domestic or foreign limited liability company or its  
24 representative.

25 3. If the secretary of state refuses to file a document,  
26 the secretary of state shall return it to the domestic or  
27 foreign limited liability company or its representative within  
28 ten days after the document was received by the secretary of  
29 state, together with a brief, written explanation of the  
30 reason for the refusal.

31 4. The secretary of state's duty to file documents under  
32 this section is ministerial. Filing or refusing to file a  
33 document does not:

34 a. Affect the validity or invalidity of the document in  
35 whole or part.

1 b. Relate to the correctness or incorrectness of  
2 information contained in the document.

3 c. Create a presumption that the document is valid or  
4 invalid or that information contained in the document is  
5 correct or incorrect.

6 Sec. 13. NEW SECTION. 490A.122 EFFECTIVE TIME AND DATE  
7 OF DOCUMENTS.

8 1. Except as provided in subsection 2 and section  
9 490A.123, subsection 3, a document accepted for filing is  
10 effective at the later of the following times:

11 a. At the time of filing on the date it is filed, as  
12 evidenced by the secretary of state's date and time  
13 endorsement on the original document.

14 b. At the time specified in the document as its effective  
15 time on the date it is filed.

16 2. A document may specify a delayed effective time and  
17 date, and if it does so the document becomes effective at the  
18 time and date specified. If a delayed effective date but no  
19 time is specified, the document is effective at the close of  
20 business on that date. A delayed effective date for a  
21 document shall not be later than the ninetieth day after the  
22 date it is filed.

23 Sec. 14. NEW SECTION. 490A.123 CORRECTING FILED  
24 DOCUMENTS.

25 1. A domestic or foreign limited liability company may  
26 correct a document filed by the secretary of state if the  
27 document satisfies one or both of the following requirements:

28 a. Contains an incorrect statement.

29 b. Was defectively executed, attested, sealed, verified,  
30 or acknowledged.

31 2. A document is corrected by complying with both of the  
32 following:

33 a. By preparing articles of correction that satisfy all of  
34 the following requirements:

35 (1) Describe the document, including its filing date, or

1 attach a copy of it to the articles.

2 (2) Specify the incorrect statement and the reason it is  
3 incorrect or the manner in which the execution was defective.

4 (3) Correct the incorrect statement or defective  
5 execution.

6 b. By delivering the articles to the secretary of state  
7 for filing.

8 3. Articles of correction are effective on the effective  
9 date of the document they correct except as to persons relying  
10 on the uncorrected document and adversely affected by the  
11 correction. As to those persons, articles of correction are  
12 effective when filed.

13 Sec. 15. NEW SECTION. 490A.124 FEES.

14 1. The secretary of state shall collect the following fees  
15 when documents described in this subsection are delivered to  
16 the secretary's office for filing:

17	a. Articles of organization .....	\$	50
18	b. Application for use of indistinguishable name ..	\$	10
19	c. Application for reserved name .....	\$	10
20	d. Notice of transfer of reserved name .....	\$	10
21	e. Application for registered name per month or part		
22	thereof .....	\$	2
23	f. Application for renewal of registered name .....	\$	20
24	g. Statement of change of registered agent or		
25	registered office or both .....	No fee	
26	h. Agent's statement of change of registered		
27	office for each affected limited liability company .....	No fee	
28	i. Agent's statement of resignation .....	No fee	
29	j. Amendment of articles of organization .....	\$	50
30	k. Restatement of articles of organization with		
31	amendment of articles .....	\$	50
32	l. Articles of merger .....	\$	50
33	m. Articles of dissolution .....	\$	5
34	n. Articles of revocation of dissolution .....	\$	5
35	o. Certificate of administrative dissolution .....	No fee	

- 1 p. Application for reinstatement following
- 2 administrative dissolution ..... \$ 5
- 3 q. Certificate of reinstatement ..... No fee
- 4 r. Certificate of judicial dissolution ..... No fee
- 5 s. Application for certificate of authority ..... \$ 100
- 6 t. Application for amended certificate of
- 7 authority ..... \$ 100
- 8 u. Application for certificate of withdrawal ..... \$ 10
- 9 v. Certificate of revocation of authority to
- 10 transact business ..... No fee
- 11 w. Articles of correction ..... \$ 5
- 12 x. Application for certificate of existence or
- 13 authorization ..... \$ 5
- 14 y. Any other document required or permitted to
- 15 be filed by this chapter ..... \$ 5

16 2. The secretary of state shall collect a fee of five  
 17 dollars each time process is served on the secretary under  
 18 this chapter. The party to a proceeding causing service of  
 19 process is entitled to recover this fee as costs if the party  
 20 prevails in the proceeding.

21 3. The secretary of state shall collect the following fees  
 22 for copying and certifying the copy of any filed document  
 23 relating to a domestic or foreign corporation:

- 24 a. One dollar a page for copying.
- 25 b. Five dollars for the certificate.

26 Sec. 16. NEW SECTION. 490A.125 FORMS.

- 27 1. The secretary of state may prescribe and furnish on
- 28 request forms including but not limited to the following:
- 29 a. An application for a certificate of existence.
- 30 b. A foreign limited liability company's application for a
- 31 certificate of authority to transact business in this state.
- 32 c. A foreign limited liability company's application for a
- 33 certificate of withdrawal.

34 If the secretary of state so requires, use of these listed  
 35 forms prescribed by the secretary of state is mandatory.

1 2. The secretary of state may prescribe and furnish on  
2 request forms for other documents required or permitted to be  
3 filed by this chapter but their use is not mandatory.

4 Sec. 17. NEW SECTION. 490A.126 APPEAL FROM SECRETARY OF  
5 STATE'S REFUSAL TO FILE DOCUMENT.

6 1. If the secretary of state refuses to file a document  
7 delivered to the secretary's office for filing, the domestic  
8 or foreign limited liability company may appeal the refusal,  
9 within thirty days after the return of the document, to the  
10 district court for the county in which the limited liability  
11 company's principal office or, if none in this state, its  
12 registered office is or will be located. The appeal is  
13 commenced by petitioning the court to compel filing the  
14 document and by attaching to the petition the document and the  
15 secretary of state's explanation of the refusal to file.

16 2. The court may summarily order the secretary of state to  
17 file the document or take other action the court considers  
18 appropriate.

19 3. The court's final decision may be appealed as in other  
20 civil proceedings.

21 Sec. 18. NEW SECTION. 490A.127 EVIDENTIARY EFFECT OF  
22 COPY OF FILED DOCUMENT.

23 A certificate attached to a copy of a document filed by the  
24 secretary of state, bearing the secretary of state's  
25 signature, which may be in facsimile, and the seal of the  
26 secretary of state, is conclusive evidence that the original  
27 document is on file with the secretary of state.

28 Sec. 19. NEW SECTION. 490A.128 CERTIFICATE OF EXISTENCE.

29 1. Anyone may apply to the secretary of state to furnish a  
30 certificate of existence for a domestic limited liability  
31 company or a certificate of authorization for a foreign  
32 limited liability company.

33 2. A certificate of existence or authorization must set  
34 forth all of the following:

35 a. The domestic limited liability company's name or the

1 foreign limited liability company's name used in this state.

2 b. That one of the following applies:

3 (1) If it is a domestic limited liability company, that it  
4 is duly organized under the law of this state, the date of its  
5 organization, and the period of its duration.

6 (2) If it is a foreign limited liability company, that it  
7 is authorized to transact business in this state.

8 c. That all fees required by this chapter have been paid.

9 d. That articles of dissolution have not been filed.

10 e. Other facts of record in the office of the secretary of  
11 state that may be requested by the applicant.

12 3. Subject to any qualification stated in the certificate,  
13 a certificate of existence or authorization issued by the  
14 secretary of state may be relied upon as conclusive evidence  
15 that the domestic or foreign limited liability company is in  
16 existence or is authorized to transact business in this state.

17 Sec. 20. NEW SECTION. 490A.129 PENALTY FOR SIGNING FALSE  
18 DOCUMENT.

19 1. A person commits an offense if that person signs a  
20 document the person knows is false in any material respect  
21 with intent that the document be delivered to the secretary of  
22 state for filing.

23 2. An offense under this section is a serious misdemeanor  
24 punishable by a fine of not to exceed one thousand dollars.

25 Sec. 21. NEW SECTION. 490A.130 SECRETARY OF STATE --  
26 POWERS.

27 The secretary of state has the power reasonably necessary  
28 to perform the duties required of the secretary of state by  
29 this chapter.

30 SUBCHAPTER II

31 PURPOSES AND POWERS

32 Sec. 22. NEW SECTION. 490A.201 PURPOSES.

33 1. A limited liability company organized under this  
34 chapter has the purpose of engaging in any lawful business  
35 unless a more limited purpose is set forth in the articles of

1 organization.

2 2. A limited liability company engaging in a business that  
3 is subject to regulation under another statute of this state  
4 may organize under this chapter only if permitted by, and  
5 subject to all limitations of, the other statute.

6 Sec. 23. NEW SECTION. 490A.202 POWERS.

7 Unless its articles of organization provide otherwise, a  
8 limited liability company has the same powers as an individual  
9 to do all things necessary or convenient to carry out its  
10 business and affairs, including without limitation power to do  
11 all of the following:

12 1. Sue and be sued, complain, and defend in its name.

13 2. Transact its business, carry on its operations, and  
14 have and exercise the powers granted by this chapter in any  
15 state and in any foreign country.

16 3. Purchase, receive, lease, or otherwise acquire, and  
17 own, hold, improve, use, and otherwise deal with, real or  
18 personal property, or any legal or equitable interest in  
19 property, wherever located.

20 4. Sell, convey, transfer, mortgage, pledge, lease,  
21 exchange, and otherwise dispose of all or any part of its  
22 property.

23 5. Purchase, receive, subscribe for, or otherwise acquire  
24 and hold, to sell, mortgage, lend, pledge, or otherwise  
25 dispose of, and deal in and with, shares or other interests  
26 in, or obligations of any other person.

27 6. Make contracts and guaranties, incur liabilities,  
28 borrow money, issue its notes, bonds, and other obligations,  
29 which may be convertible into or include the option to  
30 purchase other securities of the limited liability company,  
31 and secure any of its obligations by mortgage, deed of trust,  
32 or pledge of any of its property, franchises, or income.

33 7. Lend money, invest and reinvest its funds, and receive  
34 and hold real and personal property as security for repayment.

35 8. Elect and appoint managers, employees, and agents of

1 the limited liability company, define their duties, fix their  
2 compensation, and lend them money and credit.

3 9. Pay pensions and establish pension plans, pension  
4 trusts, profit sharing plans, and benefit and incentive plans  
5 for all or any of its current or former members, managers,  
6 employees, and agents.

7 10. Make donations for the public welfare or for  
8 religious, charitable, scientific, or educational purposes.

9 11. Make payments or donations, or do any other act, not  
10 inconsistent with law, that furthers the business and affairs  
11 of the limited liability company.

12 12. Cease its activities and dissolve.

13 13. Be a promoter, stockholder, partner, member,  
14 associate, agent, or manager of any corporation, partnership,  
15 limited liability company, joint venture, trust, or other  
16 entity.

17 14. Make and amend operating agreements, not inconsistent  
18 with its articles of organization or with the law of this  
19 state, for the administration and regulation of its affairs.

20 15. Transact any lawful business that a corporation,  
21 partnership, or other entity may conduct under the law of this  
22 state subject, however, to any and all laws and restrictions  
23 that govern or limit the conduct of such activity by such  
24 corporation, partnership, or other entity.

25 16. Have and exercise all powers necessary or convenient  
26 to effect any or all of the purposes for which the limited  
27 liability company is organized.

28 SUBCHAPTER III

29 FORMATION

30 Sec. 24. NEW SECTION. 490A.301 FORMATION.

31 One or more persons may form a limited liability company by  
32 executing and delivering articles of organization to the  
33 secretary of state for filing. Such person or persons need  
34 not be members of the limited liability company after  
35 formation has occurred.



1 Sec. 25. NEW SECTION. - 490A.302 LIABILITY.

2 All persons purporting to act as or on behalf of a limited  
3 liability company, knowing there is no organization under this  
4 chapter, are jointly and severally liable for all liabilities  
5 created while so acting.

6 Sec. 26. NEW SECTION. 490A.303 ARTICLES OF ORGANIZATION.

7 1. The articles of organization must set forth all of the  
8 following:

9 a. A name for the limited liability company that satisfies  
10 the requirements of section 490A.401.

11 b. The street address of the limited liability company's  
12 initial registered office and the name of its initial  
13 registered agent at that office.

14 c. The street address of the principal office of the  
15 limited liability company, which may be the same as the  
16 registered office, but need not be within this state.

17 d. The period of its duration which shall not be  
18 perpetual.

19 2. The articles of organization may set forth any other  
20 provision not inconsistent with law, including, but not  
21 limited to, a statement of whether there are limitations on  
22 the authority of members to bind the limited liability  
23 company.

24 3. The articles of organization need not set forth any of  
25 the powers enumerated in this chapter.

26 4. The articles of organization or an operating agreement  
27 may provide that a member's interest in a limited liability  
28 company may be evidenced by a certificate of membership  
29 interest issued by the limited liability company and may also  
30 provide for assignment or transfer of any membership interest  
31 represented by such a certificate and make other provisions  
32 with respect to such a certificate.

33 SUBCHAPTER IV

34 NAMES

35 Sec. 27. NEW SECTION. 490A.401 NAME.

1 1. A limited liability company name must contain the words  
2 "Limited Company" or the abbreviation "L.C." or words or  
3 abbreviations of like import in another language.

4 2. A limited liability company name shall not contain any  
5 of the following:

6 a. The words "Corporation", "Incorporated", "Limited  
7 Partnership" or the abbreviations "Corp.", "Inc." or "L.P." or  
8 words or abbreviations of like import in another language.

9 b. Any word or phrase the use of which is prohibited by  
10 law for such a limited liability company.

11 3. Except as authorized by subsections 4 and 5, a limited  
12 liability company name must be distinguishable upon the  
13 records of the secretary of state from all of the following:

14 a. The name of a limited liability company, limited  
15 partnership, or corporation organized under the law of this  
16 state or registered as a foreign limited liability company,  
17 foreign limited partnership, or foreign corporation in this  
18 state.

19 b. A name reserved in the manner provided under the law of  
20 this state.

21 c. The fictitious name adopted by a foreign corporation,  
22 foreign limited partnership, or foreign limited liability  
23 company authorized to transact business in this state, because  
24 its real name is unavailable.

25 d. The corporate name of a nonprofit corporation  
26 incorporated or authorized to transact business in this state.

27 4. A limited liability company may apply to the secretary  
28 of state for authorization to use a name that is not  
29 distinguishable upon the secretary's records from one or more  
30 of the names described in subsection 3. The secretary of  
31 state shall authorize use of the name applied for if one of  
32 the following conditions applies:

33 a. The other entity consents to the use in writing and  
34 submits an undertaking in form satisfactory to the secretary  
35 of state to change its name to a name that is distinguishable

1 upon the records of the secretary of state from the name of  
2 the applying limited liability company.

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

7 5. A limited liability company may use the name, including  
8 the fictitious name, of another entity that is used in this  
9 state if the other entity is formed under the law of this  
10 state or is authorized to transact business in this state and  
11 the proposed user limited liability company meets one of the  
12 following conditions:

13 a. Has merged with the other entity.

14 b. Has been formed by reorganization of the other entity.

15 c. Has acquired all or substantially all of the assets,  
16 including the name, of the other entity.

17 6. This chapter does not control the use of fictitious  
18 names; however, if a limited liability company uses a  
19 fictitious name in this state it shall deliver to the  
20 secretary of state for filing a certified copy of the  
21 resolution of the limited liability company adopting the  
22 fictitious name.

23 Sec. 28. NEW SECTION. 490A.402 RESERVED NAME.

24 1. A person may reserve the exclusive use of a limited  
25 liability company name, including a fictitious name for a  
26 foreign limited liability company whose limited liability  
27 company name is not available, by delivering an application to  
28 the secretary of state for filing. The application must set  
29 forth the name and address of the applicant and the name  
30 proposed to be reserved. If the secretary of state finds that  
31 the limited liability company name applied for is available,  
32 the secretary of state shall reserve the name for the  
33 applicant's exclusive use for a nonrenewable one hundred  
34 twenty-day period.

35 2. The owner of a reserved limited liability company name

1 may transfer the reservation to another person by delivering  
2 to the secretary of state a signed notice of the transfer that  
3 states the name and address of the transferee.

4

## SUBCHAPTER V

5

## REGISTERED OFFICE AND AGENT

6

Sec. 29. NEW SECTION. 490A.501 REGISTERED OFFICE AND  
7 REGISTERED AGENT.

8

Each limited liability company must continuously maintain  
9 in this state each of the following:

10

1. A registered office that may be the same as any of its  
11 places of business.

12

2. A registered agent who may be any of the following:

13

a. An individual who is a resident of this state and whose  
14 business office is identical with the registered office.

15

b. A domestic corporation, domestic limited liability  
16 company, or not-for-profit domestic corporation whose business  
17 office is identical with the registered office.

18

c. A foreign corporation, foreign limited liability  
19 company, or not-for-profit foreign corporation authorized to  
20 transact business in this state whose business office is  
21 identical with the registered office.

22

Sec. 30. NEW SECTION. 490A.502 CHANGE OF REGISTERED  
23 OFFICE OR REGISTERED AGENT.

24

1. Each limited liability company may change its  
25 registered office or registered agent by delivering to the  
26 secretary of state for filing a statement of change that sets  
27 forth the following:

28

a. The name of the limited liability company or foreign  
29 limited liability company.

30

b. The street address of its current registered office.

31

c. If the current registered office is to be changed, the  
32 street address of the new registered office.

33

d. The name of its current registered agent.

34

e. If the current registered agent is to be changed, the  
35 name of the new registered agent and the new agent's written

1 consent either on the statement or attached to it, to the  
2 appointment.

3 f. That after the change or changes are made, the street  
4 address of its registered office and the business office of  
5 its registered agent will be identical.

6 2. A statement of change shall forthwith be filed in the  
7 office of the secretary of state by a limited liability  
8 company whenever its registered agent dies, resigns, or ceases  
9 to satisfy the requirements of section 490A.501.

10 3. If a registered agent changes the registered agent's  
11 business address to another place, the registered agent may  
12 change the business address and the address of the registered  
13 agent by filing a statement as required in subsection 1 for  
14 each limited liability company, or a single statement for all  
15 limited liability companies named in the notice, except that  
16 it need be signed only by the registered agent or agents and  
17 need not be responsive to subsection 1, paragraph "e", and  
18 must recite that a copy of the statement has been mailed to  
19 each limited liability company named in the notice.

20 Sec. 31. NEW SECTION. 490A.503 RESIGNATION OF REGISTERED  
21 AGENT.

22 1. A registered agent may resign the agent's agency  
23 appointment by signing and delivering to the secretary of  
24 state for filing the signed original and two exact copies or  
25 conformed copies of a statement of resignation. The statement  
26 may include a statement that the registered office is also  
27 discontinued. After filing the statement the secretary of  
28 state shall mail one copy to the registered office, if not  
29 discontinued, and the other copy to the limited liability  
30 company at its principal office.

31 2. The agency appointment is terminated, and the  
32 registered office discontinued if so provided, on the thirty-  
33 first day after the date on which the statement was filed.

34 Sec. 32. NEW SECTION. 490A.504 SERVICE ON LIMITED  
35 LIABILITY COMPANY.

1 1. A domestic or foreign limited liability company's  
2 registered agent is the limited liability company's agent for  
3 service of process, notice, or demand required or permitted by  
4 law to be served on the limited liability company.

5 2. If a limited liability company has no registered agent,  
6 or the agent cannot with reasonable diligence be served, the  
7 limited liability company may be served by registered or  
8 certified mail, return receipt requested, addressed to the  
9 limited liability company at its principal office. Service is  
10 perfected under this subsection at the earliest of:

11 a. The date the limited liability company receives the  
12 mail.

13 b. The date shown on the return receipt, if signed on  
14 behalf of the limited liability company.

15 c. Five days after its deposit in the United States mail,  
16 as evidenced by the postmark, if mailed postpaid and correctly  
17 addressed.

18 3. This section does not prescribe the only means, or  
19 necessarily the required means, of serving a domestic or  
20 foreign limited liability company.

21 SUBCHAPTER VI  
22 RELATIONSHIP OF A  
23 LIMITED LIABILITY COMPANY  
24 AND ITS MEMBERS TO THIRD PERSONS

25 Sec. 33. NEW SECTION. 490A.601 LIABILITY TO THIRD  
26 PARTIES.

27 Except as otherwise provided by this chapter or as  
28 expressly provided in the articles of organization, no member  
29 or manager of a limited liability company is personally liable  
30 for the acts or debts of the limited liability company.

31 Sec. 34. NEW SECTION. 490A.602 PARTIES TO ACTIONS.

32 A member of a limited liability company is not a proper  
33 party to a proceeding by or against a limited liability  
34 company, except where either of the following applies:

35 1. The object is to enforce a member's right against or

1 liability to the limited liability company.

2 2. As provided in subchapter 10.

3 SUBCHAPTER VII

4 RELATIONSHIP OF MEMBERS TO EACH OTHER

5 Sec. 35. NEW SECTION. 490A.701 VOTING RIGHTS OF MEMBERS.

6 1. Unless otherwise provided in the articles of  
7 organization or an operating agreement, the members of a  
8 limited liability company shall vote in proportion to their  
9 capital contributions to the limited liability company, as  
10 adjusted from time to time to reflect any additional  
11 contributions or withdrawals.

12 2. Unless otherwise provided in the articles of  
13 organization or an operating agreement, a unanimous vote shall  
14 be required to approve the following matters:

15 a. The dissolution and winding up of the limited liability  
16 company.

17 b. The sale, exchange, lease, mortgage, pledge, or other  
18 transfer of all or substantially all of the assets of the  
19 limited liability company.

20 c. Merger of the limited liability company with another  
21 entity.

22 d. An amendment to the articles of organization or  
23 operating agreement.

24 Sec. 36. NEW SECTION. 490A.702 MANAGEMENT OF LIMITED  
25 LIABILITY COMPANY.

26 Unless the articles of organization or an operating  
27 agreement provides for management of a limited liability  
28 company by a manager or managers, management of a limited  
29 liability company shall be vested in its members.

30 Sec. 37. NEW SECTION. 490A.703 OPERATING AGREEMENT.

31 1. The members of a limited liability company may enter  
32 into an operating agreement to establish or regulate the  
33 affairs of the limited liability company, the conduct of its  
34 business and the relations of its members. An operating  
35 agreement may contain any provisions regarding the affairs of

1 a limited liability company and the conduct of its business to  
2 the extent that such provisions are not inconsistent with law  
3 or the articles of organization.

4 2. An operating agreement must initially be agreed to by  
5 all of the members. Unless the articles of organization  
6 specifically permit otherwise, an operating agreement shall be  
7 in writing.

8 3. A court may enforce an operating agreement by  
9 injunction or by other relief that the court determines to be  
10 fair and appropriate in the circumstances. As an alternative  
11 to injunctive or other equitable relief, when the provisions  
12 of section 490A.1302 are applicable, the court may order  
13 dissolution of the limited liability company.

14 Sec. 38. NEW SECTION. 490A.704 WITHDRAWAL OF MEMBER.

15 A member may withdraw from a limited liability company at  
16 the time or upon the happening of events specified in writing  
17 in the articles of organization or an operating agreement. If  
18 the articles of organization or an operating agreement does  
19 not specify in writing the time or the events upon the  
20 happening of which a member may withdraw, a member may  
21 withdraw upon not less than six months' prior written notice  
22 to each member at the member's address on the books of the  
23 limited liability company.

24 Sec. 39. NEW SECTION. 490A.705 MANAGEMENT OF A LIMITED  
25 LIABILITY COMPANY BY A MANAGER OR MANAGERS.

26 1. The articles of organization or an operating agreement  
27 of a limited liability company may apportion responsibility  
28 for managing a limited liability company among one or more  
29 managers who may be, but need not be, members.

30 2. The articles of organization or an operating agreement  
31 may prescribe qualifications for managers.

32 3. The number of managers shall be fixed by or in the  
33 manner provided in the articles of organization or an  
34 operating agreement. The number of managers may be increased  
35 or decreased by amendment to, or in the manner provided in,



1 the articles of organization or an operating agreement.

2 4. Unless otherwise provided in the articles of  
3 organization or an operating agreement, managers shall be  
4 elected by the majority vote of the members.

5 5. Unless otherwise provided in the articles of  
6 organization or an operating agreement, any vacancy occurring  
7 in the office of manager shall be filled by a majority vote of  
8 the members.

9 6. All managers or any lesser number may be removed in the  
10 manner provided in the articles of organization or an  
11 operating agreement. If the articles of organization or an  
12 operating agreement does not provide for the removal of  
13 managers, then all managers or any lesser number may be  
14 removed with or without cause by a majority vote of the  
15 members.

16 7. Unless otherwise provided in the articles of  
17 organization or an operating agreement, if the limited  
18 liability company has more than one manager, all decisions of  
19 the managers shall be by majority vote of the managers.

20 8. Unless the articles of organization or an operating  
21 agreement require a different number, a quorum for a meeting  
22 of managers consists of a majority of the managers.

23 Sec. 40. NEW SECTION. 490A.706 GENERAL STANDARDS OF  
24 CONDUCT FOR MANAGERS.

25 1. A manager shall discharge that manager's duties as a  
26 manager in good faith, with the care an ordinary prudent  
27 person in a like position would exercise under similar  
28 circumstances, and in a manner the manager believes to be in  
29 the best interests of the limited liability company.

30 2. In discharging the manager's duties, a manager is  
31 entitled to rely on information, opinions, reports, or  
32 statements, including financial statements and other financial  
33 data, if prepared or presented by any of the following:

34 a. One or more managers or employees of the limited  
35 liability company whom the manager reasonably believes to be

1 reliable and competent in the matters presented.

2 b. Legal counsel, public accountants, or other persons as  
3 to matters the manager reasonably believes are within the  
4 person's professional or expert competence.

5 c. A committee of managers of which the manager is not a  
6 member if the manager reasonably believes the committee merits  
7 confidence.

8 3. A manager is not acting in good faith if the manager  
9 has knowledge concerning the matter in question that makes  
10 reliance otherwise permitted by subsection 2 unwarranted.

11 4. A manager is not liable for any action taken as a  
12 manager or any failure to take any action, if the manager  
13 performed the duties of the manager's office in compliance  
14 with this section, or if, and to the extent that, liability  
15 for any such action or failure to act has been limited by the  
16 articles of organization pursuant to section 490A.707.

17 Sec. 41. NEW SECTION. 490A.707 LIMITATION OF LIABILITY  
18 OF MANAGERS.

19 The articles of organization may contain a provision  
20 eliminating or limiting the personal liability of a manager to  
21 the limited liability company or its members for monetary  
22 damages for breach of fiduciary duty as a manager, if the  
23 provision does not eliminate or limit the liability of a  
24 manager for any of the following:

25 1. Breach of the manager's duty of loyalty to the limited  
26 liability company or its members.

27 2. Acts or omissions not in good faith or which involve  
28 intentional misconduct or a knowing violation of law.

29 3. Transaction from which the manager derives an improper  
30 personal benefit or a wrongful distribution in violation of  
31 section 490A.807.

32 A provision shall not eliminate or limit the liability of a  
33 manager for an act or omission occurring prior to the date  
34 when the provision in the articles of organization becomes  
35 effective.

1     Sec. 42. NEW SECTION. 490A.708 BUSINESS TRANSACTIONS OF  
2 MANAGERS WITH THE LIMITED LIABILITY COMPANY.

3     1. A conflict of interest transaction is a transaction  
4 with the limited liability company in which a manager of the  
5 limited liability company has a direct or indirect interest.  
6 A conflict of interest transaction is not voidable by the  
7 limited liability company solely because of the manager's  
8 interest in the transaction if any one of the following is  
9 true:

10    a. The material facts of the transaction and the manager's  
11 interest were disclosed or known to the managers or a  
12 committee of managers and the managers or a committee of  
13 managers authorized, approved, or ratified the transaction.

14    b. The material facts of the transaction and the manager's  
15 interest were disclosed or known to the members entitled to  
16 vote and they authorized, approved, or ratified the  
17 transaction.

18    c. The transaction was fair to the limited liability  
19 company.

20     2. For purposes of this section, a manager of the limited  
21 liability company has an indirect interest in a transaction if  
22 either:

23    a. Another entity in which the manager has a material  
24 financial interest or in which the manager is a general  
25 partner is a party to the transaction.

26    b. Another entity of which the manager is a director,  
27 officer, manager, or trustee is a party to the transaction and  
28 the transaction is or should be considered by the limited  
29 liability company.

30     3. For purposes of subsection 1, paragraph "a", a conflict  
31 of interest transaction is authorized, approved, or ratified  
32 if it receives the affirmative vote of a majority of the  
33 managers or of the committee of managers, who have no direct  
34 or indirect interest in the transaction, but a transaction may  
35 not be authorized, approved, or ratified under this section by

1 a single manager. If a majority of the managers who have no  
2 direct or indirect interest in the transaction vote to  
3 authorize, approve, or ratify the transaction, a quorum is  
4 present for the purpose of taking action under this section.  
5 The presence of, or a vote cast by, a manager with a direct or  
6 indirect interest in the transaction does not affect the  
7 validity of any action taken under subsection 1, paragraph  
8 "a", if the transaction is otherwise authorized, approved, or  
9 ratified as provided in that subsection.

10 4. For purposes of subsection 1, paragraph "b", a conflict  
11 of interest transaction is authorized, approved, or ratified  
12 if it receives the vote of a majority of the members entitled  
13 to vote under this subsection. Interests owned by or voted  
14 under the control of a manager who has a direct or indirect  
15 interest in the transaction, and interests owned by or voted  
16 under the control of an entity described in subsection 2,  
17 paragraph "a", shall not be counted in a vote of members to  
18 determine whether to authorize, approve, or ratify a conflict  
19 of interest transaction under subsection 1, paragraph "b".  
20 The vote of those members, however, is counted in determining  
21 whether the transaction is approved under other sections of  
22 this chapter. Members, whether or not present, that are  
23 entitled to be counted in a vote on the transaction under this  
24 subsection constitute a quorum for the purpose of taking  
25 action under this section.

26 Sec. 43. NEW SECTION. 490A.709 INFORMATION AND RECORDS.

27 1. Each limited liability company shall keep at its  
28 principal office the following:

29 a. A current list of the full name and last known business  
30 address of each member and manager.

31 b. A copy of the articles of organization and all articles  
32 of amendment thereto.

33 c. Copies of the limited liability company's federal,  
34 state, and local income tax returns and reports, if any, for  
35 the three most recent years.

1 d. Copies of any then-effective written operating  
2 agreement and of any financial statements of the limited  
3 liability company for the three most recent years.

4 e. Unless contained in a written operating agreement, a  
5 writing setting out:

6 (1) The amount of cash and a description and statement of  
7 the agreed value of the other property or services contributed  
8 by each member and which each member has agreed to contribute.

9 (2) The times at which or events on the happening of which  
10 any additional contributions agreed to be made by each member  
11 are to be made.

12 (3) Any right of a member to receive, or of the limited  
13 liability company to make, distributions to a member which  
14 include a return of all or any part of the member's  
15 contribution.

16 (4) Any events upon the happening of which the limited  
17 liability company is to dissolve and its affairs be wound up.

18 2. Each member has the right, upon reasonable request and  
19 subject to reasonable standards as may be set forth in an  
20 operating agreement, to do any of the following:

21 a. Inspect and copy any of the limited liability company  
22 records required to be maintained by this section; and

23 b. Obtain from the manager or managers, or if the limited  
24 liability company has no manager or managers, from any member  
25 or other person with access to such information, from time to  
26 time upon reasonable demand any of the following:

27 (1) True and full information regarding the state of the  
28 business and financial condition of the limited liability  
29 company.

30 (2) Promptly after it becomes available, a copy of the  
31 limited liability company's federal, state, and local income  
32 tax returns for each year.

33 (3) Other information regarding the affairs of the limited  
34 liability company as is just and reasonable.

35 SUBCHAPTER VIII

1

## FINANCE

2       Sec. 44. NEW SECTION. 490A.801 CONTRIBUTIONS.

3       1. The contributions of a member to a limited liability  
4 company may be in cash, property, or services rendered, or a  
5 promissory note or other binding obligation to contribute cash  
6 or property or to perform services.

7       2. Unless otherwise provided in the articles of  
8 organization or an operating agreement, a member is obligated  
9 to the limited liability company to perform any enforceable  
10 promise to contribute cash or property or to perform services,  
11 even if the member is unable to perform because of death,  
12 disability, or any other reason. If a member does not make  
13 the contribution, the member is obligated at the option of the  
14 limited liability company to contribute cash equal to that  
15 portion of the value of the contribution that has not been  
16 made as stated in the limited liability company records  
17 required to be kept by section 490A.709. A promise by a  
18 member to contribute to a limited liability company is not  
19 enforceable unless set out in a writing signed by the member.

20       3. Unless otherwise provided in the articles of  
21 organization or an operating agreement, the obligation of a  
22 member to make a contribution or return money or other  
23 property paid or distributed in violation of this chapter may  
24 be compromised only by consent of all the members.  
25 Notwithstanding the compromise, a creditor of a limited  
26 liability company who extends credit or otherwise acts in  
27 reliance on the original obligation may enforce the original  
28 obligation.

29       Sec. 45. NEW SECTION. 490A.802 SHARING OF PROFITS AND  
30 LOSSES.

31       The profits and losses of a limited liability company shall  
32 be allocated among the members, and among classes of members,  
33 in the manner provided in writing in the articles of  
34 organization or an operating agreement. If the articles of  
35 organization or an operating agreement do not so provide in

1 writing, profits and losses shall be allocated on the basis of  
2 their respective capital contributions, as adjusted from time  
3 to time to reflect any additional contributions or  
4 withdrawals.

5 Sec. 46. NEW SECTION. 490A.803 SHARING OF DISTRIBUTIONS.

6 Distributions of cash or other assets of a limited  
7 liability company shall be allocated among the members, and  
8 among classes of members, in the manner provided in writing in  
9 the articles of organization or an operating agreement. If  
10 the articles of organization or an operating agreement do not  
11 so provide in writing, distributions shall be made on the  
12 basis of their respective capital contributions, as adjusted  
13 from time to time to reflect any additional contributions or  
14 withdrawals.

15 Sec. 47. NEW SECTION. 490A.804 INTERIM DISTRIBUTIONS.

16 Except as otherwise provided in this chapter, a member is  
17 entitled to receive distributions from a limited liability  
18 company before the member's withdrawal from the limited  
19 liability company and before the dissolution and winding up of  
20 the company to the extent and at the times or upon the  
21 happening of the events specified in the articles of  
22 organization or an operating agreement.

23 Sec. 48. NEW SECTION. 490A.805 DISTRIBUTION UPON  
24 WITHDRAWAL.

25 Except as otherwise provided in this chapter, upon  
26 withdrawal, a withdrawing member is entitled to receive any  
27 distribution to which the member is entitled under the  
28 articles of organization or an operating agreement. If not  
29 otherwise provided in the articles of organization or an  
30 operating agreement, the member is entitled to receive, within  
31 a reasonable time after withdrawal, the fair value of the  
32 member's membership interest as of the date of withdrawal,  
33 based on the member's right to share in distributions from the  
34 limited liability company.

35 Sec. 49. NEW SECTION. 490A.806 DISTRIBUTION IN KIND.

1 Unless otherwise provided in the articles of organization  
2 or an operating agreement, a member, regardless of the nature  
3 of the member's contribution, has no right to demand and  
4 receive any distribution from a limited liability company in  
5 any form other than cash. Unless otherwise provided in the  
6 articles of organization or an operating agreement, a member  
7 shall not be compelled to accept a distribution of any asset  
8 in kind from a limited liability company to the extent that  
9 the percentage of the asset distributed to the member exceeds  
10 the percentage of the member's membership interest in the  
11 limited liability company.

12 Sec. 50. NEW SECTION. 490A.807 RESTRICTIONS ON MAKING  
13 DISTRIBUTION.

14 1. A distribution shall not be made if, after giving it  
15 effect, either of the following would result:

16 a. The limited liability company would not be able to pay  
17 its debts as they became due in the usual course of business.

18 b. The limited liability company's total assets would be  
19 less than the sum of its total liabilities plus, unless the  
20 articles of organization or an operating agreement permit  
21 otherwise, the amount that would be needed, if the limited  
22 liability company were to be dissolved at the time of the  
23 distribution, to satisfy the preferential rights upon  
24 dissolution of members whose preferential rights are superior  
25 to the rights of members receiving the distribution.

26 2. The limited liability company may base a determination  
27 that a distribution is not prohibited under subsection 1 of  
28 this section on either of the following:

29 a. Financial statements prepared on the basis of  
30 accounting practices and principles that are reasonable in the  
31 circumstances.

32 b. A fair valuation or other method that is reasonable in  
33 the circumstances.

34 3. The effect of a distribution under subsection 1 of this  
35 section is measured as of one of the following:



1 a. The date the distribution is authorized if the payment  
2 occurs within one hundred twenty days after the date of  
3 authorization.

4 b. The date the payment is made if it occurs more than one  
5 hundred twenty days after the date of authorization.

6 4. A limited liability company's indebtedness to a member  
7 incurred by reason of a distribution made in accordance with  
8 this section is at parity with the limited liability company's  
9 indebtedness to its general unsecured creditors, except to the  
10 extent subordinated by agreement.

11 Sec. 51. NEW SECTION. 490A.808 LIABILITY UPON WRONGFUL  
12 DISTRIBUTION.

13 If a member has received a distribution in violation of the  
14 articles of organization or an operating agreement or in  
15 violation of section 490A.807 of this chapter, then the member  
16 is liable to the limited liability company for a period of  
17 five years thereafter for the amount of the distribution  
18 wrongfully made.

19 SUBCHAPTER IX

20 RIGHTS OF AND ASSIGNMENT BY MEMBERS

21 Sec. 52. NEW SECTION. 490A.901 NATURE OF INTEREST IN  
22 LIMITED LIABILITY COMPANY.

23 A membership interest in a limited liability company is  
24 personal property.

25 Sec. 53. NEW SECTION. 490A.902 ASSIGNMENT OF INTEREST.

26 Unless otherwise provided in the articles of organization  
27 or an operating agreement, a membership interest in a limited  
28 liability company is assignable in whole or in part. An  
29 assignment of an interest in a limited liability company does  
30 not of itself dissolve the limited liability company. An  
31 assignment does not entitle the assignee to participate in the  
32 management and affairs of the limited liability company or to  
33 become or to exercise any rights of a member. Such an  
34 assignment entitles the assignee to receive, to the extent  
35 assigned, only the distribution to which the assignor would be

1 entitled. Except as provided in the articles of organization  
2 or an operating agreement, a member ceases to be a member upon  
3 assignment of the member's entire membership interest.

4 Unless otherwise provided in the articles of organization  
5 or an operating agreement, the pledge of, or granting of a  
6 security interest, lien, or other encumbrance in or against,  
7 any or all of the membership interest of a member shall not  
8 cause the member to cease to be a member and shall not deprive  
9 the member of the power to exercise any rights or powers of a  
10 member.

11 Unless otherwise provided in the articles of organization  
12 or an operating agreement and except to the extent assumed by  
13 agreement, until an assignee of a membership interest becomes  
14 a member, the assignee shall have no liability as a member as  
15 a result of the assignment except for liability for a wrongful  
16 distribution to the assignee described in section 490A.808.

17 Sec. 54. NEW SECTION. 490A.903 RIGHT OF ASSIGNEE TO  
18 BECOME MEMBER.

19 1. Unless otherwise provided in the articles of  
20 organization or an operating agreement, an assignee of an  
21 interest in a limited liability company may become a member  
22 only if the other members unanimously consent. The consent of  
23 a member may be evidenced in any manner specified in the  
24 articles of organization or an operating agreement. In the  
25 absence of such specification consent shall be evidenced by a  
26 written instrument, dated and signed by the requisite number  
27 of members, or evidenced by a vote taken at a meeting of  
28 members called for that purpose.

29 2. An assignee who has become a member has, to the extent  
30 assigned, the rights and powers, and is subject to the  
31 restrictions and liabilities, of a member under the articles  
32 of organization, an operating agreement, and this chapter. An  
33 assignee who becomes a member is liable for any obligations of  
34 the member's assignor to make and return contributions as  
35 provided in subchapter VII and VIII. However, an assignee who

1 becomes a member is not obligated for liabilities of the  
2 assignor unknown to the assignee at the time the assignee  
3 became a member, and which could not be ascertained from the  
4 articles of organization or an operating agreement.

5 3. If an assignee of an interest in a limited liability  
6 company becomes a member, the assignor is not released from  
7 liability to the limited liability company under sections  
8 490A.801 and 490A.808.

9 Sec. 55. NEW SECTION. 490A.904 RIGHTS OF CREDITOR.

10 On application to a court of competent jurisdiction by any  
11 judgment creditor of a member, the court may charge the  
12 interest of the member in the limited liability company with  
13 payment of the unsatisfied amount of the judgment with  
14 interest. To the extent of the amounts so charged, the  
15 judgment creditor has only the rights of an assignee of the  
16 interest in the limited liability company. This chapter does  
17 not deprive any member of the benefit of any exemption laws  
18 applicable to the member's interest in the limited liability  
19 company.

20 Sec. 56. NEW SECTION. 490A.905 POWERS OF ESTATE OF A  
21 DECEASED OR INCOMPETENT MEMBER.

22 If a member who is an individual dies or a court of  
23 competent jurisdiction adjudges the member to be incompetent,  
24 the member's executor, administrator, guardian, conservator,  
25 or other legal representative may exercise all of the member's  
26 rights for the purpose of settling the member's estate or  
27 administering the member's property, including any power under  
28 the articles of organization or an operating agreement of an  
29 assignee to become a member. If a member is a corporation,  
30 trust, or other entity and is dissolved or terminated, the  
31 powers of that member may be exercised by its legal  
32 representative or successor.

33 SUBCHAPTER X

34 DERIVATIVE ACTIONS

35 Sec. 57. NEW SECTION. 490A.1001 RIGHT OF MEMBER TO BRING

1 DERIVATIVE ACTION.

2 A member may bring an action in the right of the limited  
3 liability company to recover a judgment in its favor if all of  
4 the following conditions are met:

5 1. Either management of the limited liability company is  
6 vested in a manager or managers who have the sole authority to  
7 cause the limited liability company to sue in its own right or  
8 management of the limited liability company is reserved to the  
9 members but the plaintiff does not have the authority to cause  
10 the limited liability company to sue in its own right under  
11 the provisions of the articles of organization or an operating  
12 agreement.

13 2. The plaintiff has made demand on those managers or  
14 those members with such authority requesting that such  
15 managers or such members cause the limited liability company  
16 to sue in its own right.

17 3. The members or managers with such authority have  
18 wrongfully refused to bring the action or, after adequate time  
19 to consider the demand, have failed to respond to the demand.

20 4. The plaintiff is a member of the limited liability  
21 company at the time of bringing the action and was a member of  
22 the limited liability company at the time of the transaction  
23 of which the plaintiff complains, or the plaintiff's status as  
24 a member of the limited liability company thereafter devolved  
25 upon the plaintiff pursuant to the terms of the articles of  
26 organization or an operating agreement from a person who was a  
27 member at such time.

28 5. The plaintiff fairly and adequately represents the  
29 interests of the members in enforcing the right of the limited  
30 liability company.

31 SUBCHAPTER XI

32 AMENDMENT OF ARTICLES OF ORGANIZATION

33 Sec. 58. NEW SECTION. 490A.1101 AMENDMENT OF ARTICLES OF  
34 ORGANIZATION.

35 1. A limited liability company may amend its articles of

1 organization at any time to add or change a provision that is  
2 required or permitted in the articles of organization or to  
3 delete a provision not required in the articles of  
4 organization by delivering articles of amendment to the  
5 secretary of state for filing. Whether a provision is  
6 required or permitted for the articles of organization is  
7 determined as of the effective date of the amendment.

8 2. To amend its articles of organization, a limited  
9 liability company shall deliver to the secretary of state for  
10 filing articles of amendment setting forth all of the  
11 following:

- 12 a. The name of the limited liability company.
- 13 b. The text of each amendment adopted.
- 14 c. The date of each amendment's adoption.
- 15 d. A statement that the amendment was adopted by a vote of  
16 the members in accordance with this chapter.

17 Sec. 59. NEW SECTION. 490A.1102 RESTATED ARTICLES OF  
18 ORGANIZATION.

19 1. A limited liability company may restate its articles of  
20 organization at any time.

21 2. The restatement may include one or more amendments to  
22 the articles. The restatement must be adopted by a vote of  
23 the members as provided by this chapter.

24 3. A limited liability company restating its articles of  
25 organization shall deliver to the secretary of state for  
26 filing articles of restatement setting forth the name of the  
27 limited liability company and the text of the restated  
28 articles of organization together with a certificate setting  
29 forth the information required by section 490A.1101,  
30 subsection 2.

31 4. Duly adopted restated articles of organization  
32 supersede the original articles of organization and all  
33 amendments to them.

34 5. The secretary of state may certify restated articles of  
35 organization, as the articles of organization currently in

1 effect, without including the certificate information required  
2 by subsection 3.

3 Sec. 60. NEW SECTION. 490A.1103 AMENDMENT PURSUANT TO  
4 REORGANIZATION.

5 1. A limited liability company's articles of organization  
6 may be amended without action by the members to carry out a  
7 plan of reorganization ordered or decreed by a court of  
8 competent jurisdiction under federal statute if the articles  
9 of organization after amendment contain only provisions  
10 required or permitted by section 490A.303.

11 2. The individual or individuals designated by the court  
12 shall deliver to the secretary of state for filing articles of  
13 amendment setting forth all of the following:

14 a. The name of the limited liability company.

15 b. The text of each amendment approved by the court.

16 c. The date of the court's order or decree approving the  
17 articles of amendment.

18 d. The title of the reorganization proceeding in which the  
19 order or decree was entered.

20 e. A statement that the court had jurisdiction of the  
21 proceeding under federal statute.

22 3. This section does not apply after entry of a final  
23 decree in the reorganization proceeding even though the court  
24 retains jurisdiction of the proceeding for limited purposes  
25 unrelated to consummation of the reorganization plan.

26 Sec. 61. NEW SECTION. 490A.1104 EFFECT OF AMENDMENT.

27 An amendment to articles of organization does not affect a  
28 cause of action existing against or in favor of the limited  
29 liability company, a proceeding to which the limited liability  
30 company is a party, or the existing rights of persons other  
31 than members of the limited liability company. An amendment  
32 changing a limited liability company's name does not abate a  
33 proceeding brought by or against the limited liability company  
34 in its former name.

35

SUBCHAPTER XII

MERGER

Sec. 62. NEW SECTION. 490A.1201 MERGER.

Any one or more limited liability companies may merge with or into any one or more limited liability companies, limited partnerships, or corporations, provided that no member of a limited liability company that is a party to the merger will, as a result of the merger, become personally liable for the liabilities or obligations of any other person or entity unless that member approves the plan of merger or otherwise consents to becoming personally liable.

Sec. 63. NEW SECTION. 490A.1202 PLAN OF MERGER.

1. Each constituent entity must enter into a written plan of merger, which must be approved in accordance with section 490A.1203.

2. The plan of merger must set forth all of the following:

- a. The name of each constituent entity in the merger and the name of the surviving entity into which each other constituent entity proposes to merge.
- b. The terms and conditions of the proposed merger.
- c. The manner and basis of converting the interests in each constituent entity in the merger into interests, shares, or other securities or obligations of the surviving entity, or of any other entity, or, in whole or in part, into cash or other property.
- d. Such amendments to the articles of organization of a limited liability company, articles or certificate of incorporation of a corporation, or certificate of limited partnership of a limited partnership, as the case may be, of the surviving entity as are desired to be effected by the merger, or that no such changes are desired.
- e. Other provisions relating to the proposed merger as are deemed necessary or desirable.

Sec. 64. NEW SECTION. 490A.1203 ACTION ON PLAN.

1. A proposed plan of merger complying with the requirements of section 490A.1202 shall be approved in the

1 manner provided by this section:

2 a. A limited liability company which is a party to a  
3 proposed merger shall have the plan of merger authorized and  
4 approved as required by section 490A.701.

5 b. A corporation which is a party to a proposed merger  
6 shall have the plan of merger authorized and approved in the  
7 manner and by the vote required by chapter 490.

8 c. A limited partnership which is a party to a proposed  
9 merger shall have the plan of merger authorized and approved  
10 in the manner and by the vote required by its partnership  
11 agreement and in accordance with chapter 545.

12 2. After a merger is authorized, unless the plan of merger  
13 provides otherwise, and at any time before articles of merger  
14 as provided for in section 490A.1204 are filed, the plan of  
15 merger may be abandoned subject to any contractual rights, in  
16 accordance with the procedure set forth in the plan of merger  
17 or, if none is set forth, in one of the following ways:

18 a. By the unanimous consent of the members of each limited  
19 liability company that is a constituent entity, unless the  
20 articles of organization or an operating agreement of any such  
21 limited liability company provides otherwise.

22 b. In the manner determined by the board of directors of  
23 any corporation that is a constituent entity.

24 c. By the limited partners of any limited partnership that  
25 is a constituent entity by the vote, if any, required by its  
26 limited partnership agreement and in accordance with the law  
27 of this state.

28 Sec. 65. NEW SECTION. 490A.1204 ARTICLES OF MERGER.

29 1. After a plan of merger is approved as provided in  
30 section 490A.1203, the surviving entity shall deliver to the  
31 secretary of state for filing articles of merger duly executed  
32 by each constituent entity setting forth all of the following:

33 a. The name of each constituent entity.

34 b. The plan of merger.

35 c. The effective date of the merger if later than the date



1 of filing of the articles of merger.

2 d. The name of the surviving entity.

3 e. A statement that the plan of merger was duly authorized  
4 and approved by each constituent entity in accordance with  
5 section 490A.1203.

6 2. A merger takes effect upon the later of the effective  
7 date of the filing of the articles of merger or the date set  
8 forth in the plan of merger.

9 Sec. 66. NEW SECTION. 490A.1205 EFFECT OF MERGER.

10 When a merger takes effect all of the following apply:

11 1. Every other constituent entity merges into the  
12 surviving entity and the separate existence of every  
13 constituent entity except the surviving entity ceases.

14 2. The title to all real estate and other property owned  
15 by each constituent entity is vested in the surviving entity  
16 without reversion or impairment.

17 3. The surviving entity has all liabilities of each  
18 constituent entity.

19 4. A proceeding pending against any constituent entity may  
20 be continued as if the merger did not occur or the surviving  
21 entity may be substituted in the proceeding for the  
22 constituent entity whose existence ceased.

23 5. The articles or limited partnership agreement of the  
24 surviving entity are amended to the extent provided in the  
25 plan of merger.

26 6. The shares or interests of each constituent entity that  
27 are to be converted into shares, obligations, or other  
28 securities of the surviving or any other entity or into cash  
29 or other property are converted, and the former holders of the  
30 shares or interests are entitled only to the rights provided  
31 in the articles of merger except for dissenters' rights  
32 provided by law.

33 Sec. 67. NEW SECTION. 490A.1206 MERGER WITH FOREIGN  
34 ENTITY.

35 1. Any one or more limited liability companies of this

1 state may merge with or into one or more foreign liability  
2 companies, foreign corporations, or foreign limited  
3 partnerships, or any one or more foreign liability companies,  
4 foreign corporations, or foreign limited partnerships may  
5 merge with or into any one or more limited liability companies  
6 of this state, if all of the following apply:

7 a. The merger is permitted by the law of the state or  
8 jurisdiction under whose law each foreign constituent entity  
9 is organized or formed and each foreign constituent entity  
10 complies with that law in effecting the merger.

11 b. The foreign constituent entity complies with section  
12 490A.1204 of this division if it is the surviving entity.

13 c. Each domestic constituent entity complies with the  
14 applicable provisions of sections 490A.1202 and 490A.1203 and,  
15 if it is the surviving entity, with section 490A.1204.

16 2. Upon a merger involving one or more domestic limited  
17 liability companies taking effect, if the surviving entity is  
18 to be governed by the law of any state other than this state  
19 or of any foreign country, then the surviving entity shall  
20 agree to both of the following:

21 a. That it may be served with process in this state in any  
22 proceeding for enforcement of any obligation of any  
23 constituent entity, who was a party to the merger, that was  
24 organized under the law of this state, as well as for  
25 enforcement of any obligation of the surviving entity arising  
26 from the merger.

27 b. To irrevocably appoint the secretary of state as its  
28 agent for service of process in any such proceeding, and the  
29 surviving entity shall specify the address to which a copy of  
30 the process shall be mailed to it by the secretary of state.

31 3. The effect of the merger shall be as provided in  
32 section 490A.1205, if the surviving entity is to be governed  
33 by the law of this state. If the surviving entity is to be  
34 governed by the law of any jurisdiction other than this state,  
35 the effect of the merger shall be the same as provided in

1 subsection 2 of this section, except insofar as the law of the  
2 other jurisdiction provides otherwise.

3 SUBCHAPTER XIII

4 DISSOLUTION

5 Sec. 68. NEW SECTION. 490A.1301 DISSOLUTION -- GENERAL  
6 PROVISIONS.

7 A limited liability company organized under this chapter is  
8 dissolved and its affairs shall be wound up upon the happening  
9 of the first to occur of the following events:

10 1. At the time or on the happening of an event specified  
11 in the articles of organization or an operating agreement to  
12 cause dissolution.

13 2. Upon the unanimous written consent of the members.

14 3. Upon the death, withdrawal, expulsion, bankruptcy, or  
15 dissolution of a member or occurrence of any other event,  
16 except assignment of a membership interest voluntarily or by  
17 operation of law, that terminates the continued membership of  
18 a member in the limited liability company, unless the business  
19 of the limited liability company is continued by the unanimous  
20 consent of the remaining members.

21 4. The entry of a decree of judicial dissolution under  
22 section 490A.1302.

23 Sec. 69. NEW SECTION. 490A.1302 JUDICIAL DISSOLUTION.

24 On application by or for a member, the district court of  
25 the county in which the registered office of the limited  
26 liability company is located may decree dissolution of a  
27 limited liability company if it is not reasonably practicable  
28 to carry on the business in conformity with the articles of  
29 organization and any operating agreement.

30 Sec. 70. NEW SECTION. 490A.1303 WINDING UP.

31 Unless otherwise provided in the articles of organization  
32 or an operating agreement, members who have not wrongfully  
33 dissolved a limited liability company may wind up the limited  
34 liability company's affairs; but the district court of the  
35 county in which the registered office of the limited liability

1 company is located, on cause shown, may wind up the limited  
2 liability company's affairs on application of any member,  
3 member's legal representative, or member's assignee.

4 Sec. 71. NEW SECTION. 490A.1304 DISTRIBUTION OF ASSETS  
5 UPON DISSOLUTION.

6 Upon the winding up of a limited liability company, the  
7 assets of the limited liability company shall be distributed  
8 in the order as follows:

9 1. To creditors, including members who are creditors, to  
10 the extent permitted by law, in satisfaction of liabilities of  
11 the limited liability company other than for distributions to  
12 members under section 490A.803 or section 490A.805.

13 2. Unless otherwise provided in the articles of  
14 organization or an operating agreement, to members and former  
15 members in satisfaction of liabilities for distributions under  
16 section 490A.803 or section 490A.805.

17 3. Unless otherwise provided in the articles of  
18 organization or an operating agreement, to members first for  
19 the return of their capital contributions and second with  
20 respect to their interests in the limited liability company,  
21 in the proportions in which the members share in  
22 distributions.

23 Sec. 72. NEW SECTION. 490A.1305 ARTICLES OF DISSOLUTION.

24 1. Upon the completion of winding up of the limited  
25 liability company, articles of dissolution shall be delivered  
26 to the secretary of state for filing. The winding up of a  
27 limited liability company shall be completed when all debts,  
28 liabilities, and obligations of the limited liability company  
29 have been paid and discharged or reasonably adequate provision  
30 therefor has been made, and all of the remaining property and  
31 assets of the limited liability company have been distributed  
32 to the members. The articles of dissolution shall set forth  
33 all of the following:

- 34 a. The name of the limited liability company.  
35 b. The date of filing of the articles of organization and

1 each amendment thereto.

2 c. The reason for filing the articles of dissolution.

3 d. The effective date of dissolution if it is not to be  
4 effective on the filing of the articles of dissolution.

5 e. Any other information the members or managers determine  
6 to include.

7 2. The limited liability company is dissolved upon the  
8 effective date of its articles of dissolution.

9 Sec. 73. NEW SECTION. 490A.1306 KNOWN CLAIMS AGAINST  
10 DISSOLVED LIMITED LIABILITY COMPANIES.

11 A dissolved limited liability company may dispose of the  
12 known claims against it in accordance with this section.

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

17 a. Describe information that must be included in a claim.

18 b. Provide a mailing address where a claim may be sent.

19 c. State the deadline, which may not be fewer than one  
20 hundred twenty days from the effective date of the written  
21 notice, by which the dissolved limited liability company must  
22 receive the claim.

23 d. State that the claim will be barred if not received by  
24 the deadline.

25 2. A claim against the dissolved limited liability company  
26 is barred if either of the following occurs:

27 a. A claimant who was given written notice under  
28 subsection 1 does not deliver the claim to the dissolved  
29 limited liability company by the deadline.

30 b. A claimant whose claim was rejected by the dissolved  
31 limited liability company does not commence a proceeding to  
32 enforce the claim within ninety days from the effective date  
33 of the rejection notice.

34 3. For purposes of this section, "claim" does not include  
35 a contingent liability or a claim based on an event occurring

1 after the effective date of dissolution.

2 Sec. 74. NEW SECTION. 490A.1307 UNKNOWN CLAIMS AGAINST  
3 DISSOLVED LIMITED LIABILITY COMPANY.

4 1. A dissolved limited liability company may also publish  
5 notice of its dissolution and request that persons with claims  
6 against the limited liability company present them in  
7 accordance with the notice.

8 2. The notice shall meet all of the following  
9 requirements:

10 a. Be published one time in a newspaper of general  
11 circulation in the county where the dissolved limited  
12 liability company's principal office or, if none in this  
13 state, its registered office is or was last located.

14 b. Describe the information that must be included in a  
15 claim and provide a mailing address where the claim may be  
16 sent.

17 c. State that a claim against the limited liability  
18 company will be barred unless a proceeding to enforce the  
19 claim is commenced within five years after the publication of  
20 the notice.

21 3. If the dissolved limited liability company publishes a  
22 newspaper notice in accordance with subsection 2, the claim of  
23 each of the following claimants is barred unless the claimant  
24 commences a proceeding to enforce the claim against the  
25 dissolved corporation within five years after the publication  
26 date of the newspaper notice:

27 a. A claimant who did not receive written notice under  
28 section 490A.1306.

29 b. A claimant whose claim was timely sent to the dissolved  
30 limited liability company but not acted on.

31 c. A claimant whose claim is contingent or based on an  
32 event occurring after the effective date of dissolution.

33 4. A claim may be enforced under this section in either of  
34 the following ways:

35 a. Against the dissolved limited liability company, to the

1 extent of its undistributed assets.

2 b. If the assets have been distributed in liquidation,  
3 against a member of the dissolved limited liability company to  
4 the extent of the member's pro rata share of the claim or the  
5 limited liability company assets distributed to the member in  
6 liquidation, whichever is less, but a member's total liability  
7 for all claims under this section shall not exceed the total  
8 amount of assets distributed to the member in liquidation.

9 SUBCHAPTER XIV

10 FOREIGN LIMITED LIABILITY COMPANIES

11 Sec. 75. NEW SECTION. 490A.1401 LAW GOVERNING.

12 The law of the state or other jurisdiction under which a  
13 foreign limited liability company is formed governs its  
14 formation and internal affairs and the liability of its  
15 members and managers. A foreign limited liability company  
16 shall not be denied registration by reason of any difference  
17 between those laws and the laws of this state. A foreign  
18 limited liability company holding a valid registration in this  
19 state shall have no greater rights and privileges than a  
20 domestic limited liability company. The registration shall  
21 not be deemed to authorize the foreign limited liability  
22 company to exercise any of its powers or purposes that a  
23 domestic limited liability company is forbidden by law to  
24 exercise in this state.

25 Sec. 76. NEW SECTION. 490A.1402 REGISTRATION.

26 A foreign limited liability company may apply for a  
27 certificate of registration to transact business in this state  
28 by delivering an application to the secretary of state for  
29 filing. An application for registration as a foreign limited  
30 liability company shall set forth all of the following:

31 1. The name of the foreign limited liability company and,  
32 if different, the name under which it proposes to register and  
33 transact business in this state.

34 2. The state or other jurisdiction in which the foreign  
35 limited liability company was formed and the date of its

1 formation.

2 3. The street address of the registered office of the  
3 foreign limited liability company in this state, the name of  
4 the registered agent at the office, and a statement that the  
5 registered office and registered agent comply with the  
6 requirements of section 490A.501.

7 4. The address of the office required to be maintained in  
8 the state or other jurisdiction of its formation by the law of  
9 that state or jurisdiction or, if not so required, of the  
10 principal office of the foreign limited liability company.

11 5. A copy of the articles of organization filed in the  
12 foreign limited liability company's state or other  
13 jurisdiction of formation authorizing it to do business in  
14 that state or other jurisdiction, duly authenticated by the  
15 proper officer of the state or other jurisdiction of its  
16 formation.

17 Sec. 77. NEW SECTION. 490A.1403 SERVICE ON FOREIGN  
18 LIMITED LIABILITY COMPANY.

19 1. The registered agent of a foreign limited liability  
20 company authorized to transact business in this state is the  
21 limited liability company's agent for service of process,  
22 notice, or demand required or permitted by law to be served on  
23 the foreign limited liability company.

24 2. A foreign limited liability company may be served by  
25 registered or certified mail, return receipt requested,  
26 addressed to the foreign limited liability company at its  
27 principal office shown in its application for a certificate of  
28 authority if the foreign limited liability company meets any  
29 of the following conditions:

30 a. Has no registered agent or its registered agent cannot  
31 with reasonable diligence be served.

32 b. Has withdrawn from transacting business in this state  
33 under section 490A.1406.

34 c. Has had its certificate of authority revoked under  
35 section 490A.1410.



1 3. Service is perfected under subsection 2 at the earliest  
2 of:

3 a. The date the foreign limited liability company receives  
4 the mail.

5 b. The date shown on the return receipt, if signed on  
6 behalf of the foreign limited liability company.

7 c. Five days after its deposit in the United States mail,  
8 as evidenced by the postmark, if mailed postpaid and correctly  
9 addressed.

10 4. A foreign limited liability company may also be served  
11 in any other manner permitted by law.

12 Sec. 78. NEW SECTION. 490A.1404 NAME.

13 A certificate of registration shall not be issued to a  
14 foreign limited liability company unless the name of the  
15 limited liability company satisfies the requirements of  
16 section 490A.401. To obtain or maintain a certificate of  
17 registration the company shall comply with the following:

18 1. The foreign limited company shall add the words  
19 "Limited Company" or the abbreviation "L.C." to its name for  
20 use in this state.

21 2. If its real name is unavailable in this state, the  
22 foreign limited liability company shall use a fictitious name  
23 that is available, and which satisfies the requirements of  
24 section 490A.401, and shall inform the secretary of state of  
25 the fictitious name.

26 Sec. 79. NEW SECTION. 490A.1405 CHANGE AND AMENDMENT.

27 If any statement in the application for registration of a  
28 foreign limited liability company was false when made or any  
29 arrangements or other facts described have changed, making the  
30 application inaccurate in any respect, the foreign limited  
31 liability company shall promptly deliver to the secretary of  
32 state for filing articles of correction correcting such  
33 statement as required by section 490A.123.

34 Sec. 80. NEW SECTION. 490A.1406 CANCELLATION OF  
35 CERTIFICATE OF REGISTRATION.

1 1. A foreign limited liability company may cancel its  
2 certificate of registration by delivering to the secretary of  
3 state for filing a certificate of cancellation which shall set  
4 forth all of the following:

5 a. The name of the foreign limited liability company and  
6 the name of the state or other jurisdiction under whose  
7 jurisdiction it was formed.

8 b. That the foreign limited liability company is not  
9 transacting business in this state and that it surrenders its  
10 registration to transact business in this state.

11 c. That the foreign limited liability company revokes the  
12 authority of its registered agent to accept service on its  
13 behalf and appoints the secretary of state as its agent for  
14 service of process in any proceeding based on a cause of  
15 action arising during the time it was authorized to transact  
16 business in this state.

17 d. A mailing address to which the secretary of state may  
18 mail a copy of any process served on the secretary of state  
19 under paragraph "c" of this subsection.

20 e. A commitment to notify the secretary of state in the  
21 future of any change in the mailing address of the limited  
22 liability company.

23 2. The certificate of registration shall be cancelled upon  
24 the filing of the certificate of cancellation by the secretary  
25 of state.

26 Sec. 81. NEW SECTION. 490A.1407 AUTHORITY TO TRANSACT  
27 BUSINESS REQUIRED.

28 1. A foreign limited liability company shall not transact  
29 business in this state until it obtains a certificate of  
30 authority from the secretary of state.

31 2. The following activities, among others, do not  
32 constitute transacting business within the meaning of  
33 subsection 1:

34 a. Maintaining, defending, or settling any proceeding.

35 b. Holding meetings of the members or managers or carrying

1 on other activities concerning internal corporate affairs.

2 c. Maintaining bank accounts.

3 d. Maintaining offices or agencies for the transfer,  
4 exchange, and registration of the limited liability company's  
5 own securities or maintaining trustees or depositories with  
6 respect to those securities.

7 e. Selling through independent contractors.

8 f. Soliciting or obtaining orders, whether by mail or  
9 through employees or agents or otherwise, if the orders  
10 require acceptance outside this state before they become  
11 contracts.

12 g. Creating or acquiring indebtedness, mortgages, and  
13 security interests in real or personal property.

14 h. Securing or collecting debts or enforcing mortgages and  
15 security interests in property securing the debts.

16 i. Owning, without more, real or personal property.

17 j. Conducting an isolated transaction that is completed  
18 within thirty days and that is not one in the course of  
19 repeated transactions of a like nature.

20 k. Transacting business in interstate commerce.

21 3. The list of activities in subsection 2 is not  
22 exhaustive.

23 Sec. 82. NEW SECTION. 490A.1408 CONSEQUENCES OF  
24 TRANSACTING BUSINESS WITHOUT AUTHORITY.

25 1. A foreign limited liability company transacting  
26 business in this state without a certificate of authority  
27 shall not maintain a proceeding in any court in this state  
28 until it obtains a certificate of authority.

29 2. The successor to a foreign limited liability company  
30 that transacted business in this state without a certificate  
31 of authority and the assignee of a cause of action arising out  
32 of that business shall not maintain a proceeding based on that  
33 cause of action in any court in this state until the foreign  
34 limited liability company or its successor obtains a  
35 certificate of authority.

1 3. A court may stay a proceeding commenced by a foreign  
2 limited liability company, its successor, or assignee until it  
3 determines whether the foreign limited liability company or  
4 its successor or assignee requires a certificate of authority.  
5 If it so determines, the court may further stay the proceeding  
6 until the foreign limited liability company or its successor  
7 or assignee obtains the certificate.

8 4. A foreign limited liability company is liable for a  
9 civil penalty not to exceed a total of one thousand dollars if  
10 it transacts business in this state without a certificate of  
11 authority. The attorney general may collect penalties due  
12 under this subsection.

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

17 Sec. 83. NEW SECTION. 490A.1409 ACTIONS BY ATTORNEY  
18 GENERAL.

19 The attorney general may bring an action to restrain a  
20 foreign limited liability company from transacting business in  
21 this state in violation of this chapter.

22 Sec. 84. NEW SECTION. 490A.1410 REVOCATION OF  
23 REGISTRATION.

24 1. The certificate of registration of a foreign limited  
25 liability company to transact business in this state may be  
26 revoked by the secretary of state upon the occurrence of any  
27 of the following:

28 a. The foreign limited liability company has failed to:

29 (1) Pay any fees or penalties prescribed by this chapter.

30 (2) Appoint and maintain a registered agent as required  
31 under section 490A.1402.

32 (3) Deliver for filing to the secretary of state a report  
33 upon any change in the name or address of the registered  
34 agent.

35 (4) Deliver to the secretary of state for filing articles

1 of correction required under section 490A.1405.

2 b. A misrepresentation has been made of any material  
3 matter in any application, report, affidavit, or other  
4 documents submitted by the foreign limited liability company  
5 under this subchapter.

6 2. A certificate of registration of a foreign limited  
7 liability company shall not be revoked by the secretary of  
8 state, unless both of the following apply:

9 a. The secretary of state has given the foreign limited  
10 liability company not less than sixty days' notice thereof by  
11 mail addressed to its registered office in this state or, if  
12 the foreign limited liability company fails to appoint and  
13 maintain a registered agent in this state, addressed to the  
14 office required to be maintained pursuant to section  
15 490A.1402.

16 b. During the sixty-day period, the foreign limited  
17 liability company has failed to pay such fees or penalties  
18 prescribed by this chapter, to file a report of change  
19 regarding the registered agent, to file any necessary articles  
20 of correction, or to correct any such misrepresentation.

21 3. Upon the expiration of sixty days after the mailing of  
22 the notice, the authority of the foreign limited liability  
23 company to transact business in this state shall cease.

24 SUBCHAPTER XV

25 PROFESSIONAL LIMITED LIABILITY COMPANIES

26 Sec. 85. NEW SECTION. 490A.1501 DEFINITIONS.

27 As used in this division, unless the context otherwise  
28 requires:

29 1. "Employees" or "agents" does not include clerks,  
30 stenographers, secretaries, bookkeepers, technicians, or other  
31 persons who are not usually and ordinarily considered by  
32 custom and practice to be practicing a profession nor any  
33 other person who performs all that person's duties for the  
34 professional limited liability company under the direct  
35 supervision and control of one or more managers, employees, or

1 agents of the professional limited liability company who are  
2 duly licensed in this state to practice a profession which the  
3 limited liability company is authorized to practice in this  
4 state. This chapter does not require any such persons to be  
5 licensed to practice a profession if they are not required to  
6 be licensed under any other law of this state.

7 2. "Foreign professional limited liability company" means  
8 a limited liability company organized under laws other than  
9 the laws of this state for a purpose for which a professional  
10 limited liability company may be organized under this chapter.

11 3. "Licensed" includes registered, certified, admitted to  
12 practice, or otherwise legally authorized under the laws of  
13 this state.

14 4. "Profession" means the profession of certified public  
15 accountancy, architecture, chiropractic, dentistry, physical  
16 therapy, psychology, professional engineering, land surveying,  
17 landscape architecture, law, medicine and surgery, optometry,  
18 osteopathy, osteopathic medicine and surgery, accounting  
19 practitioner, podiatry, speech pathology, audiology,  
20 veterinary medicine, pharmacy, and nursing.

21 5. "Professional limited liability company" means a  
22 limited liability company subject to this subchapter, except a  
23 foreign professional limited liability company.

24 6. "Regulating board" means any board, commission, court,  
25 or governmental authority which, under the laws of this state,  
26 is charged with the licensing, registration, certification,  
27 admission to practice, or other legal authorization of the  
28 practitioners of any profession.

29 7. "Voluntary transfer" includes a sale, voluntary  
30 assignment, gift, pledge, or encumbrance; a voluntary change  
31 of legal or equitable ownership or beneficial interest; or a  
32 voluntary change of persons having voting rights with respect  
33 to any membership interest, except as proxies; but does not  
34 include a transfer of an individual's membership interest or  
35 other property to a guardian or conservator appointed for that

1 individual or the individual's property.

2 Sec. 86. NEW SECTION. 490A.1502 PURPOSES AND POWERS.

3 A professional limited liability company shall be organized  
4 only for the purpose of engaging in the practice of one  
5 specific profession, or two or more specific professions which  
6 could lawfully be practiced in combination by a licensed  
7 individual or a partnership of licensed individuals, and for  
8 the additional purpose of doing all lawful things which may be  
9 incidental to or necessary or convenient in connection with  
10 the practice of the profession or professions. The articles  
11 of organization of a professional limited liability company  
12 shall state in substance that the purposes for which the  
13 professional limited liability company is organized are to  
14 engage in the general practice of a specified profession or  
15 professions, or one or more specified branches or divisions  
16 thereof, and to do all lawful things which may be incidental  
17 to or necessary or convenient in connection with the practice  
18 of the profession or professions.

19 Sec. 87. NEW SECTION. 490A.1503 NAME.

20 The name of a professional limited liability company, the  
21 name of a foreign professional limited liability company or  
22 its name as modified for use in this state, and any fictitious  
23 name or trade name adopted by a professional limited liability  
24 company or foreign professional limited liability company  
\* 25 shall contain the words "Professional Limited Company" or the  
26 abbreviation "P.L.C.", and except for the addition of such  
27 words or abbreviation, shall be a name which could lawfully be  
28 used by a licensed individual or by a partnership of licensed  
29 individuals in the practice in this state of a profession  
30 which the professional limited liability company is authorized  
31 to practice. Each regulating board may by rule adopt  
32 additional requirements as to the corporate names and  
33 fictitious or trade names of professional limited liability  
34 companies and foreign professional limited liability companies  
35 which are authorized to practice a profession which is within

1 the jurisdiction of the regulating board.

2 Sec. 88. NEW SECTION. 490A.1504 WHO MAY ORGANIZE.

3 Two or more individuals having capacity to contract, each  
4 of whom is licensed to practice a profession in this state  
5 which the professional limited liability company is to be  
6 authorized to practice, may act as organizers of a  
7 professional limited liability company.

8 Sec. 89. NEW SECTION. 490A.1505 PRACTICE BY PROFESSIONAL  
9 LIMITED LIABILITY COMPANY.

10 Notwithstanding any other statute or rule of law, a  
11 professional limited liability company may practice a  
12 profession, but may do so in this state only through members,  
13 managers, employees, and agents who are licensed to practice  
14 the same profession in this state. In its practice of a  
15 profession, no professional limited liability company shall do  
16 any act which could not lawfully be done by individuals  
17 licensed to practice the profession which the professional  
18 limited liability company is authorized to practice.

19 Sec. 90. NEW SECTION. 490A.1506 PROFESSIONAL REGULATION.

20 A professional limited liability company shall not be  
21 required to register with or to obtain any license,  
22 registration, certificate, or other legal authorization from a  
23 regulating board in order to practice a profession. Except as  
24 provided in this section, this subchapter does not restrict or  
25 limit in any manner the authority or duties of any regulating  
26 board with respect to individuals practicing a profession  
27 which is within the jurisdiction of the regulating board, even  
28 if the individual is a member, manager, employee, or agent of  
29 a professional limited liability company or foreign  
30 professional limited liability company and practices the  
31 individual's profession through such professional limited  
32 liability company.

33 Sec. 91. NEW SECTION. 490A.1507 RELATIONSHIP AND  
34 LIABILITY TO PERSONS SERVED.

35 This subchapter does not modify any law applicable to the



1 relationship between an individual practicing a profession and  
2 a person receiving professional services, including, but not  
3 limited to, any liability arising out of such practice and any  
4 law respecting privileged communications. This chapter does  
5 not modify or affect the ethical standards or standards of  
6 conduct of any profession, including, but not limited to, any  
7 standards prohibiting or limiting the practice of the  
8 profession by a limited liability company or prohibiting or  
9 limiting the practice of two or more professions in  
10 combination. All such standards shall apply to the members,  
11 managers, employees, and agents through whom a professional  
12 limited liability company practices any profession in this  
13 state, to the same extent that the standards apply to an  
14 individual practitioner.

15 Sec. 92. NEW SECTION. 490A.1508 ISSUANCE OF MEMBERSHIP  
16 INTERESTS.

17 Membership interests of a professional limited liability  
18 company shall be issued only to individuals who are licensed  
19 to practice in any state a profession which the professional  
20 limited liability company is authorized to practice.  
21 Membership interests of a professional limited liability  
22 company shall not at any time be issued in, transferred into,  
23 or held in joint tenancy, tenancy in common, or any other form  
24 of joint ownership or co-ownership. The Iowa uniform  
25 securities Act shall not be applicable to nor govern any  
26 transaction relating to any membership interests of a  
27 professional limited liability company.

28 Sec. 93. NEW SECTION. 490A.1509 ASSIGNMENT OF MEMBERSHIP  
29 INTERESTS.

30 A member or other person shall not make a voluntary  
31 assignment of a membership interest in a professional limited  
32 liability company to any person, except to the professional  
33 limited liability company or to an individual who is licensed  
34 to practice in this state a profession which the limited  
35 liability company is authorized to practice. The articles of

1 organization or operating agreement of the professional  
2 limited liability company may contain any additional  
3 provisions restricting the assignment of membership interests.  
4 Unless the articles of organization or an operating agreement  
5 otherwise provide, a voluntary assignment requires the  
6 unanimous consent of the members.

7 Sec. 94. NEW SECTION. 490A.1510 CONVERTIBLE MEMBERSHIP  
8 INTERESTS -- RIGHTS AND OPTIONS.

9 A professional limited liability company shall not create  
10 or issue any interest convertible into a membership interest  
11 of the professional limited liability company. The provisions  
12 of this subchapter with respect to the issuance and transfer  
13 of membership interests apply to the creation, issuance, and  
14 transfer of any rights or options entitling the holder to  
15 purchase from a professional limited liability company any  
16 membership interests of the professional limited liability  
17 company. Rights or options shall not be transferable,  
18 whether voluntarily, involuntarily, by operation of law, or in  
19 any other manner. Upon the death of the holder, or when the  
20 holder ceases to be licensed to practice a profession in this  
21 state which the professional limited liability company is  
22 authorized to practice, the rights or options shall expire.

23 Sec. 95. NEW SECTION. 490A.1511 VOTING TRUST -- PROXY.

24 A member of a professional limited liability company shall  
25 not create or enter into a voting trust or any other agreement  
26 conferring upon any other person the right to vote or  
27 otherwise represent any membership interests of a professional  
28 limited liability company, and no such voting trust or  
29 agreement is valid or effective. Any proxy of a member of a  
30 professional limited liability company shall be an individual  
31 licensed to practice a profession in this state which the  
32 professional limited liability company is authorized to  
33 practice. Any provision in any proxy instrument denying the  
34 right of the member to revoke the proxy at any time or for any  
35 period of time is not valid or effective. This section does

1 not otherwise limit the right of a member to vote by proxy,  
2 but the articles of organization or operating agreement of the  
3 professional limited liability company may further limit or  
4 deny the right to vote by proxy.

5 Sec. 96. NEW SECTION. 490A.1512 REQUIRED PURCHASE BY  
6 PROFESSIONAL LIMITED LIABILITY COMPANY OF ITS OWN MEMBERSHIP  
7 INTERESTS.

8 1. Notwithstanding any other statute or rule of law, a  
9 professional limited liability company shall purchase its own  
10 membership interests as provided in this section; and the  
11 members of a professional limited liability company and their  
12 executors, administrators, legal representatives, and  
13 successors in interest, shall sell and transfer the membership  
14 interests held by them as provided in this section.

15 2. Upon the death of a member, the professional limited  
16 liability company shall immediately purchase all membership  
17 interests held by the deceased member.

18 3. In order to remain a member of a professional limited  
19 liability company, a member shall at all times be licensed to  
20 practice in this state a profession which the professional  
21 limited liability company is authorized to practice. When a  
22 member does not have or ceases to have this qualification, the  
23 professional limited liability company shall immediately  
24 purchase all membership interests held by that member.

25 4. When a person other than a member of record becomes  
26 entitled to have membership interests of a professional  
27 limited liability company transferred into that person's name  
28 or to exercise voting rights, except as a proxy, with respect  
29 to membership interests of the professional limited liability  
30 company, the professional limited liability company shall  
31 immediately purchase the membership interests. Without  
32 limiting the generality of the foregoing, this section shall  
33 be applicable whether the event occurs as a result of  
34 appointment of a guardian or conservator for a member or the  
35 member's property, transfer of membership interests by

1 operation of law, involuntary transfer of membership  
2 interests, judicial proceedings, execution, levy, bankruptcy  
3 proceedings, receivership proceedings, foreclosure or  
4 enforcement of a pledge or encumbrance, or any other situation  
5 or occurrence. However, this section does not apply to any  
6 voluntary transfer of membership interests as defined in this  
7 chapter.

8 5. Membership interests purchased by the professional  
9 limited liability company under this section shall be  
10 transferred to the professional limited liability company as  
11 of the close of business on the date of the death or other  
12 event which requires purchase. The member and the member's  
13 executors, administrators, legal representatives, or  
14 successors in interest, shall promptly do all things which may  
15 be necessary or convenient to cause transfer to be made as of  
16 the transfer date. However, the membership interests shall  
17 promptly be transferred on the books and records of the  
18 professional limited liability company as of the transfer  
19 date, notwithstanding any delay in transferring or  
20 surrendering the membership interests or certificates  
21 representing the membership interests, and the transfer shall  
22 be valid and effective for all purposes as of the close of  
23 business on the transfer date. The purchase price for such  
24 membership interests shall be paid as provided in this  
25 chapter, but the transfer of membership interests to the  
26 professional limited liability company as provided in this  
27 section shall not be delayed or affected by any delay or  
28 default in making payment.

29 6. Notwithstanding subsections 1 through 5, purchase by  
30 the professional limited liability company is not required  
31 upon the occurrence of any event other than death of a member,  
32 if the professional limited liability company is dissolved  
33 within sixty days after the occurrence of the event. The  
34 articles of organization or operating agreement of the  
35 professional limited liability company may provide that

1 purchase is not required upon the death of a member, if the  
2 professional limited liability company is dissolved within  
3 sixty days after the date of the member's death.

4 7. Unless otherwise provided in the articles of  
5 organization or an operating agreement of the professional  
6 limited liability company or in an agreement among all members  
7 of the professional limited liability company all of the  
8 following apply:

9 a. The purchase price for membership interests shall be  
10 their book value as of the end of the month immediately  
11 preceding the death or other event which requires purchase.  
12 Book value shall be determined from the books and records of  
13 the professional limited liability company in accordance with  
14 the regular method of accounting used by the professional  
15 limited liability company, uniformly and consistently applied.  
16 Adjustments to book value shall be made, if necessary, to take  
17 into account work in process and accounts receivable. A final  
18 determination of book value made in good faith by an  
19 independent certified public accountant or firm of certified  
20 public accountants employed by the professional limited  
21 liability company for the purpose shall be conclusive on all  
22 persons.

23 b. The purchase price shall be paid in cash as follows:

24 (1) Upon the death of a member, thirty percent of the  
25 purchase price shall be paid within ninety days after death,  
26 and the balance shall be paid in three equal annual  
27 installments on the first three anniversaries of the death.

28 (2) Upon the happening of any other event referred to in  
29 this section, one-tenth of the purchase price shall be paid  
30 within ninety days after the date of the event, and the  
31 balance shall be paid in three equal annual installments on  
32 the first three anniversaries of the date of the event.

33 c. Interest from the date of death or other event shall be  
34 payable annually on principal payment dates, at the rate of  
35 six percent per annum on the unpaid balance of the purchase

1 price.

2 d. All persons who are members of the professional limited  
3 liability company on the date of death or other event, and  
4 their executors, administrators, and legal representatives,  
5 shall, to the extent the professional limited liability  
6 company fails to meet its obligations under this section, be  
7 jointly liable for the payment of the purchase price and  
8 interest in proportion to their percentage of ownership of the  
9 professional limited liability company's membership interests,  
10 disregarding membership interests of the deceased or  
11 withdrawing member.

12 e. The part of the purchase price remaining unpaid after  
13 the initial payment shall be evidenced by a negotiable  
14 promissory note, which shall be executed by the professional  
15 limited liability company and all members liable for payment.  
16 Any person liable on the note shall have the right to prepay  
17 the note in full or in part at any time.

18 f. If the person making any payment is not reasonably able  
19 to determine which of two or more persons is entitled to  
20 receive a payment, or if the payment is payable to a person  
21 who is unknown, or who is under disability and there is no  
22 person legally competent to receive the payment, or who cannot  
23 be found after the exercise of reasonable diligence by the  
24 person making the payment, it shall be deposited with the  
25 treasurer of state and shall be subject to the provisions of  
26 section 490.1440 with respect to funds deposited with the  
27 treasurer of state upon the voluntary or involuntary  
28 dissolution of a business corporation.

29 8. Notwithstanding the other provisions of this section, no  
30 part of the purchase price shall be required to be paid until  
31 the certificates, if any, representing the membership  
32 interests have been surrendered to the professional limited  
33 liability company.

34 9. Notwithstanding the other provisions of this section,  
35 payment of any part of the purchase price for membership

1 interests of a deceased member shall not be required until the  
2 executor or administrator of the deceased member provides any  
3 indemnity, release, or other document from any taxing  
4 authority, which is reasonably necessary to protect the  
5 professional limited liability company against liability for  
6 estate, inheritance, and death taxes.

7 10. The articles of organization or an operating agreement  
8 of the professional limited liability company or an agreement  
9 among all members of a professional limited liability company  
10 may provide for a different purchase price, a different method  
11 of determining the purchase price, a different interest rate  
12 or no interest, and other terms, conditions, and schedules of  
13 payment.

14 11. The articles of organization or an operating agreement  
15 of the professional limited liability company or an agreement  
16 among all members of a professional limited liability company  
17 may provide for the optional or mandatory purchase of its own  
18 membership interests by the professional limited liability  
19 company in other situations, subject to any applicable law  
20 regarding such a purchase.

21 Sec. 97. NEW SECTION. 490A.1513 CERTIFICATES  
22 REPRESENTING MEMBERSHIP INTERESTS.

23 Each certificate representing membership interests of a  
24 professional limited liability company shall state in  
25 substance that the certificate represents membership interests  
26 in a professional limited liability company and is not  
27 transferable except as expressly provided in this chapter and  
28 in the articles of organization or an operating agreement of  
29 the professional limited liability company.

30 Sec. 98. NEW SECTION. 490A.1514 MANAGEMENT.

31 All managers of a professional limited liability company  
32 shall at all times be individuals who are licensed to practice  
33 a profession in this state which the limited liability company  
34 is authorized to practice. A person who is not licensed shall  
35 have no authority or duties in the management or control of

1 the limited liability company. If a manager ceases to have  
2 this qualification, the manager shall immediately and  
3 automatically cease to hold such management position.

4 Sec. 99. NEW SECTION. 490A.1515 MERGER.

5 A professional limited liability company shall not merge  
6 with any entity except another professional limited liability  
7 company subject to this subchapter or a professional  
8 corporation subject to chapter 496C. Merger is not permitted  
9 unless the surviving or new professional limited liability  
10 company is a professional limited liability company which  
11 complies with all requirements of this subchapter.

12 Sec. 100. NEW SECTION. 490A.1516 DISSOLUTION OR  
13 LIQUIDATION.

14 Violation of any provision of this subchapter by a  
15 professional limited liability company or any of its members  
16 or managers shall be cause for its involuntary dissolution, or  
17 liquidation of its assets and business by the district court,  
18 as provided in section 490A.1302. Upon the death of the last  
19 remaining member of a professional limited liability company,  
20 or when the last remaining member is not licensed or ceases to  
21 be licensed to practice a profession in this state which the  
22 professional limited liability company is authorized to  
23 practice, or when any person other than the member of record  
24 becomes entitled to have all membership interests of the last  
25 remaining member of the professional limited liability company  
26 transferred into that person's name or to exercise voting  
27 rights, except as a proxy, with respect to such membership  
28 interests, the professional limited liability company shall  
29 not practice any profession and it shall be promptly  
30 dissolved. However, if prior to dissolution all outstanding  
31 membership interests of the professional limited liability  
32 company are acquired by one or more persons licensed to  
33 practice a profession in this state which the professional  
34 limited liability company is authorized to practice, the  
35 professional limited liability company need not be dissolved



1 and may practice the profession as provided in this  
2 subchapter.

3 Sec. 101. NEW SECTION. 490A.1517 FOREIGN PROFESSIONAL  
4 LIMITED LIABILITY COMPANY.

5 A foreign professional limited liability company may  
6 practice a profession in this state if it complies with the  
7 provisions of this chapter and this subchapter. The secretary  
8 of state may prescribe forms for this purpose. A foreign  
9 professional limited liability company may practice a  
10 profession in this state only through members, managers,  
11 employees, and agents who are licensed to practice the  
12 profession in this state. The provisions of this subchapter  
13 with respect to the practice of a profession by a professional  
14 limited liability company apply to a foreign professional  
15 limited liability company. This subchapter does not prohibit  
16 the practice of a profession in this state by an individual  
17 who is a member, manager, employee, or agent of a foreign  
18 professional limited liability company, if the individual  
19 could lawfully practice the profession in this state in the  
20 absence of any relationship to a foreign professional limited  
21 liability company. The preceding sentence applies regardless  
22 of whether or not the foreign professional limited liability  
23 company is authorized to practice a profession in this state.

24 Sec. 102. NEW SECTION. 490A.1518 LIMITED LIABILITY  
25 COMPANIES ORGANIZED UNDER OTHER LAWS.

26 This chapter does not apply to or interfere with the  
27 practice of any profession by or through any professional  
28 limited liability company organized after the effective date  
29 of this Act under any other law of this state or any other  
30 state or country, if the practice is lawful under any other  
31 statute or rule of law of this state. Any such professional  
32 limited liability company may voluntarily elect to adopt this  
33 subchapter and become subject to its provisions, by amending  
34 its articles of organization to be consistent with all  
35 provisions of this subchapter and by stating in its amended

1 articles of organization that the limited liability company  
2 has voluntarily elected to adopt this subchapter. Any limited  
3 liability company organized under any law of any other state  
4 or country may become subject to the provisions of this  
5 subchapter by complying with all provisions of this subchapter  
6 with respect to foreign professional limited liability  
7 companies.

8 Sec. 103. NEW SECTION. 490A.1519 CONFLICTS WITH OTHER  
9 PROVISIONS OF THIS CHAPTER.

10 The provisions of this subchapter shall prevail over any  
11 inconsistent provisions of this chapter.

12 SUBCHAPTER XVI

13 PROVISIONS

14 Sec. 104. NEW SECTION. 490A.1601 PROPERTY TITLE RECORDS.

15 When by merger or amendment to the articles of organization  
16 the name of any domestic or foreign limited liability company  
17 is changed, a certificate reciting the change or succession  
18 shall be issued by the secretary of state upon request and  
19 payment of any applicable fee and the certificate may be  
20 admitted to record upon payment of any applicable fee in any  
21 recording office within the jurisdiction of which any property  
22 of the limited liability company is located in order to  
23 maintain the continuity of title records, but no transfer tax  
24 shall be due thereon. If a limited liability company or other  
25 entity is not a domestic limited liability company or other  
26 entity or a foreign limited liability company or other entity  
27 authorized to do business in this state, a similar certificate  
28 by any competent authority of the state of organization or  
29 formation of the limited liability company or other entity may  
30 be admitted to record in any recording office within the  
31 jurisdiction of which any property of the limited liability  
32 company or other entity is located in order to maintain the  
33 continuity of title records upon payment of any applicable  
34 fee, but no transfer tax shall be due thereon.

35 Sec. 105. Section 502.207A, subsection 2, paragraph a,

1 Code 1991, is amended to read as follows:

2 a. The issuer must be a corporation, limited liability  
3 company, or partnership organized under the laws of one of the  
4 states or possessions of the United States which engages in or  
5 proposes to engage in a business other than petroleum  
6 exploration or production mining or other extractive  
7 industries.

8 Sec. 106. Section 558.39, Code 1991, is amended by adding  
9 the following new subsection:

10 NEW SUBSECTION. 3A. In the case of limited liability  
11 companies:

12 On this ... day of ....., A.D. 19.., before me, a  
13 ..... (Insert title of acknowledging officer)  
14 in and for said county, personally appeared .....,  
15 to me personally known, who being by me duly (sworn or  
16 affirmed) did say that that person is ..... (Insert  
17 title of executing member) of said (limited liability  
18 company), that (the seal affixed to said instrument is the  
19 seal of said or no seal has been procured by the said)  
20 (limited liability company) and that said instrument was  
21 signed and sealed on behalf of the said (limited liability  
22 company) by authority of its managers and the said  
23 ..... acknowledged the execution of said  
24 instrument to be the voluntary act and deed of said (limited  
25 liability company) by it voluntarily executed.

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Chair Hansen of Woodbury, Peterson of Carroll  
McNeal

Now **HSB 611**  
Judiciary & Law Enforcement  
HOUSE FILE 2369

BY (PROPOSED COMMITTEE ON  
JUDICIARY AND LAW ENFORCEMENT  
BILL BY CHAIRPERSON JAY)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act authorizing limited liability companies in Iowa and  
2 including penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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**SUB COMMITTEE ASSIGNMENTS**  
CHAIR: *Hansen*  
COMMITTEE: *Judiciary*  
*2/11/92*

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SUBCHAPTER I  
GENERAL PROVISIONS  
PART 1

Section 1. NEW SECTION. 490A.100 SHORT TITLE.

This chapter is entitled and may be cited as the "Iowa Limited Liability Company Act."

Sec. 2. NEW SECTION. 490A.101 RESERVATION OF POWER TO AMEND OR REPEAL.

The general assembly has the power to amend or repeal all or part of this chapter at any time and all domestic and foreign limited liability companies subject to this chapter shall be governed by the amendment or repeal.

Sec. 3. NEW SECTION. 490A.102 DEFINITIONS.

In this chapter, unless the context otherwise requires:

1. "Articles of organization" means documents filed under section 490A.301 for the purpose of forming a limited liability company and includes amended and restated articles of organization, and articles of merger.

2. "Bankruptcy" means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code.

3. "Capital contribution" means any cash, property, or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in the capacity of a member.

4. "Constituent entity" means each limited liability company, limited partnership, or corporation which is party to a plan of merger pursuant to subchapter XII.

5. "Corporation" means a domestic corporation formed under the law of this state or subject to the law of this state, or a foreign corporation as defined in this chapter.

6. "Court" includes every court having jurisdiction of the case.

7. "Distribution" means a direct or indirect transfer of

1 money or other property, or incurrence of indebtedness by a  
2 limited liability company to or for the benefit of its members  
3 in respect of their interests.

4 8. "Entity" includes corporation and foreign corporation;  
5 nonprofit corporation; profit and nonprofit unincorporated  
6 association; business trust, estate, partnership, limited  
7 liability company, trust, and two or more persons having a  
8 joint or common economic interest; and state, United States,  
9 and foreign government.

10 9. "Foreign corporation" means a corporation for profit  
11 incorporated under a law other than the law of this state.

12 10. "Foreign limited liability company" means a limited  
13 liability company organized under a law other than the law of  
14 this state.

15 11. "Foreign limited partnership" means a limited  
16 partnership organized under a law other than the law of this  
17 state.

18 12. "Individual" includes the estate of an incompetent, a  
19 ward, or a deceased individual.

20 13. "Limited liability company" or "domestic limited  
21 liability company" means an entity that is an unincorporated  
22 association having two or more members, and that is organized  
23 under or subject to this chapter.

24 14. "Limited partnership" means a limited partnership  
25 organized under the law of this state or a foreign limited  
26 partnership as defined in this section.

27 15. "Manager" or "managers" means a person or persons  
28 designated by the members of a limited liability company to  
29 manage the limited liability company as provided in the  
30 articles of organization or an operating agreement.

31 16. "Member" means a person with a membership interest in  
32 a limited liability company.

33 17. "Membership interest" or "interest" means a member's  
34 share of the profits and the losses of the limited liability  
35 company and the right to receive distributions of the limited

1 liability company's assets, and any right to vote or  
2 participate in management.

3 18. "Operating agreement" means any agreement of the  
4 members as to the affairs of a limited liability company and  
5 the conduct of its business.

6 19. "Person" has the same meaning as specified in section  
7 4.1, subsection 13.

8 20. "Principal office" means the office, in or out of this  
9 state, where the principal executive offices of a domestic or  
10 foreign limited liability company are located.

11 21. "Secretary of state" means the Iowa secretary of  
12 state.

13 22. "State," when referring to a part of the United  
14 States, includes a state, commonwealth, and their agencies and  
15 governmental subdivisions; and a territory or insular  
16 possession, and their agencies and governmental subdivisions,  
17 of the United States.

18 23. "Surviving Entity" means the constituent entity  
19 surviving the merger, as identified in the articles of merger  
20 provided for in subchapter XII.

21 24. "United States" includes a district, authority,  
22 bureau, commission, department, and any other agency of the  
23 United States.

24 PART 2

25 Sec. 4. NEW SECTION. 490A.120 FILING REQUIREMENTS.

26 1. A document must satisfy the requirements of this  
27 section, and of any other section that adds to or varies these  
28 requirements, to be entitled to filing.

29 2. The document must be one that this chapter requires or  
30 permits to be filed with the secretary of state.

31 3. The document must contain the information required by  
32 this chapter. It may contain other information as well.

33 4. The document must be typewritten or printed. The  
34 typewritten or printed portion shall be in black. Manually  
35 signed photocopies, or other reproduced copies, including

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1 facsimiles and other electronically or computer-generated  
2 copies of typewritten or printed documents may be filed.

3 5. The document must be in the English language. A  
4 limited liability company name need not be in English if  
5 written in English letters or Arabic or Roman numerals. The  
6 articles of organization, duly authenticated by the official  
7 having custody of the applicable records in the state or  
8 county under whose law the limited liability company is  
9 formed, which are required of foreign limited liability  
10 companies, need not be in English if accompanied by a  
11 reasonably authenticated English translation.

12 6. The document must be executed by one of the following  
13 persons:

14 a. A manager, or if no managers have been selected, by any  
15 member of the limited liability company.

16 b. If the limited liability company has not been formed,  
17 by the person forming the limited liability company.

18 c. If the limited liability company is in the hands of a  
19 receiver, trustee, or other court-appointed fiduciary, that  
20 fiduciary.

21 7. The person executing the document shall sign it and  
22 state beneath or opposite the person's signature the person's  
23 name and the capacity in which the person signs.

24 8. If, pursuant to any provision of this chapter, the  
25 secretary of state has prescribed a mandatory form for the  
26 document, the document shall be in or on the prescribed form.

27 9. The document must be delivered to the secretary of  
28 state for filing and must be accompanied by the correct filing  
29 fee.

30 Sec. 5. NEW SECTION. 490A.121 FILING DUTY OF SECRETARY  
31 OF STATE.

32 1. If a document delivered to the office of the secretary  
33 of state for filing satisfies the requirements of section  
34 490A.120, the secretary of state shall file it and issue any  
35 necessary certificate.



1     2. The secretary of state files a document by stamping or  
2 otherwise endorsing "filed", together with the secretary of  
3 state's name and official title and the date and time of  
4 receipt, on both the document and the receipt for the filing  
5 fee, and recording the document in the records of the  
6 secretary of state. After filing a document, and except as  
7 provided in section 490A.503, the secretary of state shall  
8 deliver the document, with the filing fee receipt, or  
9 acknowledgment of receipt if no fee is required, attached, to  
10 the domestic or foreign limited liability company or its  
11 representative.

12     3. If the secretary of state refuses to file a document,  
13 the secretary of state shall return it to the domestic or  
14 foreign limited liability company or its representative within  
15 ten days after the document was received by the secretary of  
16 state, together with a brief, written explanation of the  
17 reason for the refusal.

18     4. The secretary of state's duty to file documents under  
19 this section is ministerial. Filing or refusing to file a  
20 document does not:

21     a. Affect the validity or invalidity of the document in  
22 whole or part.

23     b. Relate to the correctness or incorrectness of  
24 information contained in the document.

25     c. Create a presumption that the document is valid or  
26 invalid or that information contained in the document is  
27 correct or incorrect.

28     Sec. 6. NEW SECTION. 490A.122 EFFECTIVE TIME AND DATE OF  
29 DOCUMENTS.

30     1. Except as provided in subsection 2 and section  
31 490A.123, subsection 3, a document accepted for filing is  
32 effective at the later of the following times:

33     a. At the time of filing on the date it is filed, as  
34 evidenced by the secretary of state's date and time  
35 endorsement on the original document.

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1 b. At the time specified in the document as its effective  
2 time on the date it is filed.

3 2. A document may specify a delayed effective time and  
4 date, and if it does so the document becomes effective at the  
5 time and date specified. If a delayed effective date but no  
6 time is specified, the document is effective at the close of  
7 business on that date. A delayed effective date for a  
8 document shall not be later than the ninetieth day after the  
9 date it is filed.

10 Sec. 7. NEW SECTION. 490A.123 CORRECTING FILED  
11 DOCUMENTS.

12 1. A domestic or foreign limited liability company may  
13 correct a document filed by the secretary of state if the  
14 document satisfies one or both of the following requirements:

- 15 a. Contains an incorrect statement.
- 16 b. Was defectively executed, attested, sealed, verified,  
17 or acknowledged.

18 2. A document is corrected by complying with both of the  
19 following:

20 a. By preparing articles of correction that satisfy all of  
21 the following requirements:

22 (1) Describe the document, including its filing date, or  
23 attach a copy of it to the articles.

24 (2) Specify the incorrect statement and the reason it is  
25 incorrect or the manner in which the execution was defective.

26 (3) Correct the incorrect statement or defective  
27 execution.

28 b. By delivering the articles to the secretary of state  
29 for filing.

30 3. Articles of correction are effective on the effective  
31 date of the document they correct except as to persons relying  
32 on the uncorrected document and adversely affected by the  
33 correction. As to those persons, articles of correction are  
34 effective when filed.

35 Sec. 8. NEW SECTION. 490A.124 FEES.

- 1 1. The secretary of state shall collect the following fees  
 2 when documents described in this subsection are delivered to  
 3 the secretary's office for filing:
- 4 a. Articles of organization ..... \$ 50
  - 5 b. Application for use of indistinguishable name .. \$ 10
  - 6 c. Application for reserved name ..... \$ 10
  - 7 d. Notice of transfer of reserved name ..... \$ 10
  - 8 e. Application for registered name per month or part  
 9 thereof ..... \$ 2
  - 10 f. Application for renewal of registered name ..... \$ 20
  - 11 g. Statement of change of registered agent or  
 12 registered office or both ..... No fee
  - 13 h. Agent's statement of change of registered  
 14 office for each affected limited liability company .... No fee
  - 15 i. Agent's statement of resignation ..... No fee
  - 16 j. Amendment of articles of organization ..... \$ 50
  - 17 k. Restatement of articles of organization with  
 18 amendment of articles ..... \$ 50
  - 19 l. Articles of merger ..... \$ 50
  - 20 m. Articles of dissolution ..... \$ 5
  - 21 n. Articles of revocation of dissolution ..... \$ 5
  - 22 o. Certificate of administrative dissolution ..... No fee
  - 23 p. Application for reinstatement following  
 24 administrative dissolution ..... \$ 5
  - 25 q. Certificate of reinstatement ..... No fee
  - 26 r. Certificate of judicial dissolution ..... No fee
  - 27 s. Application for certificate of authority ..... \$ 100
  - 28 t. Application for amended certificate of  
 29 authority ..... \$ 100
  - 30 u. Application for certificate of withdrawal ..... \$ 10
  - 31 v. Certificate of revocation of authority to  
 32 transact business ..... No fee
  - 33 w. Articles of correction ..... \$ 5
  - 34 x. Application for certificate of existence or  
 35 authorization ..... \$ 5

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1 y. Any other document required or permitted to  
2 be filed by this chapter ..... \$ 5

3 2. The secretary of state shall collect a fee of five  
4 dollars each time process is served on the secretary under  
5 this chapter. The party to a proceeding causing service of  
6 process is entitled to recover this fee as costs if the party  
7 prevails in the proceeding.

8 3. The secretary of state shall collect the following fees  
9 for copying and certifying the copy of any filed document  
10 relating to a domestic or foreign corporation:

- 11 a. One dollar a page for copying.
- 12 b. Five dollars for the certificate.

13 Sec. 9. NEW SECTION. 490A.125 FORMS.

14 1. The secretary of state may prescribe and furnish on  
15 request forms including but not limited to the following:

- 16 a. An application for a certificate of existence.
- 17 b. A foreign limited liability company's application for a  
18 certificate of authority to transact business in this state.
- 19 c. A foreign limited liability company's application for a  
20 certificate of withdrawal.

21 If the secretary of state so requires, use of these listed  
22 forms prescribed by the secretary of state is mandatory.

23 2. The secretary of state may prescribe and furnish on  
24 request forms for other documents required or permitted to be  
25 filed by this chapter but their use is not mandatory.

26 Sec. 10. NEW SECTION. 490A.126 APPEAL FROM SECRETARY OF  
27 STATE'S REFUSAL TO FILE DOCUMENT.

28 1. If the secretary of state refuses to file a document  
29 delivered to the secretary's office for filing, the domestic  
30 or foreign limited liability company may appeal the refusal,  
31 within thirty days after the return of the document, to the  
32 district court for the county in which the limited liability  
33 company's principal office or, if none in this state, its  
34 registered office is or will be located. The appeal is  
35 commenced by petitioning the court to compel filing the

1 document and by attaching to the petition the document and the  
2 secretary of state's explanation of the refusal to file.

3 2. The court may summarily order the secretary of state to  
4 file the document or take other action the court considers  
5 appropriate.

6 3. The court's final decision may be appealed as in other  
7 civil proceedings.

8 Sec. 11. NEW SECTION. 490A.127 EVIDENTIARY EFFECT OF  
9 COPY OF FILED DOCUMENT.

10 A certificate attached to a copy of a document filed by the  
11 secretary of state, bearing the secretary of state's  
12 signature, which may be in facsimile, and the seal of the  
13 secretary of state, is conclusive evidence that the original  
14 document is on file with the secretary of state.

15 Sec. 12. NEW SECTION. 490A.128 CERTIFICATE OF EXISTENCE.

16 1. Anyone may apply to the secretary of state to furnish a  
17 certificate of existence for a domestic limited liability  
18 company or a certificate of authorization for a foreign  
19 limited liability company.

20 2. A certificate of existence or authorization must set  
21 forth all of the following:

22 a. The domestic limited liability company's name or the  
23 foreign limited liability company's name used in this state.

24 b. That one of the following applies:

25 (1) If it is a domestic limited liability company, that it  
26 is duly organized under the law of this state, the date of its  
27 organization, and the period of its duration.

28 (2) If it is a foreign limited liability company, that it  
29 is authorized to transact business in this state.

30 c. That all fees required by this chapter have been paid.

31 d. That articles of dissolution have not been filed.

32 e. Other facts of record in the office of the secretary of  
33 state that may be requested by the applicant.

34 3. Subject to any qualification stated in the certificate,  
35 a certificate of existence or authorization issued by the

1 secretary of state may be relied upon as conclusive evidence  
2 that the domestic or foreign limited liability company is in  
3 existence or is authorized to transact business in this state.

4 Sec. 13. NEW SECTION. 490A.129 PENALTY FOR SIGNING FALSE  
5 DOCUMENT.

6 1. A person commits an offense if that person signs a  
7 document the person knows is false in any material respect  
8 with intent that the document be delivered to the secretary of  
9 state for filing.

10 2. An offense under this section is a serious misdemeanor  
11 punishable by a fine of not to exceed one thousand dollars.

12 Sec. 14. NEW SECTION. 490A.130 SECRETARY OF STATE --  
13 POWERS.

14 The secretary of state has the power reasonably necessary  
15 to perform the duties required of the secretary of state by  
16 this chapter.

17 SUBCHAPTER II

18 PURPOSES AND POWERS

19 Sec. 15. NEW SECTION. 490A.201 PURPOSES.

20 1. A limited liability company organized under this  
21 chapter has the purpose of engaging in any lawful business  
22 unless a more limited purpose is set forth in the articles of  
23 organization.

24 2. A limited liability company engaging in a business that  
25 is subject to regulation under another statute of this state  
26 may organize under this chapter only if permitted by, and  
27 subject to all limitations of, the other statute.

28 Sec. 16. NEW SECTION. 490A.202 POWERS.

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

- 34 1. Sue and be sued, complain, and defend in its name.  
35 2. Transact its business, carry on its operations, and

1 have and exercise the powers granted by this chapter in any  
2 state and in any foreign country.

3 3. Purchase, receive, lease, or otherwise acquire, and  
4 own, hold, improve, use, and otherwise deal with, real or  
5 personal property, or any legal or equitable interest in  
6 property, wherever located.

7 4. Sell, convey, transfer, mortgage, pledge, lease,  
8 exchange, and otherwise dispose of all or any part of its  
9 property.

10 5. Purchase, receive, subscribe for, or otherwise acquire  
11 and hold, to sell, mortgage, lend, pledge, or otherwise  
12 dispose of, and deal in and with, shares or other interests  
13 in, or obligations of any other person.

14 6. Make contracts and guaranties, incur liabilities,  
15 borrow money, issue its notes, bonds, and other obligations,  
16 which may be convertible into or include the option to  
17 purchase other securities of the limited liability company,  
18 and secure any of its obligations by mortgage, deed of trust,  
19 or pledge of any of its property, franchises, or income.

20 7. Lend money, invest and reinvest its funds, and receive  
21 and hold real and personal property as security for repayment.

22 8. Elect and appoint managers, employees, and agents of  
23 the limited liability company, define their duties, fix their  
24 compensation, and lend them money and credit.

25 9. Pay pensions and establish pension plans, pension  
26 trusts, profit sharing plans, and benefit and incentive plans  
27 for all or any of its current or former members, managers,  
28 employees, and agents.

29 10. Make donations for the public welfare or for  
30 religious, charitable, scientific, or educational purposes.

31 11. Make payments or donations, or do any other act, not  
32 inconsistent with law, that furthers the business and affairs  
33 of the limited liability company.

34 12. Cease its activities and dissolve.

35 13. Be a promoter, stockholder, partner, member,

1 associate, agent, or manager of any corporation, partnership,  
2 limited liability company, joint venture, trust, or other  
3 entity.

4 14. Make and amend operating agreements, not inconsistent  
5 with its articles of organization or with the law of this  
6 state, for the administration and regulation of its affairs.

7 15. Transact any lawful business that a corporation,  
8 partnership, or other entity may conduct under the law of this  
9 state subject, however, to any and all laws and restrictions  
10 that govern or limit the conduct of such activity by such  
11 corporation, partnership, or other entity.

12 16. Have and exercise all powers necessary or convenient  
13 to effect any or all of the purposes for which the limited  
14 liability company is organized.

15 SUBCHAPTER III

16 FORMATION

17 Sec. 17. NEW SECTION. 490A.301 FORMATION.

18 One or more persons may form a limited liability company by  
19 executing and delivering articles of organization to the  
20 secretary of state for filing. Such person or persons need  
21 not be members of the limited liability company after  
22 formation has occurred.

23 Sec. 18. NEW SECTION. 490A.302 LIABILITY.

24 All persons purporting to act as or on behalf of a limited  
25 liability company, knowing there is no organization under this  
26 chapter, are jointly and severally liable for all liabilities  
27 created while so acting.

28 Sec. 19. NEW SECTION. 490A.303 ARTICLES OF ORGANIZATION.

29 1. The articles of organization must set forth all of the  
30 following:

31 a. A name for the limited liability company that satisfies  
32 the requirements of section 490A.401.

33 b. The street address of the limited liability company's  
34 initial registered office and the name of its initial  
35 registered agent at that office.



1 c. The street address of the principal office of the  
2 limited liability company, which may be the same as the  
3 registered office, but need not be within this state.

4 d. The period of its duration which shall not be  
5 perpetual.

6 2. The articles of organization may set forth any other  
7 provision not inconsistent with law, including, but not  
8 limited to, a statement of whether there are limitations on  
9 the authority of members to bind the limited liability  
10 company.

11 3. The articles of organization need not set forth any of  
12 the powers enumerated in this chapter.

13 4. The articles of organization or an operating agreement  
14 may provide that a member's interest in a limited liability  
15 company may be evidenced by a certificate of membership  
16 interest issued by the limited liability company and may also  
17 provide for assignment or transfer of any membership interest  
18 represented by such a certificate and make other provisions  
19 with respect to such a certificate.

20 SUBCHAPTER IV

21 NAMES

22 Sec. 20. NEW SECTION. 490A.401 NAME.

23 1. A limited liability company name must contain the words  
24 "Limited Company" or the abbreviation "L.C." or words or  
25 abbreviations of like import in another language.

26 2. A limited liability company name shall not contain any  
27 of the following:

28 a. The words "Corporation", "Incorporated", "Limited  
29 Partnership" or the abbreviations "Corp.", "Inc." or "L.P." or  
30 words or abbreviations of like import in another language.

31 b. Any word or phrase the use of which is prohibited by  
32 law for such a limited liability company.

33 3. Except as authorized by subsections 4 and 5, a limited  
34 liability company name must be distinguishable upon the  
35 records of the secretary of state from all of the following:

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1 a. The name of a limited liability company, limited  
2 partnership, or corporation organized under the law of this  
3 state or registered as a foreign limited liability company,  
4 foreign limited partnership, or foreign corporation in this  
5 state.

6 b. A name reserved in the manner provided under the law of  
7 this state.

8 c. The fictitious name adopted by a foreign corporation,  
9 foreign limited partnership, or foreign limited liability  
10 company authorized to transact business in this state, because  
11 its real name is unavailable.

12 d. The corporate name of a nonprofit corporation  
13 incorporated or authorized to transact business in this state.

14 4. A limited liability company may apply to the secretary  
15 of state for authorization to use a name that is not  
16 distinguishable upon the secretary's records from one or more  
17 of the names described in subsection 3. The secretary of  
18 state shall authorize use of the name applied for if one of  
19 the following conditions applies:

20 a. The other entity consents to the use in writing and  
21 submits an undertaking in form satisfactory to the secretary  
22 of state to change its name to a name that is distinguishable  
23 upon the records of the secretary of state from the name of  
24 the applying limited liability company.

25 b. The applicant delivers to the secretary of state a  
26 certified copy of the final judgment of a court of competent  
27 jurisdiction establishing the applicant's right to use the  
28 name applied for in this state.

29 5. A limited liability company may use the name, including  
30 the fictitious name, of another entity that is used in this  
31 state if the other entity is formed under the law of this  
32 state or is authorized to transact business in this state and  
33 the proposed user limited liability company meets one of the  
34 following conditions:

35 a. Has merged with the other entity.

1 b. Has been formed by reorganization of the other entity.

2 c. Has acquired all or substantially all of the assets,  
3 including the name, of the other entity.

4 6. This chapter does not control the use of fictitious  
5 names; however, if a limited liability company uses a  
6 fictitious name in this state it shall deliver to the  
7 secretary of state for filing a certified copy of the  
8 resolution of the limited liability company adopting the  
9 fictitious name.

10 Sec. 21. NEW SECTION. 490A.402 RESERVED NAME.

11 1. A person may reserve the exclusive use of a limited  
12 liability company name, including a fictitious name for a  
13 foreign limited liability company whose limited liability  
14 company name is not available, by delivering an application to  
15 the secretary of state for filing. The application must set  
16 forth the name and address of the applicant and the name  
17 proposed to be reserved. If the secretary of state finds that  
18 the limited liability company name applied for is available,  
19 the secretary of state shall reserve the name for the  
20 applicant's exclusive use for a nonrenewable one hundred  
21 twenty-day period.

22 2. The owner of a reserved limited liability company name  
23 may transfer the reservation to another person by delivering  
24 to the secretary of state a signed notice of the transfer that  
25 states the name and address of the transferee.

26 SUBCHAPTER V

27 REGISTERED OFFICE AND AGENT

28 Sec. 22. NEW SECTION. 490A.501 REGISTERED OFFICE AND  
29 REGISTERED AGENT.

30 Each limited liability company must continuously maintain  
31 in this state each of the following:

32 1. A registered office that may be the same as any of its  
33 places of business.

34 2. A registered agent who may be any of the following:

35 a. An individual who is a resident of this state and whose

1 business office is identical with the registered office.

2 b. A domestic corporation, domestic limited liability  
3 company, or not-for-profit domestic corporation whose business  
4 office is identical with the registered office.

5 c. A foreign corporation, foreign limited liability  
6 company, or not-for-profit foreign corporation authorized to  
7 transact business in this state whose business office is  
8 identical with the registered office.

9 Sec. 23. NEW SECTION. 490A.502 CHANGE OF REGISTERED  
10 OFFICE OR REGISTERED AGENT.

11 1. Each limited liability company may change its  
12 registered office or registered agent by delivering to the  
13 secretary of state for filing a statement of change that sets  
14 forth the following:

15 a. The name of the limited liability company or foreign  
16 limited liability company.

17 b. The street address of its current registered office.

18 c. If the current registered office is to be changed, the  
19 street address of the new registered office.

20 d. The name of its current registered agent.

21 e. If the current registered agent is to be changed, the  
22 name of the new registered agent and the new agent's written  
23 consent either on the statement or attached to it, to the  
24 appointment.

25 f. That after the change or changes are made, the street  
26 address of its registered office and the business office of  
27 its registered agent will be identical.

28 2. A statement of change shall forthwith be filed in the  
29 office of the secretary of state by a limited liability  
30 company whenever its registered agent dies, resigns, or ceases  
31 to satisfy the requirements of section 490A.501.

32 3. If a registered agent changes the registered agent's  
33 business address to another place, the registered agent may  
34 change the business address and the address of the registered  
35 agent by filing a statement as required in subsection 1 for

1 each limited liability company, or a single statement for all  
2 limited liability companies named in the notice, except that  
3 it need be signed only by the registered agent or agents and  
4 need not be responsive to subsection 1, paragraph "e", and  
5 must recite that a copy of the statement has been mailed to  
6 each limited liability company named in the notice.

7 Sec. 24. NEW SECTION. 490A.503 RESIGNATION OF REGISTERED  
8 AGENT.

9 1. A registered agent may resign the agent's agency  
10 appointment by signing and delivering to the secretary of  
11 state for filing the signed original and two exact copies or  
12 conformed copies of a statement of resignation. The statement  
13 may include a statement that the registered office is also  
14 discontinued. After filing the statement the secretary of  
15 state shall mail one copy to the registered office, if not  
16 discontinued, and the other copy to the limited liability  
17 company at its principal office.

18 2. The agency appointment is terminated, and the  
19 registered office discontinued if so provided, on the thirty-  
20 first day after the date on which the statement was filed.

21 Sec. 25. NEW SECTION. 490A.504 SERVICE ON LIMITED  
22 LIABILITY COMPANY.

23 1. A domestic or foreign limited liability company's  
24 registered agent is the limited liability company's agent for  
25 service of process, notice, or demand required or permitted by  
26 law to be served on the limited liability company.

27 2. If a limited liability company has no registered agent,  
28 or the agent cannot with reasonable diligence be served, the  
29 limited liability company may be served by registered or  
30 certified mail, return receipt requested, addressed to the  
31 limited liability company at its principal office. Service is  
32 perfected under this subsection at the earliest of:

33 a. The date the limited liability company receives the  
34 mail.

35 b. The date shown on the return receipt, if signed on

1 behalf of the limited liability company.

2 c. Five days after its deposit in the United States mail,  
3 as evidenced by the postmark, if mailed postpaid and correctly  
4 addressed.

5 3. This section does not prescribe the only means, or  
6 necessarily the required means, of serving a domestic or  
7 foreign limited liability company.

8

#### SUBCHAPTER VI

9

#### RELATIONSHIP OF A

10

#### LIMITED LIABILITY COMPANY

11

#### AND ITS MEMBERS TO THIRD PERSONS

12

13 Sec. 26. NEW SECTION. 490A.601 LIABILITY TO THIRD  
14 PARTIES.

15 Except as otherwise provided by this chapter or as  
16 expressly provided in the articles of organization, no member  
17 or manager of a limited liability company is personally liable  
18 for the acts or debts of the limited liability company.

19 Sec. 27. NEW SECTION. 490A.602 PARTIES TO ACTIONS.

20 A member of a limited liability company is not a proper  
21 party to a proceeding by or against a limited liability  
22 company, except where either of the following applies:

23 1. The object is to enforce a member's right against or  
24 liability to the limited liability company.

25 2. As provided in subchapter 10.

26

#### SUBCHAPTER VII

27

#### RELATIONSHIP OF MEMBERS TO EACH OTHER

28

29 Sec. 28. NEW SECTION. 490A.701 VOTING RIGHTS OF MEMBERS.

30

31 1. Unless otherwise provided in the articles of  
32 organization or an operating agreement, the members of a  
33 limited liability company shall vote in proportion to their  
34 capital contributions to the limited liability company, as  
35 adjusted from time to time to reflect any additional  
36 contributions or withdrawals.

37

38 2. Unless otherwise provided in the articles of  
39 organization or an operating agreement, a unanimous vote shall

1 be required to approve the following matters:

2 a. The dissolution and winding up of the limited liability  
3 company.

4 b. The sale, exchange, lease, mortgage, pledge, or other  
5 transfer of all or substantially all of the assets of the  
6 limited liability company.

7 c. Merger of the limited liability company with another  
8 entity.

9 d. An amendment to the articles of organization or  
10 operating agreement.

11 Sec. 29. NEW SECTION. 490A.702 MANAGEMENT OF LIMITED  
12 LIABILITY COMPANY.

13 Unless the articles of organization or an operating  
14 agreement provides for management of a limited liability  
15 company by a manager or managers, management of a limited  
16 liability company shall be vested in its members.

17 Sec. 30. NEW SECTION. 490A.703 OPERATING AGREEMENT.

18 1. The members of a limited liability company may enter  
19 into an operating agreement to establish or regulate the  
20 affairs of the limited liability company, the conduct of its  
21 business and the relations of its members. An operating  
22 agreement may contain any provisions regarding the affairs of  
23 a limited liability company and the conduct of its business to  
24 the extent that such provisions are not inconsistent with law  
25 or the articles of organization.

26 2. An operating agreement must initially be agreed to by  
27 all of the members. Unless the articles of organization  
28 specifically permit otherwise, an operating agreement shall be  
29 in writing.

30 3. A court may enforce an operating agreement by  
31 injunction or by other relief that the court determines to be  
32 fair and appropriate in the circumstances. As an alternative  
33 to injunctive or other equitable relief, when the provisions  
34 of section 490A.1302 are applicable, the court may order  
35 dissolution of the limited liability company.

1     Sec. 31. NEW SECTION. 490A.704 WITHDRAWAL OF MEMBER.

2     A member may withdraw from a limited liability company at  
3 the time or upon the happening of events specified in writing  
4 in the articles of organization or an operating agreement. If  
5 the articles of organization or an operating agreement does  
6 not specify in writing the time or the events upon the  
7 happening of which a member may withdraw or a definite time  
8 for the dissolution and winding up of the limited liability  
9 company, a member may withdraw upon not less than six months'  
10 prior written notice to each member at the member's address on  
11 the books of the limited liability company.

12    Sec. 32. NEW SECTION. 490A.705 MANAGEMENT OF A LIMITED  
13 LIABILITY COMPANY BY A MANAGER OR MANAGERS.

14    1. The articles of organization or an operating agreement  
15 of a limited liability company may apportion responsibility  
16 for managing a limited liability company among one or more  
17 managers who maybe, but need not be, members.

18    2. The articles of organization or an operating agreement  
19 may prescribe qualifications for managers.

20    3. The number of managers shall be fixed by or in the  
21 manner provided in the articles of organization or an  
22 operating agreement. The number of managers may be increased  
23 or decreased by amendment to, or in the manner provided in,  
24 the articles of organization or an operating agreement.

25    4. Unless otherwise provided in the articles of  
26 organization or an operating agreement, managers shall be  
27 elected by the majority vote of the members.

28    5. Unless otherwise provided in the articles of  
29 organization or an operating agreement, any vacancy occurring  
30 in the office of manager shall be filled by a majority vote of  
31 the members.

32    6. All managers or any lesser number may be removed in the  
33 manner provided in the articles of organization or an  
34 operating agreement. If the articles of organization or an  
35 operating agreement does not provide for the removal of



1 managers, then all managers or any lesser number may be  
2 removed with or without cause by a majority vote of the  
3 members.

4 7. Unless otherwise provided in the articles of  
5 organization or an operating agreement, if the limited  
6 liability company has more than one manager, all decisions of  
7 the managers shall be by majority vote of the managers.

8 8. Unless the articles of organization or an operating  
9 agreement require a different number, a quorum for a meeting  
10 of managers consists of a majority of the managers.

11 Sec. 33. NEW SECTION. 490A.706 GENERAL STANDARDS OF  
12 CONDUCT FOR MANAGERS.

13 1. A manager shall discharge that manager's duties as a  
14 manager in good faith, with the care an ordinary prudent  
15 person in a like position would exercise under similar  
16 circumstances, and in a manner the manager believes to be in  
17 the best interests of the limited liability company.

18 2. In discharging the manager's duties, a manager is  
19 entitled to rely on information, opinions, reports, or  
20 statements, including financial statements and other financial  
21 data, if prepared or presented by any of the following:

22 a. One or more managers or employees of the limited  
23 liability company whom the manager reasonably believes to be  
24 reliable and competent in the matters presented.

25 b. Legal counsel, public accountants, or other persons as  
26 to matters the manager reasonably believes are within the  
27 person's professional or expert competence.

28 c. A committee of managers of which the manager is not a  
29 member if the manager reasonably believes the committee merits  
30 confidence.

31 3. A manager is not acting in good faith if the manager  
32 has knowledge concerning the matter in question that makes  
33 reliance otherwise permitted by subsection 2 unwarranted.

34 4. A manager is not liable for any action taken as a  
35 manager or any failure to take any action, if the manager

1 performed the duties of the manager's office in compliance  
2 with this section, or if, and to the extent that, liability  
3 for any such action or failure to act has been limited by the  
4 articles of organization pursuant to section 490A.707.

5 Sec. 34. NEW SECTION. 490A.707 LIMITATION OF LIABILITY  
6 OF MANAGERS.

7 The articles of organization may contain a provision  
8 eliminating or limiting the personal liability of a manager to  
9 the limited liability company or its members for monetary  
10 damages for breach of fiduciary duty as a manager, if the  
11 provision does not eliminate or limit the liability of a  
12 manager for any of the following:

13 1. Breach of the manager's duty of loyalty to the limited  
14 liability company or its members.

15 2. Acts or omissions not in good faith or which involve  
16 intentional misconduct or a knowing violation of law.

17 3. Transaction from which the manager derives an improper  
18 personal benefit or a wrongful distribution in violation of  
19 section 490A.807. A provision shall not eliminate or limit  
20 the liability of a manager for an act or omission occurring  
21 prior to the date when the provision in the articles of  
22 organization becomes effective.

23 Sec. 35. NEW SECTION. 490A.708 BUSINESS TRANSACTIONS OF  
24 MANAGERS WITH THE LIMITED LIABILITY COMPANY.

25 1. A conflict of interest transaction is a transaction  
26 with the limited liability company in which a manager of the  
27 limited liability company has a direct or indirect interest.  
28 A conflict of interest transaction is not voidable by the  
29 limited liability company solely because of the manager's  
30 interest in the transaction if any one of the following is  
31 true:

32 a. The material facts of the transaction and the manager's  
33 interest were disclosed or known to the managers or a  
34 committee of managers and the managers or a committee of  
35 managers authorized, approved, or ratified the transaction.

1     b. The material facts of the transaction and the manager's  
2 interest were disclosed or known to the members entitled to  
3 vote and they authorized, approved, or ratified the  
4 transaction.

5     c. The transaction was fair to the limited liability  
6 company.

7     2. For purposes of this section, a manager of the limited  
8 liability company has an indirect interest in a transaction if  
9 either:

10    a. Another entity in which the manager has a material  
11 financial interest or in which the manager is a general  
12 partner is a party to the transaction.

13    b. Another entity of which the manager is a director,  
14 officer, manager, or trustee is a party to the transaction and  
15 the transaction is or should be considered by the limited  
16 liability company.

17    3. For purposes of subsection 1, paragraph "a", a conflict  
18 of interest transaction is authorized, approved, or ratified  
19 if it receives the affirmative vote of a majority of the  
20 managers or of the committee of managers, who have no direct  
21 or indirect interest in the transaction, but a transaction may  
22 not be authorized, approved, or ratified under this section by  
23 a single manager. If a majority of the managers who have no  
24 direct or indirect interest in the transaction vote to  
25 authorize, approve, or ratify the transaction, a quorum is  
26 present for the purpose of taking action under this section.  
27 The presence of, or a vote cast by, a manager with a direct or  
28 indirect interest in the transaction does not affect the  
29 validity of any action taken under subsection 1, paragraph  
30 "a", if the transaction is otherwise authorized, approved, or  
31 ratified as provided in that subsection.

32    4. For purposes of subsection 1, paragraph "b", a conflict  
33 of interest transaction is authorized, approved, or ratified  
34 if it receives the vote of a majority of the members entitled  
35 to vote under this subsection. Interests owned by or voted

1 under the control of a manager who has a direct or indirect  
2 interest in the transaction, and interests owned by or voted  
3 under the control of an entity described in subsection 2,  
4 paragraph "a", shall not be counted in a vote of members to  
5 determine whether to authorize, approve, or ratify a conflict  
6 of interest transaction under subsection 1, paragraph "b".  
7 The vote of those members, however, is counted in determining  
8 whether the transaction is approved under other sections of  
9 this chapter. Members, whether or not present, that are  
10 entitled to be counted in a vote on the transaction under this  
11 subsection constitute a quorum for the purpose of taking  
12 action under this section.

13 Sec. 36. NEW SECTION. 490A.709 INFORMATION AND RECORDS.

14 1. Each limited liability company shall keep at its  
15 principal office the following:

16 a. A current list of the full name and last known business  
17 address of each member and manager.

18 b. A copy of the articles of organization and all articles  
19 of amendment thereto.

20 c. Copies of the limited liability company's federal,  
21 state, and local income tax returns and reports, if any, for  
22 the three most recent years.

23 d. Copies of any then-effective written operating  
24 agreement and of any financial statements of the limited  
25 liability company for the three most recent years.

26 e. Unless contained in a written operating agreement, a  
27 writing setting out:

28 (1) The amount of cash and a description and statement of  
29 the agreed value of the other property or services contributed  
30 by each member and which each member has agreed to contribute.

31 (2) The times at which or events on the happening of which  
32 any additional contributions agreed to be made by each member  
33 are to be made.

34 (3) Any right of a member to receive, or of the limited  
35 liability company to make, distributions to a member which

1 include a return of all or any part of the member's  
2 contribution.

3 (4) Any events upon the happening of which the limited  
4 liability company is to dissolve and its affairs be wound up.

5 2. Each member has the right, upon reasonable request and  
6 subject to reasonable standards as may be set forth in an  
7 operating agreement, to do any of the following:

8 a. Inspect and copy any of the limited liability company  
9 records required to be maintained by this section; and

10 b. Obtain from the manager or managers, or if the limited  
11 liability company has no manager or managers, from any member  
12 or other person with access to such information, from time to  
13 time upon reasonable demand any of the following:

14 (1) True and full information regarding the state of the  
15 business and financial condition of the limited liability  
16 company.

17 (2) Promptly after it becomes available, a copy of the  
18 limited liability company's federal, state, and local income  
19 tax returns for each year.

20 (3) Other information regarding the affairs of the limited  
21 liability company as is just and reasonable.

22 SUBCHAPTER VIII

23 FINANCE

24 Sec. 37. NEW SECTION. 490A.801 CONTRIBUTIONS.

25 1. The contributions of a member to a limited liability  
26 company may be in cash, property, or services rendered, or a  
27 promissory note or other binding obligation to contribute cash  
28 or property or to perform services.

29 2. Unless otherwise provided in the articles of  
30 organization or an operating agreement, a member is obligated  
31 to the limited liability company to perform any enforceable  
32 promise to contribute cash or property or to perform services,  
33 even if the member is unable to perform because of death,  
34 disability, or any other reason. If a member does not make  
35 the contribution, the member is obligated at the option of the

1 limited liability company to contribute cash equal to that  
2 portion of the value of the contribution that has not been  
3 made as stated in the limited liability company records  
4 required to be kept by section 490A.709. A promise by a  
5 member to contribute to a limited liability company is not  
6 enforceable unless set out in a writing signed by the member.

7 3. Unless otherwise provided in the articles of  
8 organization or an operating agreement, the obligation of a  
9 member to make a contribution or return money or other  
10 property paid or distributed in violation of this chapter may  
11 be compromised only by consent of all the members.  
12 Notwithstanding the compromise, a creditor of a limited  
13 liability company who extends credit or otherwise acts in  
14 reliance on the original obligation may enforce the original  
15 obligation.

16 Sec. 38. NEW SECTION. 490A.802 SHARING OF PROFITS AND  
17 LOSSES.

18 The profits and losses of a limited liability company shall  
19 be allocated among the members, and among classes of members,  
20 in the manner provided in writing in the articles of  
21 organization or an operating agreement. If the articles of  
22 organization or an operating agreement do not so provide in  
23 writing, profits and losses shall be allocated on the basis of  
24 their respective capital contributions, as adjusted from time  
25 to time to reflect any additional contributions or  
26 withdrawals.

27 Sec. 39. NEW SECTION. 490A.803 SHARING OF DISTRIBUTIONS.

28 Distributions of cash or other assets of a limited  
29 liability company shall be allocated among the members, and  
30 among classes of members, in the manner provided in writing in  
31 the articles of organization or an operating agreement. If  
32 the articles of organization or an operating agreement do not  
33 so provide in writing, distributions shall be made on the  
34 basis of their respective capital contributions, as adjusted  
35 from time to time to reflect any additional contributions or

1 withdrawals.

2 Sec. 40. NEW SECTION. 490A.804 INTERIM DISTRIBUTIONS.

3 Except as otherwise provided in this chapter, a member is  
4 entitled to receive distributions from a limited liability  
5 company before the member's withdrawal from the limited  
6 liability company and before the dissolution and winding up of  
7 the company to the extent and at the times or upon the  
8 happening of the events specified in the articles of  
9 organization or an operating agreement.

10 Sec. 41. NEW SECTION. 490A.805 DISTRIBUTION UPON  
11 WITHDRAWAL.

12 Except as otherwise provided in this chapter, upon  
13 withdrawal, a withdrawing member is entitled to receive any  
14 distribution to which the member is entitled under the  
15 articles of organization or an operating agreement. If not  
16 otherwise provided in the articles of organization or an  
17 operating agreement, the member is entitled to receive, within  
18 a reasonable time after withdrawal, the fair value of the  
19 member's membership interest as of the date of withdrawal,  
20 based on the member's right to share in distributions from the  
21 limited liability company.

22 Sec. 42. NEW SECTION. 490A.806 DISTRIBUTION IN KIND.

23 Unless otherwise provided in the articles of organization  
24 or an operating agreement, a member, regardless of the nature  
25 of the member's contribution, has no right to demand and  
26 receive any distribution from a limited liability company in  
27 any form other than cash. Unless otherwise provided in the  
28 articles of organization or an operating agreement, a member  
29 shall not be compelled to accept a distribution of any asset  
30 in kind from a limited liability company to the extent that  
31 the percentage of the asset distributed to the member exceeds  
32 the percentage of the member's membership interest in the  
33 limited liability company.

34 Sec. 43. NEW SECTION. 490A.807 RESTRICTIONS ON MAKING  
35 DISTRIBUTION.

1 1. A distribution shall not be made if, after giving it  
2 effect, either of the following would result:

3 a. The limited liability company would not be able to pay  
4 its debts as they became due in the usual course of business.

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

13 2. The limited liability company may base a determination  
14 that a distribution is not prohibited under subsection 1 of  
15 this section on either of the following:

16 a. Financial statements prepared on the basis of  
17 accounting practices and principles that are reasonable in the  
18 circumstances.

19 b. A fair valuation or other method that is reasonable in  
20 the circumstances.

21 3. The effect of a distribution under subsection 1 of this  
22 section is measured as of one of the following:

23 a. The date the distribution is authorized if the payment  
24 occurs within one hundred twenty days after the date of  
25 authorization.

26 b. The date the payment is made if it occurs more than one  
27 hundred twenty days after the date of authorization.

28 4. A limited liability company's indebtedness to a member  
29 incurred by reason of a distribution made in accordance with  
30 this section is at parity with the limited liability company's  
31 indebtedness to its general unsecured creditors, except to the  
32 extent subordinated by agreement.

33 Sec. 44. NEW SECTION. 490A.808 LIABILITY UPON WRONGFUL  
34 DISTRIBUTION.

35 If a member has received a distribution in violation of the



1 articles of organization or an operating agreement or in  
2 violation of section 490A.807 of this chapter, then the member  
3 is liable to the limited liability company for a period of  
4 five years thereafter for the amount of the distribution  
5 wrongfully made.

6

SUBCHAPTER IX

7

RIGHTS OF AND ASSIGNMENT BY MEMBERS

8

Sec. 45. NEW SECTION. 490A.901 NATURE OF INTEREST IN

9

LIMITED LIABILITY COMPANY.

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A membership interest in a limited liability company is

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personal property.

12

Sec. 46. NEW SECTION. 490A.902 ASSIGNMENT OF INTEREST.

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Unless otherwise provided in the articles of organization

14

or an operating agreement, a membership interest in a limited

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liability company is assignable in whole or in part. An

16

assignment of an interest in a limited liability company does

17

not of itself dissolve the limited liability company. An

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assignment does not entitle the assignee to participate in the

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management and affairs of the limited liability company or to

20

become or to exercise any rights of a member. Such an

21

assignment entitles the assignee to receive, to the extent

22

assigned, only the distribution to which the assignor would be

23

entitled. Except as provided in the articles of organization

24

or an operating agreement, a member ceases to be a member upon

25

assignment of the member's entire membership interest.

26

Unless otherwise provided in the articles of organization

27

or an operating agreement, the pledge of, or granting of a

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security interest, lien, or other encumbrance in or against,

29

any or all of the membership interest of a member shall not

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cause the member to cease to be a member and shall not deprive

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the member of the power to exercise any rights or powers of a

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member.

33

Unless otherwise provided in the articles of organization

34

or an operating agreement and except to the extent assumed by

35

agreement, until an assignee of a membership interest becomes

1 a member, the assignee shall have no liability as a member as  
2 a result of the assignment except for liability for a wrongful  
3 distribution to the assignee described in section 490A.808.

4 Sec. 47. NEW SECTION. 490A.903 RIGHT OF ASSIGNEE TO  
5 BECOME MEMBER.

6 1. Unless otherwise provided in the articles of  
7 organization or an operating agreement, an assignee of an  
8 interest in a limited liability company may become a member  
9 only if the other members unanimously consent. The consent of  
10 a member may be evidenced in any manner specified in the  
11 articles of organization or an operating agreement. In the  
12 absence of such specification consent shall be evidenced by a  
13 written instrument, dated and signed by the requisite number  
14 of members, or evidenced by a vote taken at a meeting of  
15 members called for that purpose.

16 2. An assignee who has become a member has, to the extent  
17 assigned, the rights and powers, and is subject to the  
18 restrictions and liabilities, of a member under the articles  
19 of organization, an operating agreement, and this chapter. An  
20 assignee who becomes a member is liable for any obligations of  
21 the member's assignor to make and return contributions as  
22 provided in subchapter VII and VIII. However, an assignee who  
23 becomes a member is not obligated for liabilities of the  
24 assignor unknown to the assignee at the time the assignee  
25 became a member, and which could not be ascertained from the  
26 articles of organization or an operating agreement.

27 3. If an assignee of an interest in a limited liability  
28 company becomes a member, the assignor is not released from  
29 liability to the limited liability company under sections  
30 490A.801 and 490A.808.

31 Sec. 48. NEW SECTION. 490A.904 RIGHTS OF CREDITOR.

32 On application to a court of competent jurisdiction by any  
33 judgment creditor of a member, the court may charge the  
34 interest of the member in the limited liability company with  
35 payment of the unsatisfied amount of the judgment with

1 interest. To the extent of the amounts so charged, the  
2 judgment creditor has only the rights of an assignee of the  
3 interest in the limited liability company. This chapter does  
4 not deprive any member of the benefit of any exemption laws  
5 applicable to the member's interest in the limited liability  
6 company.

7 Sec. 49. NEW SECTION. 490A.905 POWERS OF ESTATE OF A  
8 DECEASED OR INCOMPETENT MEMBER.

9 If a member who is an individual dies or a court of  
10 competent jurisdiction adjudges the member to be incompetent,  
11 the member's executor, administrator, guardian, conservator,  
12 or other legal representative may exercise all of the member's  
13 rights for the purpose of settling the member's estate or  
14 administering the member's property, including any power under  
15 the articles of organization or an operating agreement of an  
16 assignee to become a member. If a member is a corporation,  
17 trust, or other entity and is dissolved or terminated, the  
18 powers of that member may be exercised by its legal  
19 representative or successor.

20 SUBCHAPTER X

21 DERIVATIVE ACTIONS

22 Sec. 50. NEW SECTION. 490A.1001 RIGHT OF MEMBER TO BRING  
23 DERIVATIVE ACTION.

24 A member may bring an action in the right of the limited  
25 liability company to recover a judgment in its favor if all of  
26 the following conditions are met:

27 1. Either management of the limited liability company is  
28 vested in a manager or managers who have the sole authority to  
29 cause the limited liability company to sue in its own right or  
30 management of the limited liability company is reserved to the  
31 members but the plaintiff does not have the authority to cause  
32 the limited liability company to sue in its own right under  
33 the provisions of the articles of organization or an operating  
34 agreement.

35 2. The plaintiff has made demand on those managers or

1 those members with such authority requesting that such  
2 managers or such members cause the limited liability company  
3 to sue in its own right.

4 3. The members or managers with such authority have  
5 wrongfully refused to bring the action or, after adequate time  
6 to consider the demand, have failed to respond to the demand.

7 4. The plaintiff is a member of the limited liability  
8 company at the time of bringing the action and was a member of  
9 the limited liability company at the time of the transaction  
10 of which the plaintiff complains, or the plaintiff's status as  
11 a member of the limited liability company thereafter devolved  
12 upon the plaintiff pursuant to the terms of the articles of  
13 organization or an operating agreement from a person who was a  
14 member at such time.

15 5. The plaintiff fairly and adequately represents the  
16 interests of the members in enforcing the right of the limited  
17 liability company.

18 SUBCHAPTER XI

19 AMENDMENT OF ARTICLES OF ORGANIZATION

20 Sec. 51. NEW SECTION. 490A.1101 AMENDMENT OF ARTICLES OF  
21 ORGANIZATION.

22 1. A limited liability company may amend its articles of  
23 organization at any time to add or change a provision that is  
24 required or permitted in the articles of organization or to  
25 delete a provision not required in the articles of  
26 organization by delivering articles of amendment to the  
27 secretary of state for filing. Whether a provision is  
28 required or permitted for the articles of organization is  
29 determined as of the effective date of the amendment.

30 2. To amend its articles of organization, a limited  
31 liability company shall deliver to the secretary of state for  
32 filing articles of amendment setting forth all of the  
33 following:

- 34 a. The name of the limited liability company.
- 35 b. The text of each amendment adopted.

1 c. The date of each amendment's adoption.

2 d. A statement that the amendment was adopted by a vote of  
3 the members in accordance with this chapter.

4 Sec. 52. NEW SECTION. 490A.1102 RESTATED ARTICLES OF  
5 ORGANIZATION.

6 1. A limited liability company may restate its articles of  
7 organization at any time.

8 2. The restatement may include one or more amendments to  
9 the articles. The restatement must be adopted by a vote of  
10 the members as provided by this chapter.

11 3. A limited liability company restating its articles of  
12 organization shall deliver to the secretary of state for  
13 filing articles of restatement setting forth the name of the  
14 limited liability company and the text of the restated  
15 articles of organization together with a certificate setting  
16 forth the information required by subsection 2.

17 4. Duly adopted restated articles of organization  
18 supersede the original articles of organization and all  
19 amendments to them.

20 5. The secretary of state may certify restated articles of  
21 organization, as the articles of organization currently in  
22 effect, without including the certificate information required  
23 by subsection 3.

24 Sec. 53. NEW SECTION. 490A.1103 AMENDMENT PURSUANT TO  
25 REORGANIZATION.

26 1. A limited liability company's articles of organization  
27 may be amended without action by the members to carry out a  
28 plan of reorganization ordered or decreed by a court of  
29 competent jurisdiction under federal statute if the articles  
30 of organization after amendment contain only provisions  
31 required or permitted by section 490A.303.

32 2. The individual or individuals designated by the court  
33 shall deliver to the secretary of state for filing articles of  
34 amendment setting forth all of the following:

35 a. The name of the limited liability company.

1 b. The text of each amendment approved by the court.

2 c. The date of the court's order or decree approving the  
3 articles of amendment.

4 d. The title of the reorganization proceeding in which the  
5 order or decree was entered.

6 e. A statement that the court had jurisdiction of the  
7 proceeding under federal statute.

8 3. This section does not apply after entry of a final  
9 decree in the reorganization proceeding even though the court  
10 retains jurisdiction of the proceeding for limited purposes  
11 unrelated to consummation of the reorganization plan.

12 Sec. 54. NEW SECTION. 490A.1104 EFFECT OF AMENDMENT.

13 An amendment to articles of organization does not affect a  
14 cause of action existing against or in favor of the limited  
15 liability company, a proceeding to which the limited liability  
16 company is a party, or the existing rights of persons other  
17 than members of the limited liability company. An amendment  
18 changing a limited liability company's name does not abate a  
19 proceeding brought by or against the limited liability company  
20 in its former name.

21 SUBCHAPTER XII

22 MERGER

23 Sec. 55. NEW SECTION. 490A.1201 MERGER.

24 Any one or more limited liability companies may merge with  
25 or into any one or more limited liability companies, limited  
26 partnerships, or corporations, provided that no member of a  
27 limited liability company that is a party to the merger will,  
28 as a result of the merger, become personally liable for the  
29 liabilities or obligations of any other person or entity  
30 unless that member approves the plan of merger or otherwise  
31 consents to becoming personally liable.

32 Sec. 56. NEW SECTION. 490A.1202 PLAN OF MERGER.

33 1. Each constituent entity must enter into a written plan  
34 of merger, which must be approved in accordance with section  
35 490A.1203.

1 2. The plan of merger must set forth all of the following:

2 a. The name of each constituent entity in the merger and  
3 the name of the surviving entity into which each other  
4 constituent entity proposes to merge.

5 b. The terms and conditions of the proposed merger.

6 c. The manner and basis of converting the interests in  
7 each constituent entity in the merger into interests, shares,  
8 or other securities or obligations of the surviving entity, or  
9 of any other entity, or, in whole or in part, into cash or  
10 other property.

11 d. Such amendments to the articles of organization of a  
12 limited liability company, articles or certificate of  
13 incorporation of a corporation, or certificate of limited  
14 partnership of a limited partnership, as the case may be, of  
15 the surviving entity as are desired to be effected by the  
16 merger, or that no such changes are desired.

17 e. Other provisions relating to the proposed merger as are  
18 deemed necessary or desirable.

19 Sec. 57. NEW SECTION. 490A.1203 ACTION ON PLAN.

20 1. A proposed plan of merger complying with the  
21 requirements of section 490A.1202 shall be approved in the  
22 manner provided by this section:

23 a. A limited liability company which is a party to a  
24 proposed merger shall have the plan of merger authorized and  
25 approved as required by section 490A.701.

26 b. A corporation which is a party to a proposed merger  
27 shall have the plan of merger authorized and approved in the  
28 manner and by the vote required by chapter 490.

29 c. A limited partnership which is a party to a proposed  
30 merger shall have the plan of merger authorized and approved  
31 in the manner and by the vote required by its partnership  
32 agreement and in accordance with chapter 545.

33 2. After a merger is authorized, unless the plan of merger  
34 provides otherwise, and at any time before articles of merger  
35 as provided for in section 490A.1204 are filed, the plan of

1 merger may be abandoned subject to any contractual rights, in  
2 accordance with the procedure set forth in the plan of merger  
3 or, if none is set forth, in one of the following ways:

4 a. By the unanimous consent of the members of each limited  
5 liability company that is a constituent entity, unless the  
6 articles of organization or an operating agreement of any such  
7 limited liability company provides otherwise.

8 b. In the manner determined by the board of directors of  
9 any corporation that is a constituent entity.

10 c. By the limited partners of any limited partnership that  
11 is a constituent entity by the vote, if any, required by its  
12 limited partnership agreement and in accordance with the law  
13 of this state.

14 Sec. 58. NEW SECTION. 490A.1204 ARTICLES OF MERGER.

15 1. After a plan of merger is approved as provided in  
16 section 490A.1203, the surviving entity shall deliver to the  
17 secretary of state for filing articles of merger duly executed  
18 by each constituent entity setting forth all of the following:

19 a. The name of each constituent entity.

20 b. The plan of merger.

21 c. The effective date of the merger if later than the date  
22 of filing of the articles of merger.

23 d. The name of the surviving entity.

24 e. A statement that the plan of merger was duly authorized  
25 and approved by each constituent entity in accordance with  
26 section 490A.1203.

27 2. A merger takes effect upon the later of the effective  
28 date of the filing of the articles of merger or the date set  
29 forth in the plan of merger.

30 Sec. 59. NEW SECTION. 490A.1205 EFFECT OF MERGER.

31 When a merger takes effect all of the following apply:

32 1. Every other constituent entity merges into the  
33 surviving entity and the separate existence of every  
34 constituent entity except the surviving entity ceases.

35 2. The title to all real estate and other property owned



1 by each constituent entity is vested in the surviving entity  
2 without reversion or impairment.

3 3. The surviving entity has all liabilities of each  
4 constituent entity.

5 4. A proceeding pending against any constituent entity may  
6 be continued as if the merger did not occur or the surviving  
7 entity may be substituted in the proceeding for the  
8 constituent entity whose existence ceased.

9 5. The articles or limited partnership agreement of the  
10 surviving entity are amended to the extent provided in the  
11 plan of merger.

12 6. The shares or interests of each constituent entity that  
13 are to be converted into shares, obligations, or other  
14 securities of the surviving or any other entity or into cash  
15 or other property are converted, and the former holders of the  
16 shares or interests are entitled only to the rights provided  
17 in the articles of merger except for dissenters' rights  
18 provided by law.

19 Sec. 60. NEW SECTION. 490A.1206 MERGER WITH FOREIGN  
20 ENTITY.

21 1. Any one or more limited liability companies of this  
22 state may merge with or into one or more foreign liability  
23 companies, foreign corporations, or foreign limited  
24 partnerships, or any one or more foreign liability companies,  
25 foreign corporations, or foreign limited partnerships may  
26 merge with or into any one or more limited liability companies  
27 of this state, if all of the following apply:

28 a. The merger is permitted by the law of the state or  
29 jurisdiction under whose law each foreign constituent entity  
30 is organized or formed and each foreign constituent entity  
31 complies with that law in effecting the merger.

32 b. The foreign constituent entity complies with section  
33 490A.1204 of this division if it is the surviving entity.

34 c. Each domestic constituent entity complies with the  
35 applicable provisions of sections 490A.1202 and 490A.1203 and,

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1 if it is the surviving entity, with section 490A.1204.

2 2. Upon a merger involving one or more domestic limited  
3 liability companies taking effect, if the surviving entity is  
4 to be governed by the law of any state other than this state  
5 or of any foreign country, then the surviving entity shall  
6 agree to both of the following:

7 a. That it may be served with process in this state in any  
8 proceeding for enforcement of any obligation of any  
9 constituent entity, who was a party to the merger, that was  
10 organized under the law of this state, as well as for  
11 enforcement of any obligation of the surviving entity arising  
12 from the merger.

13 b. To irrevocably appoint the secretary of state as its  
14 agent for service of process in any such proceeding, and the  
15 surviving entity shall specify the address to which a copy of  
16 the process shall be mailed to it by the secretary of state.

17 3. The effect of the merger shall be as provided in  
18 section 490A.1205, if the surviving entity is to be governed  
19 by the law of this state. If the surviving entity is to be  
20 governed by the law of any jurisdiction other than this state,  
21 the effect of the merger shall be the same as provided in  
22 subsection 2 of this section, except insofar as the law of the  
23 other jurisdiction provides otherwise.

24 SUBCHAPTER XIII

25 DISSOLUTION

26 Sec. 61. NEW SECTION. 490A.1301 DISSOLUTION -- GENERAL  
27 PROVISIONS.

28 A limited liability company organized under this chapter is  
29 dissolved and its affairs shall be wound up upon the happening  
30 of the first to occur of the following events:

31 1. At the time or on the happening of an event specified  
32 in the articles of organization or an operating agreement to  
33 cause dissolution.

34 2. Upon the unanimous written consent of the members.

35 3. Upon the death, withdrawal, expulsion, bankruptcy, or

1 dissolution of a member or occurrence of any other event,  
2 except assignment of a membership interest voluntarily or by  
3 operation of law, that terminates the continued membership of  
4 a member in the limited liability company, unless the business  
5 of the limited liability company is continued by the unanimous  
6 consent of the remaining members.

7 4. The entry of a decree of judicial dissolution under  
8 section 490A.1302.

9 Sec. 62. NEW SECTION. 490A.1302 JUDICIAL DISSOLUTION.

10 On application by or for a member, the district court of  
11 the county in which the registered office of the limited  
12 liability company is located may decree dissolution of a  
13 limited liability company if it is not reasonably practicable  
14 to carry on the business in conformity with the articles of  
15 organization and any operating agreement.

16 Sec. 63. NEW SECTION. 490A.1303 WINDING UP.

17 Unless otherwise provided in the articles of organization  
18 or an operating agreement, members who have not wrongfully  
19 dissolved a limited liability company may wind up the limited  
20 liability company's affairs; but the district court of the  
21 county in which the registered office of the limited liability  
22 company is located, on cause shown, may wind up the limited  
23 liability company's affairs on application of any member,  
24 member's legal representative, or member's assignee.

25 Sec. 64. NEW SECTION. 490A.1304 DISTRIBUTION OF ASSETS  
26 UPON DISSOLUTION.

27 Upon the winding up of a limited liability company, the  
28 assets of the limited liability company shall be distributed  
29 in the order as follows:

30 1. To creditors, including members who are creditors, to  
31 the extent permitted by law, in satisfaction of liabilities of  
32 the limited liability company other than for distributions to  
33 members under section 490A.803 or section 490A.805.

34 2. Unless otherwise provided in the articles of  
35 organization or an operating agreement, to members and former

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1 members in satisfaction of liabilities for distributions under  
2 section 490A.803 or section 490A.805.

3 3. Unless otherwise provided in the articles of  
4 organization or an operating agreement, to members first for  
5 the return of their capital contributions and second with  
6 respect to their interests in the limited liability company,  
7 in the proportions in which the members share in  
8 distributions.

9 Sec. 65. NEW SECTION. 490A.1305 ARTICLES OF DISSOLUTION.

10 1. Upon the completion of winding up of the limited  
11 liability company, articles of dissolution shall be delivered  
12 to the secretary of state for filing. The winding up of a  
13 limited liability company shall be completed when all debts,  
14 liabilities, and obligations of the limited liability company  
15 have been paid and discharged or reasonably adequate provision  
16 therefor has been made, and all of the remaining property and  
17 assets of the limited liability company have been distributed  
18 to the members. The articles of dissolution shall set forth  
19 all of the following:

20 a. The name of the limited liability company.

21 b. The date of filing of the articles of organization and  
22 each amendment thereto.

23 c. The reason for filing the articles of dissolution.

24 d. The effective date of dissolution if it is not to be  
25 effective on the filing of the articles of dissolution.

26 e. Any other information the members or managers determine  
27 to include.

28 2. The limited liability company is dissolved upon the  
29 effective date of its articles of dissolution.

30 Sec. 66. NEW SECTION. 490A.1306 KNOWN CLAIMS AGAINST  
31 DISSOLVED LIMITED LIABILITY COMPANIES.

32 A dissolved limited liability company may dispose of the  
33 known claims against it in accordance with this section.

34 1. The dissolved limited liability company shall notify  
35 its known claimants in writing of the dissolution at any time

1 after its effective date. The written notice must do all of  
2 the following:

3 a. Describe information that must be included in a claim.

4 b. Provide a mailing address where a claim may be sent.

5 c. State the deadline, which may not be fewer than one  
6 hundred twenty days from the effective date of the written  
7 notice, by which the dissolved limited liability company must  
8 receive the claim.

9 d. State that the claim will be barred if not received by  
10 the deadline.

11 2. A claim against the dissolved limited liability company  
12 is barred if either of the following occurs:

13 a. A claimant who was given written notice under  
14 subsection 1 does not deliver the claim to the dissolved  
15 limited liability company by the deadline.

16 b. A claimant whose claim was rejected by the dissolved  
17 limited liability company does not commence a proceeding to  
18 enforce the claim within ninety days from the effective date  
19 of the rejection notice.

20 3. For purposes of this section, "claim" does not include  
21 a contingent liability or a claim based on an event occurring  
22 after the effective date of dissolution.

23 Sec. 67. NEW SECTION. 490A.1307 UNKNOWN CLAIMS AGAINST  
24 DISSOLVED LIMITED LIABILITY COMPANY.

25 1. A dissolved limited liability company may also publish  
26 notice of its dissolution and request that persons with claims  
27 against the limited liability company present them in  
28 accordance with the notice.

29 2. The notice shall meet all of the following  
30 requirements:

31 a. Be published one time in a newspaper of general  
32 circulation in the county where the dissolved limited  
33 liability company's principal office or, if none in this  
34 state, its registered office is or was last located.

35 b. Describe the information that must be included in a

1 claim and provide a mailing address where the claim may be  
2 sent.

3 c. State that a claim against the limited liability  
4 company will be barred unless a proceeding to enforce the  
5 claim is commenced within five years after the publication of  
6 the notice.

7 3. If the dissolved limited liability company publishes a  
8 newspaper notice in accordance with subsection 2, the claim of  
9 each of the following claimants is barred unless the claimant  
10 commences a proceeding to enforce the claim against the  
11 dissolved corporation within five years after the publication  
12 date of the newspaper notice:

13 a. A claimant who did not receive written notice under  
14 section 490A.1306.

15 b. A claimant whose claim was timely sent to the dissolved  
16 limited liability company but not acted on.

17 c. A claimant whose claim is contingent or based on an  
18 event occurring after the effective date of dissolution.

19 4. A claim may be enforced under this section in either of  
20 the following ways:

21 a. Against the dissolved limited liability company, to the  
22 extent of its undistributed assets.

23 b. If the assets have been distributed in liquidation,  
24 against a member of the dissolved limited liability company to  
25 the extent of the member's pro rata share of the claim or the  
26 limited liability company assets distributed to the member in  
27 liquidation, whichever is less, but a member's total liability  
28 for all claims under this section shall not exceed the total  
29 amount of assets distributed to the member in liquidation.

30

#### SUBCHAPTER XIV

31

#### FOREIGN LIMITED LIABILITY COMPANIES

32 Sec. 68. NEW SECTION. 490A.1401 LAW GOVERNING.

33 The law of the state or other jurisdiction under which a  
34 foreign limited liability company is formed governs its  
35 formation and internal affairs and the liability of its

1 members and managers. A foreign limited liability company  
2 shall not be denied registration by reason of any difference  
3 between those laws and the laws of this state. A foreign  
4 limited liability company holding a valid registration in this  
5 state shall have no greater rights and privileges than a  
6 domestic limited liability company. The registration shall  
7 not be deemed to authorize the foreign limited liability  
8 company to exercise any of its powers or purposes that a  
9 domestic limited liability company is forbidden by law to  
10 exercise in this state.

11 Sec. 69. NEW SECTION. 490A.1402 REGISTRATION.

12 A foreign limited liability company may apply for a  
13 certificate of registration to transact business in this state  
14 by delivering an application to the secretary of state for  
15 filing. An application for registration as a foreign limited  
16 liability company shall set forth all of the following:

17 1. The name of the foreign limited liability company and,  
18 if different, the name under which it proposes to register and  
19 transact business in this state.

20 2. The state or other jurisdiction in which the foreign  
21 limited liability company was formed and the date of its  
22 formation.

23 3. The street address of the registered office of the  
24 foreign limited liability company in this state, the name of  
25 the registered agent at the office, and a statement that the  
26 registered office and registered agent comply with the  
27 requirements of section 490A.501.

28 4. The address of the office required to be maintained in  
29 the state or other jurisdiction of its formation by the law of  
30 that state or jurisdiction or, if not so required, of the  
31 principal office of the foreign limited liability company.

32 5. A copy of the articles of organization filed in the  
33 foreign limited liability company's state or other  
34 jurisdiction of formation authorizing it to do business in  
35 that state or other jurisdiction, duly authenticated by the

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1 proper officer of the state or other jurisdiction of its  
2 formation.

3 Sec. 70. NEW SECTION. 490A.1403 SERVICE ON FOREIGN  
4 LIMITED LIABILITY COMPANY.

5 1. The registered agent of a foreign limited liability  
6 company authorized to transact business in this state is the  
7 limited liability company's agent for service of process,  
8 notice, or demand required or permitted by law to be served on  
9 the foreign limited liability company.

10 2. A foreign limited liability company may be served by  
11 registered or certified mail, return receipt requested,  
12 addressed to the foreign limited liability company at its  
13 principal office shown in its application for a certificate of  
14 authority if the foreign limited liability company meets any  
15 of the following conditions:

16 a. Has no registered agent or its registered agent cannot  
17 with reasonable diligence be served.

18 b. Has withdrawn from transacting business in this state  
19 under section 490A.1406.

20 c. Has had its certificate of authority revoked under  
21 section 490A.1410.

22 3. Service is perfected under subsection 2 at the earliest  
23 of:

24 a. The date the foreign limited liability company receives  
25 the mail.

26 b. The date shown on the return receipt, if signed on  
27 behalf of the foreign limited liability company.

28 c. Five days after its deposit in the United States mail,  
29 as evidenced by the postmark, if mailed postpaid and correctly  
30 addressed.

31 4. A foreign limited liability company may also be served  
32 in any other manner permitted by law.

33 Sec. 71. NEW SECTION. 490A.1404 NAME.

34 A certificate of registration shall not be issued to a  
35 foreign limited liability company unless the name of the



1 limited liability company satisfies the requirements of  
2 section 490A.401. To obtain or maintain a certificate of  
3 registration the company shall comply with the following:

4 1. The foreign limited company shall add the words  
5 "Limited Company" or the abbreviation "L.C." to its name for  
6 use in this state.

7 2. If its real name is unavailable in this state, the  
8 foreign limited liability company shall use a fictitious name  
9 that is available, and which satisfies the requirements of  
10 section 490A.401, and shall inform the secretary of state of  
11 the fictitious name.

12 Sec. 72. NEW SECTION. 490A.1405 CHANGE AND AMENDMENT.

13 If any statement in the application for registration of a  
14 foreign limited liability company was false when made or any  
15 arrangements or other facts described have changed, making the  
16 application inaccurate in any respect, the foreign limited  
17 liability company shall promptly deliver to the secretary of  
18 state for filing articles of correction correcting such  
19 statement as required by section 490A.123.

20 Sec. 73. NEW SECTION. 490A.1406 CANCELLATION OF  
21 CERTIFICATE OF REGISTRATION.

22 1. A foreign limited liability company may cancel its  
23 certificate of registration by delivering to the secretary of  
24 state for filing a certificate of cancellation which shall set  
25 forth all of the following:

26 a. The name of the foreign limited liability company and  
27 the name of the state or other jurisdiction under whose  
28 jurisdiction it was formed.

29 b. That the foreign limited liability company is not  
30 transacting business in this state and that it surrenders its  
31 registration to transact business in this state.

32 c. That the foreign limited liability company revokes the  
33 authority of its registered agent to accept service on its  
34 behalf and appoints the secretary of state as its agent for  
35 service of process in any proceeding based on a cause of

1 action arising during the time it was authorized to transact  
2 business in this state.

3 d. A mailing address to which the secretary of state may  
4 mail a copy of any process served on the secretary of state  
5 under paragraph "c" of this subsection.

6 e. A commitment to notify the secretary of state in the  
7 future of any change in the mailing address of the limited  
8 liability company.

9 2. The certificate of registration shall be cancelled upon  
10 the filing of the certificate of cancellation by the secretary  
11 of state.

12 Sec. 74. NEW SECTION. 490A.1407 AUTHORITY TO TRANSACT  
13 BUSINESS REQUIRED.

14 1. A foreign limited liability company shall not transact  
15 business in this state until it obtains a certificate of  
16 authority from the secretary of state.

17 2. The following activities, among others, do not  
18 constitute transacting business within the meaning of  
19 subsection 1:

20 a. Maintaining, defending, or settling any proceeding.

21 b. Holding meetings of the members or managers or carrying  
22 on other activities concerning internal corporate affairs.

23 c. Maintaining bank accounts.

24 d. Maintaining offices or agencies for the transfer,  
25 exchange, and registration of the limited liability company's  
26 own securities or maintaining trustees or depositories with  
27 respect to those securities.

28 e. Selling through independent contractors.

29 f. Soliciting or obtaining orders, whether by mail or  
30 through employees or agents or otherwise, if the orders  
31 require acceptance outside this state before they become  
32 contracts.

33 g. Creating or acquiring indebtedness, mortgages, and  
34 security interests in real or personal property.

35 h. Securing or collecting debts or enforcing mortgages and

1 security interests in property securing the debts.

2 i. Owning, without more, real or personal property.

3 j. Conducting an isolated transaction that is completed  
4 within thirty days and that is not one in the course of  
5 repeated transactions of a like nature.

6 k. Transacting business in interstate commerce.

7 3. The list of activities in subsection 2 is not  
8 exhaustive.

9 Sec. 75. NEW SECTION. 490A.1408 CONSEQUENCES OF  
10 TRANSACTING BUSINESS WITHOUT AUTHORITY.

11 1. A foreign limited liability company transacting  
12 business in this state without a certificate of authority  
13 shall not maintain a proceeding in any court in this state  
14 until it obtains a certificate of authority.

15 2. The successor to a foreign limited liability company  
16 that transacted business in this state without a certificate  
17 of authority and the assignee of a cause of action arising out  
18 of that business shall not maintain a proceeding based on that  
19 cause of action in any court in this state until the foreign  
20 limited liability company or its successor obtains a  
21 certificate of authority.

22 3. A court may stay a proceeding commenced by a foreign  
23 limited liability company, its successor, or assignee until it  
24 determines whether the foreign limited liability company or  
25 its successor or assignee requires a certificate of authority.  
26 If it so determines, the court may further stay the proceeding  
27 until the foreign limited liability company or its successor  
28 or assignee obtains the certificate.

29 4. A foreign limited liability company is liable for a  
30 civil penalty not to exceed a total of one thousand dollars if  
31 it transacts business in this state without a certificate of  
32 authority. The attorney general may collect penalties due  
33 under this subsection.

34 5. Notwithstanding subsections 1 and 2, the failure of a  
35 foreign limited liability company to obtain a certificate of

1 authority does not impair the validity of its official acts or  
2 prevent it from defending any proceeding in this state.

3 Sec. 76. NEW SECTION. 490A.1409 ACTIONS BY ATTORNEY  
4 GENERAL.

5 The attorney general may bring an action to restrain a  
6 foreign limited liability company from transacting business in  
7 this state in violation of this chapter.

8 Sec. 77. NEW SECTION. 490A.1410 REVOCATION OF  
9 REGISTRATION.

10 1. The certificate of registration of a foreign limited  
11 liability company to transact business in this state may be  
12 revoked by the secretary of state upon the occurrence of any  
13 of the following:

14 a. The foreign limited liability company has failed to:

15 (1) Pay any fees or penalties prescribed by this chapter.

16 (2) Appoint and maintain a registered agent as required  
17 under section 490A.1402.

18 (3) Deliver for filing to the secretary of state a report  
19 upon any change in the name or address of the registered  
20 agent.

21 (4) Deliver to the secretary of state for filing articles  
22 of correction required under section 490A.1405.

23 b. A misrepresentation has been made of any material  
24 matter in any application, report, affidavit, or other  
25 documents submitted by the foreign limited liability company  
26 under this subchapter.

27 2. A certificate of registration of a foreign limited  
28 liability company shall not be revoked by the secretary of  
29 state, unless both of the following apply:

30 a. The secretary of state has given the foreign limited  
31 liability company not less than sixty days' notice thereof by  
32 mail addressed to its registered office in this state or, if  
33 the foreign limited liability company fails to appoint and  
34 maintain a registered agent in this state, addressed to the  
35 office required to be maintained pursuant to section

1 490A.1402.

2 b. During the sixty-day period, the foreign limited  
3 liability company has failed to pay such fees or penalties  
4 prescribed by this chapter, to file a report of change  
5 regarding the registered agent, to file any necessary articles  
6 of correction, or to correct any such misrepresentation.

7 3. Upon the expiration of sixty days after the mailing of  
8 the notice, the authority of the foreign limited liability  
9 company to transact business in this state shall cease.

10

SUBCHAPTER XV

11

PROFESSIONAL LIMITED LIABILITY COMPANIES

12

Sec. 78. NEW SECTION. 490A.1501 DEFINITIONS.

13

As used in this division, unless the context otherwise

14

requires:

15

1. "Employees" or "agents" does not include clerks,  
16 stenographers, secretaries, bookkeepers, technicians, or other  
17 persons who are not usually and ordinarily considered by  
18 custom and practice to be practicing a profession nor any  
19 other person who performs all that person's duties for the  
20 professional limited liability company under the direct  
21 supervision and control of one or more managers, employees, or  
22 agents of the professional limited liability company who are  
23 duly licensed in this state to practice a profession which the  
24 limited liability company is authorized to practice in this  
25 state. This chapter does not require any such persons to be  
26 licensed to practice a profession if they are not required to  
27 be licensed under any other law of this state.

28

2. "Foreign professional limited liability company" means  
29 a limited liability company organized under laws other than  
30 the laws of this state for a purpose for which a professional  
31 limited liability company may be organized under this chapter.

32

3. "Licensed" includes registered, certified, admitted to  
33 practice, or otherwise legally authorized under the laws of  
34 this state.

35

4. "Profession" means the profession of certified public

1 accountancy, architecture, chiropractic, dentistry, physical  
2 therapy, psychology, professional engineering, land surveying,  
3 landscape architecture, medicine and surgery, optometry,  
4 osteopathy, osteopathic medicine and surgery, accounting  
5 practitioner, podiatry, speech pathology, audiology,  
6 veterinary medicine, pharmacy, and nursing.

7 5. "Professional limited liability company" means a  
8 limited liability company subject to this subchapter, except a  
9 foreign professional limited liability company.

10 6. "Regulating board" means any board, commission, court,  
11 or governmental authority which, under the laws of this state,  
12 is charged with the licensing, registration, certification,  
13 admission to practice, or other legal authorization of the  
14 practitioners of any profession.

15 7. "Voluntary transfer" includes a sale, voluntary  
16 assignment, gift, pledge, or encumbrance; a voluntary change  
17 of legal or equitable ownership or beneficial interest; or a  
18 voluntary change of persons having voting rights with respect  
19 to any membership interest, except as proxies; but does not  
20 include a transfer of an individual's membership interest or  
21 other property to a guardian or conservator appointed for that  
22 individual or the individual's property.

23 Sec. 79. NEW SECTION. 490A.1502 PURPOSES AND POWERS.

24 A professional limited liability company shall be organized  
25 only for the purpose of engaging in the practice of one  
26 specific profession, or two or more specific professions which  
27 could lawfully be practiced in combination by a licensed  
28 individual or a partnership of licensed individuals, and for  
29 the additional purpose of doing all lawful things which may be  
30 incidental to or necessary or convenient in connection with  
31 the practice of the profession or professions. The articles  
32 of organization of a professional limited liability company  
33 shall state in substance that the purposes for which the  
34 professional limited liability company is organized are to  
35 engage in the general practice of a specified profession or

1 professions, or one or more specified branches or divisions  
2 thereof, and to do all lawful things which may be incidental  
3 to or necessary or convenient in connection with the practice  
4 of the profession or professions.

5 Sec. 80. NEW SECTION. 490A.1503 NAME.

6 The name of a professional limited liability company, the  
7 name of a foreign professional limited liability company or  
8 its name as modified for use in this state, and any fictitious  
9 name or trade name adopted by a professional limited liability  
10 company or foreign professional limited liability company  
11 shall contain the words "Professional Limited Liability  
12 Company" or the abbreviation "P.L.C.", and except for the  
13 addition of such words or abbreviation, shall be a name which  
14 could lawfully be used by a licensed individual or by a  
15 partnership of licensed individuals in the practice in this  
16 state of a profession which the professional limited liability  
17 company is authorized to practice. Each regulating board may  
18 by rule adopt additional requirements as to the corporate  
19 names and fictitious or trade names of professional limited  
20 liability companies and foreign professional limited liability  
21 companies which are authorized to practice a profession which  
22 is within the jurisdiction of the regulating board.

23 Sec. 81. NEW SECTION. 490A.1504 WHO MAY ORGANIZE.

24 Two or more individuals having capacity to contract, each  
25 of whom is licensed to practice a profession in this state  
26 which the professional limited liability company is to be  
27 authorized to practice, may act as organizers of a  
28 professional limited liability company.

29 Sec. 82. NEW SECTION. 490A.1505 PRACTICE BY PROFESSIONAL  
30 LIMITED LIABILITY COMPANY.

31 Notwithstanding any other statute or rule of law, a  
32 professional limited liability company may practice a  
33 profession, but may do so in this state only through members,  
34 managers, employees, and agents who are licensed to practice  
35 the same profession in this state. In its practice of a

1 profession, no professional limited liability company shall do  
2 any act which could not lawfully be done by individuals  
3 licensed to practice the profession which the professional  
4 limited liability company is authorized to practice.

5 Sec. 83. NEW SECTION. 490A.1506 PROFESSIONAL REGULATION.

6 A professional limited liability company shall not be  
7 required to register with or to obtain any license,  
8 registration, certificate, or other legal authorization from a  
9 regulating board in order to practice a profession. Except as  
10 provided in this section, this subchapter does not restrict or  
11 limit in any manner the authority or duties of any regulating  
12 board with respect to individuals practicing a profession  
13 which is within the jurisdiction of the regulating board, even  
14 if the individual is a member, manager, employee, or agent of  
15 a professional limited liability company or foreign  
16 professional limited liability company and practices the  
17 individual's profession through such professional limited  
18 liability company.

19 Sec. 84. NEW SECTION. 490A.1507 RELATIONSHIP AND  
20 LIABILITY TO PERSONS SERVED.

21 This subchapter does not modify any law applicable to the  
22 relationship between an individual practicing a profession and  
23 a person receiving professional services, including, but not  
24 limited to, any liability arising out of such practice and any  
25 law respecting privileged communications. This chapter does  
26 not modify or affect the ethical standards or standards of  
27 conduct of any profession, including, but not limited to, any  
28 standards prohibiting or limiting the practice of the  
29 profession by a limited liability company or prohibiting or  
30 limiting the practice of two or more professions in  
31 combination. All such standards shall apply to the members,  
32 managers, employees, and agents through whom a professional  
33 limited liability company practices any profession in this  
34 state, to the same extent that the standards apply to an  
35 individual practitioner.



1      Sec. 85. NEW SECTION. 490A.1508 ISSUANCE OF MEMBERSHIP  
2 INTERESTS.

3      Membership interests of a professional limited liability  
4 company shall be issued only to individuals who are licensed  
5 in any state to practice in any state a profession which the  
6 professional limited liability company is authorized to  
7 practice. Membership interests of a professional limited  
8 liability company shall not at any time be issued in,  
9 transferred into, or held in joint tenancy, tenancy in common,  
10 or any other form of joint ownership or co-ownership. The  
11 Iowa uniform securities Act shall not be applicable to nor  
12 govern any transaction relating to any membership interests of  
13 a professional limited liability company.

14     Sec. 86. NEW SECTION. 490A.1509 ASSIGNMENT OF MEMBERSHIP  
15 INTERESTS.

16     A member or other person shall not make a voluntary  
17 assignment of a membership interest in a professional limited  
18 liability company to any person, except to the professional  
19 limited liability company or to an individual who is licensed  
20 to practice in this state a profession which the limited  
21 liability company is authorized to practice. The articles of  
22 organization or operating agreement of the professional  
23 limited liability company may contain any additional  
24 provisions restricting the assignment of membership interests.  
25 Unless the articles of organization or an operating agreement  
26 otherwise provide, a voluntary assignment requires the  
27 unanimous consent of the members.

28     Sec. 87. NEW SECTION. 490A.1510 CONVERTIBLE MEMBERSHIP  
29 INTERESTS -- RIGHTS AND OPTIONS.

30     A professional limited liability company shall not create  
31 or issue any interest convertible into a membership interest  
32 of the professional limited liability company. The provisions  
33 of this subchapter with respect to the issuance and transfer  
34 of membership interests apply to the creation, issuance, and  
35 transfer of any rights or options entitling the holder to

1 purchase from a professional limited liability company any  
2 membership interests of the professional limited liability  
3 company. Rights or options shall not be transferable,  
4 whether voluntarily, involuntarily, by operation of law, or in  
5 any other manner. Upon the death of the holder, or when the  
6 holder ceases to be licensed to practice a profession in this  
7 state which the professional limited liability company is  
8 authorized to practice, the rights or options shall expire.

9 Sec. 88. NEW SECTION. 490A.1511 VOTING TRUST -- PROXY.

10 A member of a professional limited liability company shall  
11 not create or enter into a voting trust or any other agreement  
12 conferring upon any other person the right to vote or  
13 otherwise represent any membership interests of a professional  
14 limited liability company, and no such voting trust or  
15 agreement is valid or effective. Any proxy of a member of a  
16 professional limited liability company shall be an individual  
17 licensed to practice a profession in this state which the  
18 professional limited liability company is authorized to  
19 practice. Any provision in any proxy instrument denying the  
20 right of the member to revoke the proxy at any time or for any  
21 period of time is not valid or effective. This section does  
22 not otherwise limit the right of a member to vote by proxy,  
23 but the articles of organization or operating agreement of the  
24 professional limited liability company may further limit or  
25 deny the right to vote by proxy.

26 Sec. 89. NEW SECTION. 490A.1512 REQUIRED PURCHASE BY  
27 PROFESSIONAL LIMITED LIABILITY COMPANY OF ITS OWN MEMBERSHIP  
28 INTERESTS.

29 1. Notwithstanding any other statute or rule of law, a  
30 professional limited liability company shall purchase its own  
31 membership interests as provided in this section; and the  
32 members of a professional limited liability company and their  
33 executors, administrators, legal representatives, and  
34 successors in interest, shall sell and transfer the membership  
35 interests held by them as provided in this section.

1     2. Upon the death of a member, the professional limited  
2 liability company shall immediately purchase all membership  
3 interests held by the deceased member.

4     3. In order to remain a member of a professional limited  
5 liability company, a member shall at all times be licensed to  
6 practice in this state a profession which the professional  
7 limited liability company is authorized to practice. When a  
8 member does not have or ceases to have this qualification, the  
9 professional limited liability company shall immediately  
10 purchase all membership interests held by that member.

11    4. When a person other than a member of record becomes  
12 entitled to have membership interests of a professional  
13 limited liability company transferred into that person's name  
14 or to exercise voting rights, except as a proxy, with respect  
15 to membership interests of the professional limited liability  
16 company, the professional limited liability company shall  
17 immediately purchase the membership interests. Without  
18 limiting the generality of the foregoing, this section shall  
19 be applicable whether the event occurs as a result of  
20 appointment of a guardian or conservator for a member or the  
21 member's property, transfer of membership interests by  
22 operation of law, involuntary transfer of membership  
23 interests, judicial proceedings, execution, levy, bankruptcy  
24 proceedings, receivership proceedings, foreclosure or  
25 enforcement of a pledge or encumbrance, or any other situation  
26 or occurrence. However, this section does not apply to any  
27 voluntary transfer of membership interests as defined in this  
28 chapter.

29    5. Membership interests purchased by the professional  
30 limited liability company under this section shall be  
31 transferred to the professional limited liability company as  
32 of the close of business on the date of the death or other  
33 event which requires purchase. The member and the member's  
34 executors, administrators, legal representatives, or  
35 successors in interest, shall promptly do all things which may

1 be necessary or convenient to cause transfer to be made as of  
2 the transfer date. However, the membership interests shall  
3 promptly be transferred on the books and records of the  
4 professional limited liability company as of the transfer  
5 date, notwithstanding any delay in transferring or  
6 surrendering the membership interests or certificates  
7 representing the membership interests, and the transfer shall  
8 be valid and effective for all purposes as of the close of  
9 business on the transfer date. The purchase price for such  
10 membership interests shall be paid as provided in this  
11 chapter, but the transfer of membership interests to the  
12 professional limited liability company as provided in this  
13 section shall not be delayed or affected by any delay or  
14 default in making payment.

15 6. Notwithstanding subsections 1 through 5, purchase by  
16 the professional limited liability company is not required  
17 upon the occurrence of any event other than death of a member,  
18 if the professional limited liability company is dissolved  
19 within sixty days after the occurrence of the event. The  
20 articles of organization or operating agreement of the  
21 professional limited liability company may provide that  
22 purchase is not required upon the death of a member, if the  
23 professional limited liability company is dissolved within  
24 sixty days after the date of the member's death.

25 7. Unless otherwise provided in the articles of  
26 organization or an operating agreement of the professional  
27 limited liability company or in an agreement among all members  
28 of the professional limited liability company all of the  
29 following apply:

30 a. The purchase price for membership interests shall be  
31 their book value as of the end of the month immediately  
32 preceding the death or other event which requires purchase.  
33 Book value shall be determined from the books and records of  
34 the professional limited liability company in accordance with  
35 the regular method of accounting used by the professional

1 limited liability company, uniformly and consistently applied.  
2 Adjustments to book value shall be made, if necessary, to take  
3 into account work in process and accounts receivable. A final  
4 determination of book value made in good faith by an  
5 independent certified public accountant or firm of certified  
6 public accountants employed by the professional limited  
7 liability company for the purpose shall be conclusive on all  
8 persons.

9 b. The purchase price shall be paid in cash as follows:

10 (1) Upon the death of a member, thirty percent of the  
11 purchase price shall be paid within ninety days after death,  
12 and the balance shall be paid in three equal annual  
13 installments on the first three anniversaries of the death.

14 (2) Upon the happening of any other event referred to in  
15 this section, one-tenth of the purchase price shall be paid  
16 within ninety days after the date of the event, and the  
17 balance shall be paid in three equal annual installments on  
18 the first three anniversaries of the date of the event.

19 c. Interest from the date of death or other event shall be  
20 payable annually on principal payment dates, at the rate of  
21 six percent per annum on the unpaid balance of the purchase  
22 price.

23 d. All persons who are members of the professional limited  
24 liability company on the date of death or other event, and  
25 their executors, administrators, and legal representatives,  
26 shall, to the extent the professional limited liability  
27 company fails to meet its obligations under this section, be  
28 jointly liable for the payment of the purchase price and  
29 interest in proportion to their percentage of ownership of the  
30 professional limited liability company's membership interests,  
31 disregarding membership interests of the deceased or  
32 withdrawing member.

33 e. The part of the purchase price remaining unpaid after  
34 the initial payment shall be evidenced by a negotiable  
35 promissory note, which shall be executed by the professional

1 limited liability company and all members liable for payment.  
2 Any person liable on the note shall have the right to prepay  
3 the note in full or in part at any time.

4 f. If the person making any payment is not reasonably able  
5 to determine which of two or more persons is entitled to  
6 receive a payment, or if the payment is payable to a person  
7 who is unknown, or who is under disability and there is no  
8 person legally competent to receive the payment, or who cannot  
9 be found after the exercise of reasonable diligence by the  
10 person making the payment, it shall be deposited with the  
11 treasurer of state and shall be subject to the provisions of  
12 section 490.1440 with respect to funds deposited with the  
13 treasurer of state upon the voluntary or involuntary  
14 dissolution of a business corporation.

15 8. Notwithstanding the other provisions of this section, no  
16 part of the purchase price shall be required to be paid until  
17 the certificates, if any, representing the membership  
18 interests have been surrendered to the professional limited  
19 liability company.

20 9. Notwithstanding the other provisions of this section,  
21 payment of any part of the purchase price for membership  
22 interests of a deceased member shall not be required until the  
23 executor or administrator of the deceased member provides any  
24 indemnity, release, or other document from any taxing  
25 authority, which is reasonably necessary to protect the  
26 professional limited liability company against liability for  
27 estate, inheritance, and death taxes.

28 10. The articles of organization or an operating agreement  
29 of the professional limited liability company or an agreement  
30 among all members of a professional limited liability company  
31 may provide for a different purchase price, a different method  
32 of determining the purchase price, a different interest rate  
33 or no interest, and other terms, conditions, and schedules of  
34 payment.

35 11. The articles of organization or an operating agreement

1 of the professional limited liability company or an agreement  
2 among all members of a professional limited liability company  
3 may provide for the optional or mandatory purchase of its own  
4 membership interests by the professional limited liability  
5 company in other situations, subject to any applicable law  
6 regarding such a purchase.

7 Sec. 90. NEW SECTION. 490A.1513 CERTIFICATES  
8 REPRESENTING MEMBERSHIP INTERESTS.

9 Each certificate representing membership interests of a  
10 professional limited liability company shall state in  
11 substance that the certificate represents membership interests  
12 in a professional limited liability company and is not  
13 transferable except as expressly provided in this chapter and  
14 in the articles of organization or an operating agreement of  
15 the professional limited liability company.

16 Sec. 91. NEW SECTION. 490A.1514 MANAGEMENT.

17 All managers of a professional limited liability company  
18 shall at all times be individuals who are licensed to practice  
19 a profession in this state which the limited liability company  
20 is authorized to practice. A person who is not licensed shall  
21 have no authority or duties in the management or control of  
22 the limited liability company. If a manager ceases to have  
23 this qualification, the manager shall immediately and  
24 automatically cease to hold such management position.

25 Sec. 92. NEW SECTION. 490A.1515 MERGER.

26 A professional limited liability company shall not merge  
27 with any entity except another professional limited liability  
28 company subject to this subchapter or a professional  
29 corporation subject to chapter 496C. Merger is not permitted  
30 unless the surviving or new professional limited liability  
31 company is a professional limited liability company which  
32 complies with all requirements of this subchapter.

33 Sec. 93. NEW SECTION. 490A.1516 DISSOLUTION OR  
34 LIQUIDATION.

35 Violation of any provision of this subchapter by a

1 professional limited liability company or any of its members  
2 or managers shall be cause for its involuntary dissolution, or  
3 liquidation of its assets and business by the district court,  
4 as provided in section 490A.1302. Upon the death of the last  
5 remaining member of a professional limited liability company,  
6 or when the last remaining member is not licensed or ceases to  
7 be licensed to practice a profession in this state which the  
8 professional limited liability company is authorized to  
9 practice, or when any person other than the member of record  
10 becomes entitled to have all membership interests of the last  
11 remaining member of the professional limited liability company  
12 transferred into that person's name or to exercise voting  
13 rights, except as a proxy, with respect to such membership  
14 interests, the professional limited liability company shall  
15 not practice any profession and it shall be promptly  
16 dissolved. However, if prior to dissolution all outstanding  
17 membership interests of the professional limited liability  
18 company are acquired by one or more persons licensed to  
19 practice a profession in this state which the professional  
20 limited liability company is authorized to practice, the  
21 professional limited liability company need not be dissolved  
22 and may practice the profession as provided in this  
23 subchapter.

24 Sec. 94. NEW SECTION. 490A.1517 FOREIGN PROFESSIONAL  
25 LIMITED LIABILITY COMPANY.

26 A foreign professional limited liability company may  
27 practice a profession in this state if it complies with the  
28 provisions of this chapter and this subchapter. The secretary  
29 of state may prescribe forms for this purpose. A foreign  
30 professional limited liability company may practice a  
31 profession in this state only through members, managers,  
32 employees, and agents who are licensed to practice the  
33 profession in this state. The provisions of this subchapter  
34 with respect to the practice of a profession by a professional  
35 limited liability company apply to a foreign professional



1 limited liability company. This subchapter does not prohibit  
2 the practice of a profession in this state by an individual  
3 who is a member, manager, employee, or agent of a foreign  
4 professional limited liability company, if the individual  
5 could lawfully practice the profession in this state in the  
6 absence of any relationship to a foreign professional limited  
7 liability company. The preceding sentence applies regardless  
8 of whether or not the foreign professional limited liability  
9 company is authorized to practice a profession in this state.

10 Sec. 95. NEW SECTION. 490A.1518 LIMITED LIABILITY  
11 COMPANIES ORGANIZED UNDER OTHER LAWS.

12 This chapter does not apply to or interfere with the  
13 practice of any profession by or through any professional  
14 limited liability company organized after the effective date  
15 of this Act under any other law of this state or any other  
16 state or country, if the practice is lawful under any other  
17 statute or rule of law of this state. Any such professional  
18 limited liability company may voluntarily elect to adopt this  
19 subchapter and become subject to its provisions, by amending  
20 its articles of organization to be consistent with all  
21 provisions of this subchapter and by stating in its amended  
22 articles of organization that the limited liability company  
23 has voluntarily elected to adopt this subchapter. Any limited  
24 liability company organized under any law of any other state  
25 or country may become subject to the provisions of this  
26 subchapter by complying with all provisions of this subchapter  
27 with respect to foreign professional limited liability  
28 companies.

29 SUBCHAPTER XVI

30 PROVISIONS

31 Sec. 96. NEW SECTION. 490A.1601 PROPERTY TITLE RECORDS.

32 When by merger or amendment to the articles of organization  
33 the name of any domestic or foreign limited liability company  
34 is changed, a certificate reciting the change or succession  
35 shall be issued by the secretary of state upon request and

6/1

1 payment of any applicable fee and the certificate may be  
 2 admitted to record upon payment of any applicable fee in any  
 3 recording office within the jurisdiction of which any property  
 4 of the limited liability company is located in order to  
 5 maintain the continuity of title records, but no transfer tax  
 6 shall be due thereon. If a limited liability company or other  
 7 entity is not a domestic limited liability company or other  
 8 entity or a foreign limited liability company or other entity  
 9 authorized to do business in this state, a similar certificate  
 10 by any competent authority of the state of organization or  
 11 formation of the limited liability company or other entity may  
 12 be admitted to record in any recording office within the  
 13 jurisdiction of which any property of the limited liability  
 14 company or other entity is located in order to maintain the  
 15 continuity of title records upon payment of any applicable  
 16 fee, but no transfer tax shall be due thereon.

17 EXPLANATION

18 This bill provides for the creation and operation of  
 19 limited liability companies in Iowa. Limited liability  
 20 companies have the tax characteristics of partnerships and the  
 21 limited liability aspects of corporations for the members of  
 22 the company, regardless of whether they are involved in the  
 23 management of the company.

24 The bill provides procedures for creating limited liability  
 25 companies, and for managing, merging with other entities,  
 26 dissolution of, and other aspects of a limited liability  
 27 company's operation.

28 The limited liability Act is structured similar to chapter  
 29 490 regarding business corporations.

30 Additional conforming amendments to the Code may be  
 31 necessary to fully implement the provisions of this bill.

32  
 33  
 34  
 35

HOUSE FILE 2369

AN ACT

AUTHORIZING LIMITED LIABILITY COMPANIES IN IOWA AND INCLUDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SUBCHAPTER I  
GENERAL PROVISIONS

PART 1

Section 1. Section 4.1, subsection 13, Code 1991, is amended to read as follows:

13. PERSON. Unless otherwise provided by law, "person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

Sec. 2. Section 172C.1, Code Supplement 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 13A. "Limited liability company" means a limited liability company as defined in section 490A.102.

Sec. 3. Section 172C.1, subsection 16, Code Supplement 1991, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. A limited liability company organized in the United States or elsewhere, beneficial ownership of which is held, directly or indirectly, by nonresident alien individuals.

Sec. 4. Section 172C.1, subsection 17, Code Supplement 1991, is amended to read as follows:

17. "Processor" means a person, firm, corporation, limited liability company, or limited partnership, which alone or in conjunction with others, directly or indirectly controls the manufacturing, processing or preparation for sale of beef or pork products having a total annual wholesale value of ten

million dollars or more. Any person, firm, corporation, limited liability company, or limited partner with a ten percent or greater interest in another person, firm, corporation, limited liability company, or limited partnership involved in the manufacturing, processing or preparation for sale of beef or pork products having a total annual wholesale value of ten million dollars or more shall also be considered a processor.

Sec. 5. Section 172C.2, unnumbered paragraph 1, Code 1991, is amended to read as follows:

In order to preserve free and private enterprise, prevent monopoly, and protect consumers, it is unlawful for any processor of beef or pork or limited partnership in which a processor holds partnership shares as a general partner or partnership shares as a limited partner, or limited liability company in which a processor is a member, to own, control or operate a feedlot in Iowa in which hogs or cattle are fed for slaughter. In addition, a processor shall not directly or indirectly control the manufacturing, processing, or preparation for sale of pork products derived from swine if the processor contracted for the care and feeding of the swine in this state. However, this section does not apply to a cooperative association organized under chapter 497, 498, or 499, if the cooperative association contracts for the care and feeding of swine with a member of the cooperative association who is actively engaged in farming. This section does not apply to an association organized as a cooperative in which another cooperative association organized under chapter 497, 498, or 499 is a member, if the association contracts with a member which is a cooperative association organized under chapter 497, 498, or 499, which contracts for the care and feeding of swine with a member of the cooperative who is actively engaged in farming. This section shall not preclude a processor or limited partnership from contracting for the purchase of hogs or cattle, provided that where the contract

sets a date for delivery which is more than twenty days after the making of the contract it shall:

Sec. 6. NEW SECTION. 172C.3A LIMITED LIABILITY COMPANIES - PROHIBITIONS.

A limited liability company shall not, either directly or indirectly, hold or acquire or otherwise obtain, lease, or have a legal or beneficial interest in any agricultural land in this state. A limited liability company shall not be a shareholder in a corporation, a limited partner in a limited partnership, or beneficiary of a trust which holds or leases any agricultural land in this state. A limited liability company violating the provisions of this section shall be subject to the same penalty as provided in section 172C.4. The courts of this state may prevent and restrain violators of this section through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent or restrain violators of this section.

Sec. 7. Section 422.32, subsection 1, Code 1991, is amended to read as follows:

1. The word "corporation" includes joint stock companies, and associations organized for pecuniary profit, other than limited liability companies, and publicly traded partnerships taxed as corporations under the Internal Revenue Code.

Sec. 8. NEW SECTION. 490A.100 SHORT TITLE.

This chapter is entitled and may be cited as the "Iowa Limited Liability Company Act."

Sec. 9. NEW SECTION. 490A.101 RESERVATION OF POWER TO AMEND OR REPEAL.

The general assembly has the power to amend or repeal all or part of this chapter at any time and all domestic and foreign limited liability companies subject to this chapter shall be governed by the amendment or repeal.

Sec. 10. NEW SECTION. 490A.102 DEFINITIONS.

In this chapter, unless the context otherwise requires:

1. "Articles of organization" means documents filed under section 490A.301 for the purpose of forming a limited liability company and includes amended and restated articles of organization, and articles of merger.

2. "Bankruptcy" means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code.

3. "Capital contribution" means any cash, property, or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in the capacity of a member.

4. "Constituent entity" means each limited liability company, limited partnership, or corporation which is party to a plan of merger pursuant to subchapter XII.

5. "Corporation" means a domestic corporation formed under the law of this state or subject to the law of this state, or a foreign corporation as defined in this chapter.

6. "Court" includes every court having jurisdiction of the case.

7. "Distribution" means a direct or indirect transfer of money or other property, or incurrance of indebtedness by a limited liability company to or for the benefit of its members in respect of their interests.

8. "Entity" includes corporation and foreign corporation; nonprofit corporation; profit and nonprofit unincorporated association; business trust, estate, partnership, limited liability company, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.

9. "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

10. "Foreign limited liability company" means a limited liability company organized under a law other than the law of this state.

11. "Foreign limited partnership" means a limited partnership organized under a law other than the law of this state.

12. "Individual" includes the estate of an incompetent, a ward, or a deceased individual.

13. "Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated association having two or more members, and that is organized under or subject to this chapter.

14. "Limited partnership" means a limited partnership organized under the law of this state or a foreign limited partnership as defined in this section.

15. "Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement.

16. "Member" means a person with a membership interest in a limited liability company.

17. "Membership interest" or "interest" means a member's share of the profits and the losses of the limited liability company and the right to receive distributions of the limited liability company's assets, and any right to vote or participate in management.

18. "Operating agreement" means any agreement of the members as to the affairs of a limited liability company and the conduct of its business.

19. "Person" has the same meaning as specified in section 4.1, subsection 13.

20. "Principal office" means the office, in or out of this state, where the principal executive offices of a domestic or foreign limited liability company are located.

21. "Secretary of state" means the Iowa secretary of state.

22. "State," when referring to a part of the United States, includes a state, commonwealth, and their agencies and

governmental subdivisions; and a territory or insular possession, and their agencies and governmental subdivisions, of the United States.

23. "Surviving entity" means the constituent entity surviving the merger, as identified in the articles of merger provided for in subchapter XII.

24. "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

PART 2

Sec. 11. NEW SECTION. 490A.120 PILING REQUIREMENTS.

1. A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.

2. The document must be one that this chapter requires or permits to be filed with the secretary of state.

3. The document must contain the information required by this chapter. It may contain other information as well.

4. The document must be typewritten or printed. The typewritten or printed portion shall be in black. Manually signed photocopies, or other reproduced copies, including facsimiles and other electronically or computer-generated copies of typewritten or printed documents may be filed.

5. The document must be in the English language. A limited liability company name need not be in English if written in English letters or Arabic or Roman numerals. The articles of organization, duly authenticated by the official having custody of the applicable records in the state or country under whose law the limited liability company is formed, which are required of foreign limited liability companies, need not be in English if accompanied by a reasonably authenticated English translation.

6. The document must be executed by one of the following persons:

a. A manager, or if no managers have been selected, by any member of the limited liability company.

b. If the limited liability company has not been formed, by the person forming the limited liability company.

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

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

8. If, pursuant to any provision of this chapter, the secretary of state has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

9. The document must be delivered to the secretary of state for filing and must be accompanied by the correct filing fee.

**Sec. 12. NEW SECTION. 490A.121 FILING DUTY OF SECRETARY OF STATE.**

1. If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 490A.120, the secretary of state shall file it and issue any necessary certificate.

2. The secretary of state files a document by stamping or otherwise endorsing "filed", together with the secretary of state's name and official title and the date and time of receipt, on both the document and the receipt for the filing fee, and recording the document in the records of the secretary of state. After filing a document, and except as provided in section 490A.503, the secretary of state shall deliver the document, with the filing fee receipt, or acknowledgment of receipt if no fee is required, attached, to the domestic or foreign limited liability company or its representative.

3. If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or

foreign limited liability company or its representative within ten days after the document was received by the secretary of state, together with a brief, written explanation of the reason for the refusal.

4. The secretary of state's duty to file documents under this section is ministerial. Filing or refusing to file a document does not:

a. Affect the validity or invalidity of the document in whole or part.

b. Relate to the correctness or incorrectness of information contained in the document.

c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**Sec. 13. NEW SECTION. 490A.122 EFFECTIVE TIME AND DATE OF DOCUMENTS.**

1. Except as provided in subsection 2 and section 490A.123, subsection 3, a document accepted for filing is effective at the later of the following times:

a. At the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document.

b. At the time specified in the document as its effective time on the date it is filed.

2. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

**Sec. 14. NEW SECTION. 490A.123 CORRECTING FILED DOCUMENTS.**

1. A domestic or foreign limited liability company may correct a document filed by the secretary of state if the document satisfies one or both of the following requirements:

- a. Contains an incorrect statement.
  - b. Was defectively executed, attested, sealed, verified, or acknowledged.
2. A document is corrected by complying with both of the following:
- a. By preparing articles of correction that satisfy all of the following requirements:
    - (1) Describe the document, including its filing date, or attach a copy of it to the articles.
    - (2) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective.
    - (3) Correct the incorrect statement or defective execution.
  - b. By delivering the articles to the secretary of state for filing.
3. Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Sec. 15. NEW SECTION. 490A.124 FEES.

1. The secretary of state shall collect the following fees when documents described in this subsection are delivered to the secretary's office for filing:
- a. Articles of organization ..... \$ 50
  - b. Application for use of indistinguishable name .. \$ 10
  - c. Application for reserved name ..... \$ 10
  - d. Notice of transfer of reserved name ..... \$ 10
  - e. Application for registered name per month or part thereof ..... \$ 2
  - f. Application for renewal of registered name ..... \$ 20
  - g. Statement of change of registered agent or registered office or both ..... No fee
  - h. Agent's statement of change of registered office for each affected limited liability company .... No fee

- i. Agent's statement of resignation ..... No fee
- j. Amendment of articles of organization ..... \$ 50
- k. Restatement of articles of organization with amendment of articles ..... \$ 50
  - l. Articles of merger ..... \$ 50
- m. Articles of dissolution ..... \$ 5
- n. Articles of revocation of dissolution ..... \$ 5
- o. Certificate of administrative dissolution ..... No fee
- p. Application for reinstatement following administrative dissolution ..... \$ 5
- q. Certificate of reinstatement ..... No fee
- r. Certificate of judicial dissolution ..... No fee
- s. Application for certificate of authority ..... \$ 100
- t. Application for amended certificate of authority ..... \$ 100
- u. Application for certificate of withdrawal ..... \$ 10
- v. Certificate of revocation of authority to transact business ..... No fee
- w. Articles of correction ..... \$ 5
- x. Application for certificate of existence or authorization ..... \$ 5
- y. Any other document required or permitted to be filed by this chapter ..... \$ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- a. One dollar a page for copying.
- b. Five dollars for the certificate.

Sec. 16. NEW SECTION. 490A.125 FORMS.

1. The secretary of state may prescribe and furnish on request forms including but not limited to the following:
  - a. An application for a certificate of existence.
  - b. A foreign limited liability company's application for a certificate of authority to transact business in this state.
  - c. A foreign limited liability company's application for a certificate of withdrawal.

If the secretary of state so requires, use of these listed forms prescribed by the secretary of state is mandatory.

2. The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

Sec. 17. NEW SECTION. 490A.126 APPEAL FROM SECRETARY OF STATE'S REPUSAL TO FILE DOCUMENT.

1. If the secretary of state refuses to file a document delivered to the secretary's office for filing, the domestic or foreign limited liability company may appeal the refusal, within thirty days after the return of the document, to the district court for the county in which the limited liability company's principal office or, if none in this state, its registered office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

2. The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

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

Sec. 18. NEW SECTION. 490A.127 EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT.

A certificate attached to a copy of a document filed by the secretary of state, bearing the secretary of state's signature, which may be in facsimile, and the seal of the secretary of state, is conclusive evidence that the original document is on file with the secretary of state.

Sec. 19. NEW SECTION. 490A.128 CERTIFICATE OF EXISTENCE.

1. Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic limited liability company or a certificate of authorization for a foreign limited liability company.

2. A certificate of existence or authorization must set forth all of the following:

- a. The domestic limited liability company's name or the foreign limited liability company's name used in this state.

- b. That one of the following applies:

- (1) If it is a domestic limited liability company, that it is duly organized under the law of this state, the date of its organization, and the period of its duration.

- (2) If it is a foreign limited liability company, that it is authorized to transact business in this state.

- c. That all fees required by this chapter have been paid.

- d. That articles of dissolution have not been filed.

- e. Other facts of record in the office of the secretary of state that may be requested by the applicant.

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

Sec. 20. NEW SECTION. 490A.129 PENALTY FOR SIGNING FALSE DOCUMENT.

1. A person commits an offense if that person signs a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine of not to exceed one thousand dollars.

Sec. 21. NEW SECTION. 490A.130 SECRETARY OF STATE -- POWERS.



The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this chapter.

SUBCHAPTER 11  
PURPOSES AND POWERS

Sec. 22. NEW SECTION. 490A.201 PURPOSES.

1. A limited liability company organized under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of organization.

2. A limited liability company engaging in a business that is subject to regulation under another statute of this state may organize under this chapter only if permitted by, and subject to all limitations of, the other statute.

Sec. 23. NEW SECTION. 490A.202 POWERS.

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

1. Sue and be sued, complain, and defend in its name.
2. Transact its business, carry on its operations, and have and exercise the powers granted by this chapter in any state and in any foreign country.
3. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.
4. Sell, convey, transfer, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.
5. Purchase, receive, subscribe for, or otherwise acquire and hold, to sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of any other person.

6. Make contracts and guaranties, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by mortgage, deed of trust, or pledge of any of its property, franchises, or income.

7. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

8. Elect and appoint managers, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit.

9. Pay pensions and establish pension plans, pension trusts, profit sharing plans, and benefit and incentive plans for all or any of its current or former members, managers, employees, and agents.

10. Make donations for the public welfare or for religious, charitable, scientific, or educational purposes.

11. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the limited liability company.

12. Cease its activities and dissolve.

13. Be a promoter, stockholder, partner, member, associate, agent, or manager of any corporation, partnership, limited liability company, joint venture, trust, or other entity.

14. Make and amend operating agreements, not inconsistent with its articles of organization or with the law of this state, for the administration and regulation of its affairs.

15. Transact any lawful business that a corporation, partnership, or other entity may conduct under the law of this state subject, however, to any and all laws and restrictions that govern or limit the conduct of such activity by such corporation, partnership, or other entity.

16. Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organized.

SUBCHAPTER III  
FORMATION

Sec. 24. NEW SECTION. 490A.301 FORMATION.

One or more persons may form a limited liability company by executing and delivering articles of organization to the secretary of state for filing. Such person or persons need not be members of the limited liability company after formation has occurred.

Sec. 25. NEW SECTION. 490A.302 LIABILITY.

All persons purporting to act as or on behalf of a limited liability company, knowing there is no organization under this chapter, are jointly and severally liable for all liabilities created while so acting.

Sec. 26. NEW SECTION. 490A.303 ARTICLES OF ORGANIZATION.

1. The articles of organization must set forth all of the following:

- a. A name for the limited liability company that satisfies the requirements of section 490A.401.
- b. The street address of the limited liability company's initial registered office and the name of its initial registered agent at that office.
- c. The street address of the principal office of the limited liability company, which may be the same as the registered office, but need not be within this state.
- d. The period of its duration which shall not be perpetual.

2. The articles of organization may set forth any other provision not inconsistent with law, including, but not limited to, a statement of whether there are limitations on the authority of members to bind the limited liability company.

3. The articles of organization need not set forth any of the powers enumerated in this chapter.

4. The articles of organization or an operating agreement may provide that a member's interest in a limited liability

company may be evidenced by a certificate of membership interest issued by the limited liability company and may also provide for assignment or transfer of any membership interest represented by such a certificate and make other provisions with respect to such a certificate.

SUBCHAPTER IV  
NAMES

Sec. 27. NEW SECTION. 490A.401 NAME.

1. A limited liability company name must contain the words "Limited Company" or the abbreviation "L.C." or words or abbreviations of like import in another language.

2. A limited liability company name shall not contain any of the following:

- a. The words "Corporation", "Incorporated", "Limited Partnership" or the abbreviations "Corp.", "Inc." or "L.P." or words or abbreviations of like import in another language.
- b. Any word or phrase the use of which is prohibited by law for such a limited liability company.

3. Except as authorized by subsections 4 and 5, a limited liability company name must be distinguishable upon the records of the secretary of state from all of the following:

- a. The name of a limited liability company, limited partnership, or corporation organized under the law of this state or registered as a foreign limited liability company, foreign limited partnership, or foreign corporation in this state.
- b. A name reserved in the manner provided under the law of this state.
- c. The fictitious name adopted by a foreign corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this state, because its real name is unavailable.
- d. The corporate name of a nonprofit corporation incorporated or authorized to transact business in this state.

4. A limited liability company may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary's records from one or more of the names described in subsection 3. The secretary of state shall authorize use of the name applied for if one of the following conditions applies:

a. The other entity consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited liability company.

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

5. A limited liability company may use the name, including the fictitious name, of another entity that is used in this state if the other entity is formed under the law of this state or is authorized to transact business in this state and the proposed user limited liability company meets one of the following conditions:

a. Has merged with the other entity.  
b. Has been formed by reorganization of the other entity.  
c. Has acquired all or substantially all of the assets, including the name, of the other entity.

6. This chapter does not control the use of fictitious names; however, if a limited liability company uses a fictitious name in this state it shall deliver to the secretary of state for filing a certified copy of the resolution of the limited liability company adopting the fictitious name.

Sec. 28. NEW SECTION. 490A.402 RESERVED NAME.

1. A person may reserve the exclusive use of a limited liability company name, including a fictitious name for a foreign limited liability company whose limited liability

company name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the limited liability company name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty-day period.

2. The owner of a reserved limited liability company name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

SUBCHAPTER V

REGISTERED OFFICE AND AGENT

Sec. 29. NEW SECTION. 490A.501 REGISTERED OFFICE AND REGISTERED AGENT.

Each limited liability company must continuously maintain in this state each of the following:

1. A registered office that may be the same as any of its places of business.

2. A registered agent who may be any of the following:

a. An individual who is a resident of this state and whose business office is identical with the registered office.

b. A domestic corporation, domestic limited liability company, or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign corporation, foreign limited liability company, or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

Sec. 30. NEW SECTION. 490A.502 CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT.

1. Each limited liability company may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth the following:

- a. The name of the limited liability company or foreign limited liability company.
  - b. The street address of its current registered office.
  - c. If the current registered office is to be changed, the street address of the new registered office.
  - d. The name of its current registered agent.
  - e. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent either on the statement or attached to it, to the appointment.
  - f. That after the change or changes are made, the street address of its registered office and the business office of its registered agent will be identical.
2. A statement of change shall forthwith be filed in the office of the secretary of state by a limited liability company whenever its registered agent dies, resigns, or ceases to satisfy the requirements of section 490A.501.
  3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required in subsection 1 for each limited liability company, or a single statement for all limited liability companies named in the notice, except that it need be signed only by the registered agent or agents and need not be responsive to subsection 1, paragraph "e", and must recite that a copy of the statement has been mailed to each limited liability company named in the notice.

Sec. 31. NEW SECTION. 490A.503 RESIGNATION OF REGISTERED AGENT.

1. A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing the signed original and two exact copies or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued. After filing the statement the secretary of

state shall mail one copy to the registered office, if not discontinued, and the other copy to the limited liability company at its principal office.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Sec. 32. NEW SECTION. 490A.504 SERVICE ON LIMITED LIABILITY COMPANY.

1. A domestic or foreign limited liability company's registered agent is the limited liability company's agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company.
2. If a limited liability company has no registered agent, or the agent cannot with reasonable diligence be served, the limited liability company may be served by registered or certified mail, return receipt requested, addressed to the limited liability company at its principal office. Service is perfected under this subsection at the earliest of:
  - a. The date the limited liability company receives the mail.
  - b. The date shown on the return receipt, if signed on behalf of the limited liability company.
  - c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
3. This section does not prescribe the only means, or necessarily the required means, of serving a domestic or foreign limited liability company.

SUBCHAPTER VI

RELATIONSHIP OF A

LIMITED LIABILITY COMPANY

AND ITS MEMBERS TO THIRD PERSONS

- Sec. 33. NEW SECTION. 490A.601 LIABILITY TO THIRD PARTIES.

Except as otherwise provided by this chapter or as expressly provided in the articles of organization, no member or manager of a limited liability company is personally liable for the acts or debts of the limited liability company.

Sec. 34. NEW SECTION. 490A.602 PARTIES TO ACTIONS.

A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company, except where either of the following applies:

1. The object is to enforce a member's right against or liability to the limited liability company.
2. As provided in subchapter 10.

SUBCHAPTER VII

RELATIONSHIP OF MEMBERS TO EACH OTHER

Sec. 35. NEW SECTION. 490A.701 VOTING RIGHTS OF MEMBERS.

1. Unless otherwise provided in the articles of organization or an operating agreement, the members of a limited liability company shall vote in proportion to their capital contributions to the limited liability company, as adjusted from time to time to reflect any additional contributions or withdrawals.

2. Unless otherwise provided in the articles of organization or an operating agreement, a unanimous vote shall be required to approve the following matters:

- a. The dissolution and winding up of the limited liability company.
- b. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company.
- c. Merger of the limited liability company with another entity.
- d. An amendment to the articles of organization or operating agreement.

Sec. 36. NEW SECTION. 490A.702 MANAGEMENT OF LIMITED LIABILITY COMPANY.

Unless the articles of organization or an operating agreement provides for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members.

Sec. 37. NEW SECTION. 490A.703 OPERATING AGREEMENT.

1. The members of a limited liability company may enter into an operating agreement to establish or regulate the affairs of the limited liability company, the conduct of its business and the relations of its members. An operating agreement may contain any provisions regarding the affairs of a limited liability company and the conduct of its business to the extent that such provisions are not inconsistent with law or the articles of organization.

2. An operating agreement must initially be agreed to by all of the members. Unless the articles of organization specifically permit otherwise, an operating agreement shall be in writing.

3. A court may enforce an operating agreement by injunction or by other relief that the court determines to be fair and appropriate in the circumstances. As an alternative to injunctive or other equitable relief, when the provisions of section 490A.1302 are applicable, the court may order dissolution of the limited liability company.

Sec. 38. NEW SECTION. 490A.704 WITHDRAWAL OF MEMBER.

A member may withdraw from a limited liability company at the time or upon the happening of events specified in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement does not specify in writing the time or the events upon the happening of which a member may withdraw, a member may withdraw upon not less than six months' prior written notice to each member at the member's address on the books of the limited liability company.

Sec. 39. NEW SECTION. 490A.705 MANAGEMENT OF A LIMITED LIABILITY COMPANY BY A MANAGER OR MANAGERS.

1. The articles of organization or an operating agreement of a limited liability company may apportion responsibility for managing a limited liability company among one or more managers who may be, but need not be, members.

2. The articles of organization or an operating agreement may prescribe qualifications for managers.

3. The number of managers shall be fixed by or in the manner provided in the articles of organization or an operating agreement. The number of managers may be increased or decreased by amendment to, or in the manner provided in, the articles of organization or an operating agreement.

4. Unless otherwise provided in the articles of organization or an operating agreement, managers shall be elected by the majority vote of the members.

5. Unless otherwise provided in the articles of organization or an operating agreement, any vacancy occurring in the office of manager shall be filled by a majority vote of the members.

6. All managers or any lesser number may be removed in the manner provided in the articles of organization or an operating agreement. If the articles of organization or an operating agreement does not provide for the removal of managers, then all managers or any lesser number may be removed with or without cause by a majority vote of the members.

7. Unless otherwise provided in the articles of organization or an operating agreement, if the limited liability company has more than one manager, all decisions of the managers shall be by majority vote of the managers.

8. Unless the articles of organization or an operating agreement require a different number, a quorum for a meeting of managers consists of a majority of the managers.

Sec. 40. NEW SECTION. 490A.706 GENERAL STANDARDS OF CONDUCT FOR MANAGERS.

1. A manager shall discharge that manager's duties as a manager in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner the manager believes to be in the best interests of the limited liability company.

2. In discharging the manager's duties, a manager is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

a. One or more managers or employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matters presented.

b. Legal counsel, public accountants, or other persons as to matters the manager reasonably believes are within the person's professional or expert competence.

c. A committee of managers of which the manager is not a member if the manager reasonably believes the committee merits confidence.

3. A manager is not acting in good faith if the manager has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection 2 unwarranted.

4. A manager is not liable for any action taken as a manager or any failure to take any action, if the manager performed the duties of the manager's office in compliance with this section, or if, and to the extent that, liability for any such action or failure to act has been limited by the articles of organization pursuant to section 490A.707.

Sec. 41. NEW SECTION. 490A.707 LIMITATION OF LIABILITY OF MANAGERS.

The articles of organization may contain a provision eliminating or limiting the personal liability of a manager to the limited liability company or its members for monetary damages for breach of fiduciary duty as a manager, if the provision does not eliminate or limit the liability of a manager for any of the following:

1. Breach of the manager's duty of loyalty to the limited liability company or its members.
2. Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law.
3. Transaction from which the manager derives an improper personal benefit or a wrongful distribution in violation of section 490A.807.

A provision shall not eliminate or limit the liability of a manager for an act or omission occurring prior to the date when the provision in the articles of organization becomes effective.

Sec. 42. NEW SECTION. 490A.708 BUSINESS TRANSACTIONS OF MANAGERS WITH THE LIMITED LIABILITY COMPANY.

1. A conflict of interest transaction is a transaction with the limited liability company in which a manager of the limited liability company has a direct or indirect interest. A conflict of interest transaction is not voidable by the limited liability company solely because of the manager's interest in the transaction if any one of the following is true:

- a. The material facts of the transaction and the manager's interest were disclosed or known to the managers or a committee of managers and the managers or a committee of managers authorized, approved, or ratified the transaction.
- b. The material facts of the transaction and the manager's interest were disclosed or known to the members entitled to vote and they authorized, approved, or ratified the transaction.
- c. The transaction was fair to the limited liability company.

2. For purposes of this section, a manager of the limited liability company has an indirect interest in a transaction if either:

- a. Another entity in which the manager has a material financial interest or in which the manager is a general partner is a party to the transaction.

b. Another entity of which the manager is a director, officer, manager, or trustee is a party to the transaction and the transaction is or should be considered by the limited liability company.

3. For purposes of subsection 1, paragraph "a", a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the managers or of the committee of managers, who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single manager. If a majority of the managers who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a manager with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection 1, paragraph "a", if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

4. For purposes of subsection 1, paragraph "b", a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the members entitled to vote under this subsection. Interests owned by or voted under the control of a manager who has a direct or indirect interest in the transaction, and interests owned by or voted under the control of an entity described in subsection 2, paragraph "a", shall not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection 1, paragraph "b". The vote of those members, however, is counted in determining whether the transaction is approved under other sections of this chapter. Members, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitute a quorum for the purpose of taking action under this section.

Sec. 43. NEW SECTION. 490A.709 INFORMATION AND RECORDS.

1. Each limited liability company shall keep at its principal office the following:
  - a. A current list of the full name and last known business address of each member and manager.
  - b. A copy of the articles of organization and all articles of amendment thereto.
  - c. Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years.
  - d. Copies of any then-effective written operating agreement and of any financial statements of the limited liability company for the three most recent years.
  - e. Unless contained in a written operating agreement, a writing setting out:
    - (1) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each member and which each member has agreed to contribute.
    - (2) The times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made.
    - (3) Any right of a member to receive, or of the limited liability company to make, distributions to a member which include a return of all or any part of the member's contribution.
    - (4) Any events upon the happening of which the limited liability company is to dissolve and its affairs be wound up.
2. Each member has the right, upon reasonable request and subject to reasonable standards as may be set forth in an operating agreement, to do any of the following:
  - a. Inspect and copy any of the limited liability company records required to be maintained by this section; and
  - b. Obtain from the manager or managers, or if the limited liability company has no manager or managers, from any member or other person with access to such information, from time to time upon reasonable demand any of the following:

(1) True and full information regarding the state of the business and financial condition of the limited liability company.

(2) Promptly after it becomes available, a copy of the limited liability company's federal, state, and local income tax returns for each year.

(3) Other information regarding the affairs of the limited liability company as is just and reasonable.

#### SUBCHAPTER VIII

#### FINANCE

#### Sec. 44. NEW SECTION. 490A.801 CONTRIBUTIONS.

1. The contributions of a member to a limited liability company may be in cash, property, or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services.
2. Unless otherwise provided in the articles of organization or an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or any other reason. If a member does not make the contribution, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the value of the contribution that has not been made as stated in the limited liability company records required to be kept by section 490A.709. A promise by a member to contribute to a limited liability company is not enforceable unless set out in a writing signed by the member.
3. Unless otherwise provided in the articles of organization or an operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit or otherwise acts in



reliance on the original obligation may enforce the original obligation.

Sec. 45. NEW SECTION. 490A.802 SHARING OF PROFITS AND LOSSES.

The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement do not so provide in writing, profits and losses shall be allocated on the basis of their respective capital contributions, as adjusted from time to time to reflect any additional contributions or withdrawals.

Sec. 46. NEW SECTION. 490A.803 SHARING OF DISTRIBUTIONS.

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement do not so provide in writing, distributions shall be made on the basis of their respective capital contributions, as adjusted from time to time to reflect any additional contributions or withdrawals.

Sec. 47. NEW SECTION. 490A.804 INTERIM DISTRIBUTIONS.

Except as otherwise provided in this chapter, a member is entitled to receive distributions from a limited liability company before the member's withdrawal from the limited liability company and before the dissolution and winding up of the company to the extent and at the times or upon the happening of the events specified in the articles of organization or an operating agreement.

Sec. 48. NEW SECTION. 490A.805 DISTRIBUTION UPON WITHDRAWAL.

Except as otherwise provided in this chapter, upon withdrawal, a withdrawing member is entitled to receive any

distribution to which the member is entitled under the articles of organization or an operating agreement. If not otherwise provided in the articles of organization or an operating agreement, the member is entitled to receive, within a reasonable time after withdrawal, the fair value of the member's membership interest as of the date of withdrawal, based on the member's right to share in distributions from the limited liability company.

Sec. 49. NEW SECTION. 490A.806 DISTRIBUTION IN KIND.

Unless otherwise provided in the articles of organization or an operating agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Unless otherwise provided in the articles of organization or an operating agreement, a member shall not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to the member exceeds the percentage of the member's membership interest in the limited liability company.

Sec. 50. NEW SECTION. 490A.807 RESTRICTIONS ON MAKING DISTRIBUTION.

1. A distribution shall not be made if, after giving it effect, either of the following would result:

a. The limited liability company would not be able to pay its debts as they became due in the usual course of business.

b. The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or an operating agreement permit otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution.

2. The limited liability company may base a determination that a distribution is not prohibited under subsection 1 of this section on either of the following:

a. Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances.

b. A fair valuation or other method that is reasonable in the circumstances.

3. The effect of a distribution under subsection 1 of this section is measured as of one of the following:

a. The date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization.

b. The date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

4. A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the limited liability company's indebtedness to its general unsecured creditors, except to the extent subordinated by agreement.

Sec. 51. NEW SECTION. 490A.808 LIABILITY UPON WRONGFUL DISTRIBUTION.

If a member has received a distribution in violation of the articles of organization or an operating agreement or in violation of section 490A.807 of this chapter, then the member is liable to the limited liability company for a period of five years thereafter for the amount of the distribution wrongfully made.

#### SUBCHAPTER IX

##### RIGHTS OF AND ASSIGNMENT BY MEMBERS

Sec. 52. NEW SECTION. 490A.901 NATURE OF INTEREST IN LIMITED LIABILITY COMPANY.

A membership interest in a limited liability company is personal property.

Sec. 53. NEW SECTION. 490A.902 ASSIGNMENT OF INTEREST.

Unless otherwise provided in the articles of organization or an operating agreement, a membership interest in a limited liability company is assignable in whole or in part. An assignment of an interest in a limited liability company does not of itself dissolve the limited liability company. An assignment does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights of a member. Such an assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the articles of organization or an operating agreement, a member ceases to be a member upon assignment of the member's entire membership interest.

Unless otherwise provided in the articles of organization or an operating agreement, the pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the membership interest of a member shall not cause the member to cease to be a member and shall not deprive the member of the power to exercise any rights or powers of a member.

Unless otherwise provided in the articles of organization or an operating agreement and except to the extent assumed by agreement, until an assignee of a membership interest becomes a member, the assignee shall have no liability as a member as a result of the assignment except for liability for a wrongful distribution to the assignee described in section 490A.808.

Sec. 54. NEW SECTION. 490A.903 RIGHT OF ASSIGNEE TO BECOME MEMBER.

1. Unless otherwise provided in the articles of organization or an operating agreement, an assignee of an interest in a limited liability company may become a member only if the other members unanimously consent. The consent of a member may be evidenced in any manner specified in the articles of organization or an operating agreement. In the absence of such specification consent shall be evidenced by a

written instrument, dated and signed by the requisite number of members, or evidenced by a vote taken at a meeting of members called for that purpose.

2. An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, an operating agreement, and this chapter. An assignee who becomes a member is liable for any obligations of the member's assignor to make and return contributions as provided in subchapter VII and VIII. However, an assignee who becomes a member is not obligated for liabilities of the assignor unknown to the assignee at the time the assignee became a member, and which could not be ascertained from the articles of organization or an operating agreement.

3. If an assignee of an interest in a limited liability company becomes a member, the assignor is not released from liability to the limited liability company under sections 490A.801 and 490A.808.

Sec. 55. NEW SECTION. 490A.904 RIGHTS OF CREDITOR.

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the interest of the member in the limited liability company with payment of the unsatisfied amount of the judgment with interest. To the extent of the amounts so charged, the judgment creditor has only the rights of an assignee of the interest in the limited liability company. This chapter does not deprive any member of the benefit of any exemption laws applicable to the member's interest in the limited liability company.

Sec. 56. NEW SECTION. 490A.905 POWERS OF ESTATE OF A DECEASED OR INCOMPETENT MEMBER.

If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the member's

rights for the purpose of settling the member's estate or administering the member's property, including any power under the articles of organization or an operating agreement of an assignee to become a member. If a member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

SUBCHAPTER X

DERIVATIVE ACTIONS

Sec. 57. NEW SECTION. 490A.1001 RIGHT OF MEMBER TO BRING DERIVATIVE ACTION.

A member may bring an action in the right of the limited liability company to recover a judgment in its favor if all of the following conditions are met:

1. Either management of the limited liability company is vested in a manager or managers who have the sole authority to cause the limited liability company to sue in its own right or management of the limited liability company is reserved to the members but the plaintiff does not have the authority to cause the limited liability company to sue in its own right under the provisions of the articles of organization or an operating agreement.

2. The plaintiff has made demand on those managers or those members with such authority requesting that such managers or such members cause the limited liability company to sue in its own right.

3. The members or managers with such authority have wrongfully refused to bring the action or, after adequate time to consider the demand, have failed to respond to the demand.

4. The plaintiff is a member of the limited liability company at the time of bringing the action and was a member of the limited liability company at the time of the transaction of which the plaintiff complains, or the plaintiff's status as a member of the limited liability company thereafter devolved upon the plaintiff pursuant to the terms of the articles of

organization or an operating agreement from a person who was a member at such time.

5. The plaintiff fairly and adequately represents the interests of the members in enforcing the right of the limited liability company.

#### SUBCHAPTER XI

##### AMENDMENT OF ARTICLES OF ORGANIZATION

##### Sec. 58. NEW SECTION. 490A.1101 AMENDMENT OF ARTICLES OF ORGANIZATION.

1. A limited liability company may amend its articles of organization at any time to add or change a provision that is required or permitted in the articles of organization or to delete a provision not required in the articles of organization by delivering articles of amendment to the secretary of state for filing. Whether a provision is required or permitted for the articles of organization is determined as of the effective date of the amendment.

2. To amend its articles of organization, a limited liability company shall deliver to the secretary of state for filing articles of amendment setting forth all of the following:

- a. The name of the limited liability company.
- b. The text of each amendment adopted.
- c. The date of each amendment's adoption.
- d. A statement that the amendment was adopted by a vote of the members in accordance with this chapter.

##### Sec. 59. NEW SECTION. 490A.1102 RESTATED ARTICLES OF ORGANIZATION.

1. A limited liability company may restate its articles of organization at any time.

2. The restatement may include one or more amendments to the articles. The restatement must be adopted by a vote of the members as provided by this chapter.

3. A limited liability company restating its articles of organization shall deliver to the secretary of state for

filing articles of restatement setting forth the name of the limited liability company and the text of the restated articles of organization together with a certificate setting forth the information required by section 490A.1101, subsection 2.

4. Duly adopted restated articles of organization supersede the original articles of organization and all amendments to them.

5. The secretary of state may certify restated articles of organization, as the articles of organization currently in effect, without including the certificate information required by subsection 3.

##### Sec. 60. NEW SECTION. 490A.1103 AMENDMENT PURSUANT TO REORGANIZATION.

1. A limited liability company's articles of organization may be amended without action by the members to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of organization after amendment contain only provisions required or permitted by section 490A.303.

2. The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth all of the following:

- a. The name of the limited liability company.
- b. The text of each amendment approved by the court.
- c. The date of the court's order or decree approving the articles of amendment.

d. The title of the reorganization proceeding in which the order or decree was entered.

e. A statement that the court had jurisdiction of the proceeding under federal statute.

3. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

##### Sec. 61. NEW SECTION. 490A.1104 EFFECT OF AMENDMENT.

An amendment to articles of organization does not affect a cause of action existing against or in favor of the limited liability company, a proceeding to which the limited liability company is a party, or the existing rights of persons other than members of the limited liability company. An amendment changing a limited liability company's name does not abate a proceeding brought by or against the limited liability company in its former name.

SUBCHAPTER XII  
MERGER

Sec. 62. NEW SECTION. 490A.1201 MERGER.

Any one or more limited liability companies may merge with or into any one or more limited liability companies, limited partnerships, or corporations, provided that no member of a limited liability company that is a party to the merger will, as a result of the merger, become personally liable for the liabilities or obligations of any other person or entity unless that member approves the plan of merger or otherwise consents to becoming personally liable.

Sec. 63. NEW SECTION. 490A.1202 PLAN OF MERGER.

1. Each constituent entity must enter into a written plan of merger, which must be approved in accordance with section 490A.1203.

2. The plan of merger must set forth all of the following:

- a. The name of each constituent entity in the merger and the name of the surviving entity into which each other constituent entity proposes to merge.
- b. The terms and conditions of the proposed merger.
- c. The manner and basis of converting the interests in each constituent entity in the merger into interests, shares, or other securities or obligations of the surviving entity, or of any other entity, or, in whole or in part, into cash or other property.
- d. Such amendments to the articles of organization of a limited liability company, articles or certificate of

incorporation of a corporation, or certificate of limited partnership of a limited partnership, as the case may be, of the surviving entity as are desired to be effected by the merger, or that no such changes are desired.

e. Other provisions relating to the proposed merger as are deemed necessary or desirable.

Sec. 64. NEW SECTION. 490A.1203 ACTION ON PLAN.

1. A proposed plan of merger complying with the requirements of section 490A.1202 shall be approved in the manner provided by this section:

a. A limited liability company which is a party to a proposed merger shall have the plan of merger authorized and approved as required by section 490A.701.

b. A corporation which is a party to a proposed merger shall have the plan of merger authorized and approved in the manner and by the vote required by chapter 490.

c. A limited partnership which is a party to a proposed merger shall have the plan of merger authorized and approved in the manner and by the vote required by its partnership agreement and in accordance with chapter 545.

2. After a merger is authorized, unless the plan of merger provides otherwise, and at any time before articles of merger as provided for in section 490A.1204 are filed, the plan of merger may be abandoned subject to any contractual rights, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in one of the following ways:

a. By the unanimous consent of the members of each limited liability company that is a constituent entity, unless the articles of organization or an operating agreement of any such limited liability company provides otherwise.

b. In the manner determined by the board of directors of any corporation that is a constituent entity.

c. By the limited partners of any limited partnership that is a constituent entity by the vote, if any, required by its limited partnership agreement and in accordance with the law of this state.

Sec. 65. NEW SECTION. 490A.1204 ARTICLES OF MERGER.

1. After a plan of merger is approved as provided in section 490A.1203, the surviving entity shall deliver to the secretary of state for filing articles of merger duly executed by each constituent entity setting forth all of the following:

- a. The name of each constituent entity.
- b. The plan of merger.
- c. The effective date of the merger if later than the date of filing of the articles of merger.
- d. The name of the surviving entity.
- e. A statement that the plan of merger was duly authorized and approved by each constituent entity in accordance with section 490A.1203.

2. A merger takes effect upon the later of the effective date of the filing of the articles of merger or the date set forth in the plan of merger.

Sec. 66. NEW SECTION. 490A.1205 EFFECT OF MERGER.

When a merger takes effect all of the following apply:

1. Every other constituent entity merges into the surviving entity and the separate existence of every constituent entity except the surviving entity ceases.
2. The title to all real estate and other property owned by each constituent entity is vested in the surviving entity without reversion or impairment.
3. The surviving entity has all liabilities of each constituent entity.
4. A proceeding pending against any constituent entity may be continued as if the merger did not occur or the surviving entity may be substituted in the proceeding for the constituent entity whose existence ceased.
5. The articles or limited partnership agreement of the surviving entity are amended to the extent provided in the plan of merger.
6. The shares or interests of each constituent entity that are to be converted into shares, obligations, or other

securities of the surviving or any other entity or into cash or other property are converted, and the former holders of the shares or interests are entitled only to the rights provided in the articles of merger except for dissenters' rights provided by law.

Sec. 67. NEW SECTION. 490A.1206 MERGER WITH FOREIGN ENTITY.

1. Any one or more limited liability companies of this state may merge with or into one or more foreign liability companies, foreign corporations, or foreign limited partnerships, or any one or more foreign liability companies, foreign corporations, or foreign limited partnerships may merge with or into any one or more limited liability companies of this state, if all of the following apply:

a. The merger is permitted by the law of the state or jurisdiction under whose law each foreign constituent entity is organized or formed and each foreign constituent entity complies with that law in effecting the merger.

b. The foreign constituent entity complies with section 490A.1204 of this division if it is the surviving entity.

c. Each domestic constituent entity complies with the applicable provisions of sections 490A.1202 and 490A.1203 and, if it is the surviving entity, with section 490A.1204.

2. Upon a merger involving one or more domestic limited liability companies taking effect, if the surviving entity is to be governed by the law of any state other than this state or of any foreign country, then the surviving entity shall agree to both of the following:

a. That it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent entity, who was a party to the merger, that was organized under the law of this state, as well as for enforcement of any obligation of the surviving entity arising from the merger.

b. To irrevocably appoint the secretary of state as its agent for service of process in any such proceeding, and the surviving entity shall specify the address to which a copy of the process shall be mailed to it by the secretary of state.

3. The effect of the merger shall be as provided in section 490A.1205, if the surviving entity is to be governed by the law of this state. If the surviving entity is to be governed by the law of any jurisdiction other than this state, the effect of the merger shall be the same as provided in subsection 2 of this section, except insofar as the law of the other jurisdiction provides otherwise.

SUBCHAPTER XIII

DISSOLUTION

Sec. 68. NEW SECTION. 490A.1301 DISSOLUTION -- GENERAL PROVISIONS.

A limited liability company organized under this chapter is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

1. At the time or on the happening of an event specified in the articles of organization or an operating agreement to cause dissolution.
2. Upon the unanimous written consent of the members.
3. Upon the death, withdrawal, expulsion, bankruptcy, or dissolution of a member or occurrence of any other event, except assignment of a membership interest voluntarily or by operation of law, that terminates the continued membership of a member in the limited liability company, unless the business of the limited liability company is continued by the unanimous consent of the remaining members.
4. The entry of a decree of judicial dissolution under section 490A.1302.

Sec. 69. NEW SECTION. 490A.1302 JUDICIAL DISSOLUTION.

On application by or for a member, the district court of the county in which the registered office of the limited liability company is located may decree dissolution of a

limited liability company if it is not reasonably practicable to carry on the business in conformity with the articles of organization and any operating agreement.

Sec. 70. NEW SECTION. 490A.1303 WINDING UP.

Unless otherwise provided in the articles of organization or an operating agreement, members who have not wrongfully dissolved a limited liability company may wind up the limited liability company's affairs; but the district court of the county in which the registered office of the limited liability company is located, on cause shown, may wind up the limited liability company's affairs on application of any member, member's legal representative, or member's assignee.

Sec. 71. NEW SECTION. 490A.1304 DISTRIBUTION OF ASSETS UPON DISSOLUTION.

Upon the winding up of a limited liability company, the assets of the limited liability company shall be distributed in the order as follows:

1. To creditors, including members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited liability company other than for distributions to members under section 490A.803 or section 490A.805.
2. Unless otherwise provided in the articles of organization or an operating agreement, to members and former members in satisfaction of liabilities for distributions under section 490A.803 or section 490A.805.
3. Unless otherwise provided in the articles of organization or an operating agreement, to members first for the return of their capital contributions and second with respect to their interests in the limited liability company, in the proportions in which the members share in distributions.

Sec. 72. NEW SECTION. 490A.1305 ARTICLES OF DISSOLUTION.

1. Upon the completion of winding up of the limited liability company, articles of dissolution shall be delivered to the secretary of state for filing. The winding up of a

limited liability company shall be completed when all debts, liabilities, and obligations of the limited liability company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the limited liability company have been distributed to the members. The articles of dissolution shall set forth all of the following:

- a. The name of the limited liability company.
- b. The date of filing of the articles of organization and each amendment thereto.
- c. The reason for filing the articles of dissolution.
- d. The effective date of dissolution if it is not to be effective on the filing of the articles of dissolution.
- e. Any other information the members or managers determine to include.

2. The limited liability company is dissolved upon the effective date of its articles of dissolution.

Sec. 73. NEW SECTION. 490A.1306 KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANIES.

A dissolved limited liability company may dispose of the known claims against it in accordance with this section.

1. The dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must do all of the following:

- a. Describe information that must be included in a claim.
- b. Provide a mailing address where a claim may be sent.
- c. State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved limited liability company must receive the claim.
- d. State that the claim will be barred if not received by the deadline.

2. A claim against the dissolved limited liability company is barred if either of the following occurs:

a. A claimant who was given written notice under subsection 1 does not deliver the claim to the dissolved limited liability company by the deadline.

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

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

Sec. 74. NEW SECTION. 490A.1307 UNKNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.

1. A dissolved limited liability company may also publish notice of its dissolution and request that persons with claims against the limited liability company present them in accordance with the notice.

2. The notice shall meet all of the following requirements:

a. Be published one time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office or, if none in this state, its registered office is or was last located.

b. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

c. State that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

3. If the dissolved limited liability company publishes a newspaper notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:



- a. A claimant who did not receive written notice under section 490A.1306.
- b. A claimant whose claim was timely sent to the dissolved limited liability company but not acted on.
- c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
4. A claim may be enforced under this section in either of the following ways:
  - a. Against the dissolved limited liability company, to the extent of its undistributed assets.
  - b. If the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of the member's pro rata share of the claim or the limited liability company assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section shall not exceed the total amount of assets distributed to the member in liquidation.

SUBCHAPTER XIV

FOREIGN LIMITED LIABILITY COMPANIES

Sec. 75. NEW SECTION. 490A.1401 LAW GOVERNING.

The law of the state or other jurisdiction under which a foreign limited liability company is formed governs its formation and internal affairs and the liability of its members and managers. A foreign limited liability company shall not be denied registration by reason of any difference between those laws and the laws of this state. A foreign limited liability company holding a valid registration in this state shall have no greater rights and privileges than a domestic limited liability company. The registration shall not be deemed to authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

Sec. 76. NEW SECTION. 490A.1402 REGISTRATION.

A foreign limited liability company may apply for a certificate of registration to transact business in this state by delivering an application to the secretary of state for filing. An application for registration as a foreign limited liability company shall set forth all of the following:

1. The name of the foreign limited liability company and, if different, the name under which it proposes to register and transact business in this state.
2. The state or other jurisdiction in which the foreign limited liability company was formed and the date of its formation.
3. The street address of the registered office of the foreign limited liability company in this state, the name of the registered agent at the office, and a statement that the registered office and registered agent comply with the requirements of section 490A.501.
4. The address of the office required to be maintained in the state or other jurisdiction of its formation by the law of that state or jurisdiction or, if not so required, of the principal office of the foreign limited liability company.
5. A copy of the articles of organization filed in the foreign limited liability company's state or other jurisdiction of formation authorizing it to do business in that state or other jurisdiction, duly authenticated by the proper officer of the state or other jurisdiction of its formation.

Sec. 77. NEW SECTION. 490A.1403 SERVICE ON FOREIGN LIMITED LIABILITY COMPANY.

1. The registered agent of a foreign limited liability company authorized to transact business in this state is the limited liability company's agent for service of process, notice, or demand required or permitted by law to be served on the foreign limited liability company.
2. A foreign limited liability company may be served by registered or certified mail, return receipt requested,

addressed to the foreign limited liability company at its principal office shown in its application for a certificate of authority if the foreign limited liability company meets any of the following conditions:

a. Has no registered agent or its registered agent cannot with reasonable diligence be served.

b. Has withdrawn from transacting business in this state under section 490A.1406.

c. Has had its certificate of authority revoked under section 490A.1410.

3. Service is perfected under subsection 2 at the earliest of:

a. The date the foreign limited liability company receives the mail.

b. The date shown on the return receipt, if signed on behalf of the foreign limited liability company.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

4. A foreign limited liability company may also be served in any other manner permitted by law.

Sec. 78. NEW SECTION. 490A.1404 NAME.

A certificate of registration shall not be issued to a foreign limited liability company unless the name of the limited liability company satisfies the requirements of section 490A.401. To obtain or maintain a certificate of registration the company shall comply with the following:

1. The foreign limited company shall add the words "Limited Company" or the abbreviation "L.C." to its name for use in this state.

2. If its real name is unavailable in this state, the foreign limited liability company shall use a fictitious name that is available, and which satisfies the requirements of section 490A.401, and shall inform the secretary of state of the fictitious name.

Sec. 79. NEW SECTION. 490A.1405 CHANGE AND AMENDMENT.

If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly deliver to the secretary of state for filing articles of correction correcting such statement as required by section 490A.123.

Sec. 80. NEW SECTION. 490A.1406 CANCELLATION OF CERTIFICATE OF REGISTRATION.

1. A foreign limited liability company may cancel its certificate of registration by delivering to the secretary of state for filing a certificate of cancellation which shall set forth all of the following:

a. The name of the foreign limited liability company and the name of the state or other jurisdiction under whose jurisdiction it was formed.

b. That the foreign limited liability company is not transacting business in this state and that it surrenders its registration to transact business in this state.

c. That the foreign limited liability company revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state.

d. A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under paragraph "c" of this subsection.

e. A commitment to notify the secretary of state in the future of any change in the mailing address of the limited liability company.

2. The certificate of registration shall be cancelled upon the filing of the certificate of cancellation by the secretary of state.

Sec. 81. NEW SECTION. 490A.1407 AUTHORITY TO TRANSACT BUSINESS REQUIRED.

1. A foreign limited liability company shall not transact business in this state until it obtains a certificate of authority from the secretary of state.

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

- a. Maintaining, defending, or settling any proceeding.
- b. Holding meetings of the members or managers or carrying on other activities concerning internal corporate affairs.
- c. Maintaining bank accounts.
- d. Maintaining offices or agencies for the transfer, exchange, and registration of the limited liability company's own securities or maintaining trustees or depositories with respect to those securities.
- e. Selling through independent contractors.
- f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.
- g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
- h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
1. Owning, without more, real or personal property.
- j. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature.
- k. Transacting business in interstate commerce.
3. The list of activities in subsection 2 is not exhaustive.

Sec. 82. NEW SECTION. 490A.1408 CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT AUTHORITY.

1. A foreign limited liability company transacting business in this state without a certificate of authority shall not maintain a proceeding in any court in this state until it obtains a certificate of authority.

2. The successor to a foreign limited liability company that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding based on that cause of action in any court in this state until the foreign limited liability company or its successor obtains a certificate of authority.

3. A court may stay a proceeding commenced by a foreign limited liability company, its successor, or assignee until it determines whether the foreign limited liability company or its successor or assignee requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign limited liability company or its successor or assignee obtains the certificate.

4. A foreign limited liability company is liable for a civil penalty not to exceed a total of one thousand dollars if it transacts business in this state without a certificate of authority. The attorney general may collect penalties due under this subsection.

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

Sec. 83. NEW SECTION. 490A.1409 ACTIONS BY ATTORNEY GENERAL.

The attorney general may bring an action to restrain a foreign limited liability company from transacting business in this state in violation of this chapter.

Sec. 84. NEW SECTION. 490A.1410 REVOCATION OF REGISTRATION.

1. The certificate of registration of a foreign limited liability company to transact business in this state may be revoked by the secretary of state upon the occurrence of any of the following:

- a. The foreign limited liability company has failed to:
  - (1) Pay any fees or penalties prescribed by this chapter.
  - (2) Appoint and maintain a registered agent as required under section 490A.1402.
  - (3) Deliver for filing to the secretary of state a report upon any change in the name or address of the registered agent.

- (4) Deliver to the secretary of state for filing articles of correction required under section 490A.1405.

- b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other documents submitted by the foreign limited liability company under this subchapter.

2. A certificate of registration of a foreign limited liability company shall not be revoked by the secretary of state, unless both of the following apply:

- a. The secretary of state has given the foreign limited liability company not less than sixty days' notice thereof by mail addressed to its registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, addressed to the office required to be maintained pursuant to section 490A.1402.

- b. During the sixty-day period, the foreign limited liability company has failed to pay such fees or penalties prescribed by this chapter, to file a report of change regarding the registered agent, to file any necessary articles of correction, or to correct any such misrepresentation.

3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign limited liability company to transact business in this state shall cease.

SUBCHAPTER XV

PROFESSIONAL LIMITED LIABILITY COMPANIES

Sec. 85. NEW SECTION. 490A.1501 DEFINITIONS.

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

1. "Employees" or "agents" does not include clerks, stenographers, secretaries, bookkeepers, technicians, or other persons who are not usually and ordinarily considered by custom and practice to be practicing a profession nor any other person who performs all that person's duties for the professional limited liability company under the direct supervision and control of one or more managers, employees, or agents of the professional limited liability company who are duly licensed in this state to practice a profession which the limited liability company is authorized to practice in this state. This chapter does not require any such persons to be licensed to practice a profession if they are not required to be licensed under any other law of this state.

2. "Foreign professional limited liability company" means a limited liability company organized under laws other than the laws of this state for a purpose for which a professional limited liability company may be organized under this chapter.

3. "Licensed" includes registered, certified, admitted to practice, or otherwise legally authorized under the laws of this state.

4. "Profession" means the profession of certified public accountancy, architecture, chiropractic, dentistry, physical therapy, psychology, professional engineering, land surveying, landscape architecture, law, medicine and surgery, optometry, osteopathy, osteopathic medicine and surgery, accounting practitioner, podiatry, speech pathology, audiology, veterinary medicine, pharmacy, and nursing.

5. "Professional limited liability company" means a limited liability company subject to this subchapter, except a foreign professional limited liability company.

6. "Regulating board" means any board, commission, court, or governmental authority which, under the laws of this state, is charged with the licensing, registration, certification, admission to practice, or other legal authorization of the practitioners of any profession.

7. "Voluntary transfer" includes a sale, voluntary assignment, gift, pledge, or encumbrance; a voluntary change of legal or equitable ownership or beneficial interest; or a voluntary change of persons having voting rights with respect to any membership interest, except as proxies; but does not include a transfer of an individual's membership interest or other property to a guardian or conservator appointed for that individual or the individual's property.

Sec. 86. NEW SECTION. 490A.1502 PURPOSES AND POWERS.

A professional limited liability company shall be organized only for the purpose of engaging in the practice of one specific profession, or two or more specific professions which could lawfully be practiced in combination by a licensed individual or a partnership of licensed individuals, and for the additional purpose of doing all lawful things which may be incidental to or necessary or convenient in connection with the practice of the profession or professions. The articles of organization of a professional limited liability company shall state in substance that the purposes for which the professional limited liability company is organized are to engage in the general practice of a specified profession or professions, or one or more specified branches or divisions thereof, and to do all lawful things which may be incidental to or necessary or convenient in connection with the practice of the profession or professions.

Sec. 87. NEW SECTION. 490A.1503 NAME.

The name of a professional limited liability company, the name of a foreign professional limited liability company or its name as modified for use in this state, and any fictitious name or trade name adopted by a professional limited liability

company or foreign professional limited liability company shall contain the words "Professional Limited Company" or the abbreviation "P.L.C.", and except for the addition of such words or abbreviation, shall be a name which could lawfully be used by a licensed individual or by a partnership of licensed individuals in the practice in this state of a profession which the professional limited liability company is authorized to practice. Each regulating board may by rule adopt additional requirements as to the corporate names and fictitious or trade names of professional limited liability companies and foreign professional limited liability companies which are authorized to practice a profession which is within the jurisdiction of the regulating board.

Sec. 88. NEW SECTION. 490A.1504 WHO MAY ORGANIZE.

Two or more individuals having capacity to contract, each of whom is licensed to practice a profession in this state which the professional limited liability company is to be authorized to practice, may act as organizers of a professional limited liability company.

Sec. 89. NEW SECTION. 490A.1505 PRACTICE BY PROFESSIONAL LIMITED LIABILITY COMPANY.

Notwithstanding any other statute or rule of law, a professional limited liability company may practice a profession, but may do so in this state only through members, managers, employees, and agents who are licensed to practice the same profession in this state. In its practice of a profession, no professional limited liability company shall do any act which could not lawfully be done by individuals licensed to practice the profession which the professional limited liability company is authorized to practice.

Sec. 90. NEW SECTION. 490A.1506 PROFESSIONAL REGULATION.

A professional limited liability company shall not be required to register with or to obtain any license, registration, certificate, or other legal authorization from a regulating board in order to practice a profession. Except as

provided in this section, this subchapter does not restrict or limit in any manner the authority or duties of any regulating board with respect to individuals practicing a profession which is within the jurisdiction of the regulating board, even if the individual is a member, manager, employee, or agent of a professional limited liability company or foreign professional limited liability company and practices the individual's profession through such professional limited liability company.

Sec. 91. NEW SECTION. 490A.1507 RELATIONSHIP AND LIABILITY TO PERSONS SERVED.

This subchapter does not modify any law applicable to the relationship between an individual practicing a profession and a person receiving professional services, including, but not limited to, any liability arising out of such practice and any law respecting privileged communications. This chapter does not modify or affect the ethical standards or standards of conduct of any profession, including, but not limited to, any standards prohibiting or limiting the practice of the profession by a limited liability company or prohibiting or limiting the practice of two or more professions in combination. All such standards shall apply to the members, managers, employees, and agents through whom a professional limited liability company practices any profession in this state, to the same extent that the standards apply to an individual practitioner.

Sec. 92. NEW SECTION. 490A.1508 ISSUANCE OF MEMBERSHIP INTERESTS.

Membership interests of a professional limited liability company shall be issued only to individuals who are licensed to practice in any state a profession which the professional limited liability company is authorized to practice. Membership interests of a professional limited liability company shall not at any time be issued in, transferred into, or held in joint tenancy, tenancy in common, or any other form

of joint ownership or co-ownership. The Iowa uniform securities Act shall not be applicable to nor govern any transaction relating to any membership interests of a professional limited liability company.

Sec. 93. NEW SECTION. 490A.1509 ASSIGNMENT OF MEMBERSHIP INTERESTS.

A member or other person shall not make a voluntary assignment of a membership interest in a professional limited liability company to any person, except to the professional limited liability company or to an individual who is licensed to practice in this state a profession which the limited liability company is authorized to practice. The articles of organization or operating agreement of the professional limited liability company may contain any additional provisions restricting the assignment of membership interests. Unless the articles of organization or an operating agreement otherwise provide, a voluntary assignment requires the unanimous consent of the members.

Sec. 94. NEW SECTION. 490A.1510 CONVERTIBLE MEMBERSHIP INTERESTS -- RIGHTS AND OPTIONS.

A professional limited liability company shall not create or issue any interest convertible into a membership interest of the professional limited liability company. The provisions of this subchapter with respect to the issuance and transfer of membership interests apply to the creation, issuance, and transfer of any rights or options entitling the holder to purchase from a professional limited liability company any membership interests of the professional limited liability company. Rights or options shall not be transferable, whether voluntarily, involuntarily, by operation of law, or in any other manner. Upon the death of the holder, or when the holder ceases to be licensed to practice a profession in this state which the professional limited liability company is authorized to practice, the rights or options shall expire.

Sec. 95. NEW SECTION. 490A.1511 VOTING TRUST -- PROXY.

A member of a professional limited liability company shall not create or enter into a voting trust or any other agreement conferring upon any other person the right to vote or otherwise represent any membership interests of a professional limited liability company, and no such voting trust or agreement is valid or effective. Any proxy of a member of a professional limited liability company shall be an individual licensed to practice a profession in this state which the professional limited liability company is authorized to practice. Any provision in any proxy instrument denying the right of the member to revoke the proxy at any time or for any period of time is not valid or effective. This section does not otherwise limit the right of a member to vote by proxy, but the articles of organization or operating agreement of the professional limited liability company may further limit or deny the right to vote by proxy.

Sec. 96. NEW SECTION. 490A.1512 REQUIRED PURCHASE BY PROFESSIONAL LIMITED LIABILITY COMPANY OF ITS OWN MEMBERSHIP INTERESTS.

1. Notwithstanding any other statute or rule of law, a professional limited liability company shall purchase its own membership interests as provided in this section; and the members of a professional limited liability company and their executors, administrators, legal representatives, and successors in interest, shall sell and transfer the membership interests held by them as provided in this section.

2. Upon the death of a member, the professional limited liability company shall immediately purchase all membership interests held by the deceased member.

3. In order to remain a member of a professional limited liability company, a member shall at all times be licensed to practice in this state a profession which the professional limited liability company is authorized to practice. When a member does not have or ceases to have this qualification, the professional limited liability company shall immediately purchase all membership interests held by that member.

4. When a person other than a member of record becomes entitled to have membership interests of a professional limited liability company transferred into that person's name or to exercise voting rights, except as a proxy, with respect to membership interests of the professional limited liability company, the professional limited liability company shall immediately purchase the membership interests. Without limiting the generality of the foregoing, this section shall be applicable whether the event occurs as a result of appointment of a guardian or conservator for a member or the member's property, transfer of membership interests by operation of law, involuntary transfer of membership interests, judicial proceedings, execution, levy, bankruptcy proceedings, receivership proceedings, foreclosure or enforcement of a pledge or encumbrance, or any other situation or occurrence. However, this section does not apply to any voluntary transfer of membership interests as defined in this chapter.

5. Membership interests purchased by the professional limited liability company under this section shall be transferred to the professional limited liability company as of the close of business on the date of the death or other event which requires purchase. The member and the member's executors, administrators, legal representatives, or successors in interest, shall promptly do all things which may be necessary or convenient to cause transfer to be made as of the transfer date. However, the membership interests shall promptly be transferred on the books and records of the professional limited liability company as of the transfer date, notwithstanding any delay in transferring or surrendering the membership interests or certificates representing the membership interests, and the transfer shall be valid and effective for all purposes as of the close of business on the transfer date. The purchase price for such membership interests shall be paid as provided in this

chapter, but the transfer of membership interests to the professional limited liability company as provided in this section shall not be delayed or affected by any delay or default in making payment.

6. Notwithstanding subsections 1 through 5, purchase by the professional limited liability company is not required upon the occurrence of any event other than death of a member, if the professional limited liability company is dissolved within sixty days after the occurrence of the event. The articles of organization or operating agreement of the professional limited liability company may provide that purchase is not required upon the death of a member, if the professional limited liability company is dissolved within sixty days after the date of the member's death.

7. Unless otherwise provided in the articles of organization or an operating agreement of the professional limited liability company or in an agreement among all members of the professional limited liability company all of the following apply:

a. The purchase price for membership interests shall be their book value as of the end of the month immediately preceding the death or other event which requires purchase. Book value shall be determined from the books and records of the professional limited liability company in accordance with the regular method of accounting used by the professional limited liability company, uniformly and consistently applied. Adjustments to book value shall be made, if necessary, to take into account work in process and accounts receivable. A final determination of book value made in good faith by an independent certified public accountant or firm of certified public accountants employed by the professional limited liability company for the purpose shall be conclusive on all persons.

b. The purchase price shall be paid in cash as follows:

(1) Upon the death of a member, thirty percent of the purchase price shall be paid within ninety days after death, and the balance shall be paid in three equal annual installments on the first three anniversaries of the death.

(2) Upon the happening of any other event referred to in this section, one-tenth of the purchase price shall be paid within ninety days after the date of the event, and the balance shall be paid in three equal annual installments on the first three anniversaries of the date of the event.

c. Interest from the date of death or other event shall be payable annually on principal payment dates, at the rate of six percent per annum on the unpaid balance of the purchase price.

d. All persons who are members of the professional limited liability company on the date of death or other event, and their executors, administrators, and legal representatives, shall, to the extent the professional limited liability company fails to meet its obligations under this section, be jointly liable for the payment of the purchase price and interest in proportion to their percentage of ownership of the professional limited liability company's membership interests, disregarding membership interests of the deceased or withdrawing member.

e. The part of the purchase price remaining unpaid after the initial payment shall be evidenced by a negotiable promissory note, which shall be executed by the professional limited liability company and all members liable for payment. Any person liable on the note shall have the right to prepay the note in full or in part at any time.

f. If the person making any payment is not reasonably able to determine which of two or more persons is entitled to receive a payment, or if the payment is payable to a person who is unknown, or who is under disability and there is no person legally competent to receive the payment, or who cannot be found after the exercise of reasonable diligence by the



person making the payment, it shall be deposited with the treasurer of state and shall be subject to the provisions of section 490.1440 with respect to funds deposited with the treasurer of state upon the voluntary or involuntary dissolution of a business corporation.

8. Notwithstanding the other provisions of this section, no part of the purchase price shall be required to be paid until the certificates, if any, representing the membership interests have been surrendered to the professional limited liability company.

9. Notwithstanding the other provisions of this section, payment of any part of the purchase price for membership interests of a deceased member shall not be required until the executor or administrator of the deceased member provides any indemnity, release, or other document from any taxing authority, which is reasonably necessary to protect the professional limited liability company against liability for estate, inheritance, and death taxes.

10. The articles of organization or an operating agreement of the professional limited liability company or an agreement among all members of a professional limited liability company may provide for a different purchase price, a different method of determining the purchase price, a different interest rate or no interest, and other terms, conditions, and schedules of payment.

11. The articles of organization or an operating agreement of the professional limited liability company or an agreement among all members of a professional limited liability company may provide for the optional or mandatory purchase of its own membership interests by the professional limited liability company in other situations, subject to any applicable law regarding such a purchase.

Sec. 97. NEW SECTION. 490A.1513 CERTIFICATES REPRESENTING MEMBERSHIP INTERESTS.

Each certificate representing membership interests of a professional limited liability company shall state in substance that the certificate represents membership interests in a professional limited liability company and is not transferable except as expressly provided in this chapter and in the articles of organization or an operating agreement of the professional limited liability company.

Sec. 98. NEW SECTION. 490A.1514 MANAGEMENT.

All managers of a professional limited liability company shall at all times be individuals who are licensed to practice a profession in this state which the limited liability company is authorized to practice. A person who is not licensed shall have no authority or duties in the management or control of the limited liability company. If a manager ceases to have this qualification, the manager shall immediately and automatically cease to hold such management position.

Sec. 99. NEW SECTION. 490A.1515 MERGER.

A professional limited liability company shall not merge with any entity except another professional limited liability company subject to this subchapter or a professional corporation subject to chapter 496C. Merger is not permitted unless the surviving or new professional limited liability company is a professional limited liability company which complies with all requirements of this subchapter.

Sec. 100. NEW SECTION. 490A.1516 DISSOLUTION OR LIQUIDATION.

Violation of any provision of this subchapter by a professional limited liability company or any of its members or managers shall be cause for its involuntary dissolution, or liquidation of its assets and business by the district court, as provided in section 490A.1302. Upon the death of the last remaining member of a professional limited liability company, or when the last remaining member is not licensed or ceases to be licensed to practice a profession in this state which the professional limited liability company is authorized to

practice, or when any person other than the member of record becomes entitled to have all membership interests of the last remaining member of the professional limited liability company transferred into that person's name or to exercise voting rights, except as a proxy, with respect to such membership interests, the professional limited liability company shall not practice any profession and it shall be promptly dissolved. However, if prior to dissolution all outstanding membership interests of the professional limited liability company are acquired by one or more persons licensed to practice a profession in this state which the professional limited liability company is authorized to practice, the professional limited liability company need not be dissolved and may practice the profession as provided in this subchapter.

Sec. 101. NEW SECTION. 490A.1517 FOREIGN PROFESSIONAL LIMITED LIABILITY COMPANY.

A foreign professional limited liability company may practice a profession in this state if it complies with the provisions of this chapter and this subchapter. The secretary of state may prescribe forms for this purpose. A foreign professional limited liability company may practice a profession in this state only through members, managers, employees, and agents who are licensed to practice the profession in this state. The provisions of this subchapter with respect to the practice of a profession by a professional limited liability company apply to a foreign professional limited liability company. This subchapter does not prohibit the practice of a profession in this state by an individual who is a member, manager, employee, or agent of a foreign professional limited liability company, if the individual could lawfully practice the profession in this state in the absence of any relationship to a foreign professional limited liability company. The preceding sentence applies regardless of whether or not the foreign professional limited liability company is authorized to practice a profession in this state.

Sec. 102. NEW SECTION. 490A.1518 LIMITED LIABILITY COMPANIES ORGANIZED UNDER OTHER LAWS.

This chapter does not apply to or interfere with the practice of any profession by or through any professional limited liability company organized after the effective date of this Act under any other law of this state or any other state or country, if the practice is lawful under any other statute or rule of law of this state. Any such professional limited liability company may voluntarily elect to adopt this subchapter and become subject to its provisions, by amending its articles of organization to be consistent with all provisions of this subchapter and by stating in its amended articles of organization that the limited liability company has voluntarily elected to adopt this subchapter. Any limited liability company organized under any law of any other state or country may become subject to the provisions of this subchapter by complying with all provisions of this subchapter with respect to foreign professional limited liability companies.

Sec. 103. NEW SECTION. 490A.1519 CONFLICTS WITH OTHER PROVISIONS OF THIS CHAPTER.

The provisions of this subchapter shall prevail over any inconsistent provisions of this chapter.

SUBCHAPTER XVI  
PROVISIONS

Sec. 104. NEW SECTION. 490A.1601 PROPERTY TITLE RECORDS.

When by merger or amendment to the articles of organization the name of any domestic or foreign limited liability company is changed, a certificate reciting the change or succession shall be issued by the secretary of state upon request and payment of any applicable fee and the certificate may be admitted to record upon payment of any applicable fee in any recording office within the jurisdiction of which any property of the limited liability company is located in order to maintain the continuity of title records, but no transfer tax

shall be due thereon. If a limited liability company or other entity is not a domestic limited liability company or other entity or a foreign limited liability company or other entity authorized to do business in this state, a similar certificate by any competent authority of the state of organization or formation of the limited liability company or other entity may be admitted to record in any recording office within the jurisdiction of which any property of the limited liability company or other entity is located in order to maintain the continuity of title records upon payment of any applicable fee, but no transfer tax shall be due thereon.

Sec. 105. Section 502.207A, subsection 2, paragraph a, Code 1991, is amended to read as follows:

a. The issuer must be a corporation, limited liability company, or partnership organized under the laws of one of the states or possessions of the United States which engages in or proposes to engage in a business other than petroleum exploration or production mining or other extractive industries.

Sec. 106. Section 558.39, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 3A. In the case of limited liability companies:

On this ... day of ....., A.D. 19... before me, a ..... (Insert title of acknowledging officer) in and for said county, personally appeared ..... to me personally known, who being by me duly (sworn or affirmed) did say that that person is ..... (Insert title of executing member) of said (limited liability company), that (the seal affixed to said instrument is the seal of said or no seal has been procured by the said) (limited liability company) and that said instrument was signed and sealed on behalf of the said (limited liability company) by authority of its managers and the said ..... acknowledged the execution of said

instrument to be the voluntary act and deed of said (limited liability company) by it voluntarily executed.

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ROBERT C. ARNOULD  
Speaker of the House

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MICHAEL E. GRONSTAL  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2369, Seventy-fourth General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House  
Approved April 27, 1992

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TERRY E. BRANSTAD  
Governor