

House Study Bill 748

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON SWAIM)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to business associations, by providing for
2 limited liability companies and conversion involving
3 corporations, and providing an effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 5668HC 82
6 da/rj/5

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1 1 DIVISION I
1 2 UNIFORM ACT PROVISIONS
1 3 ARTICLE 1
1 4 GENERAL PROVISIONS
1 5 Section 1. NEW SECTION. 489.101 SHORT TITLE.
1 6 This chapter may be cited as the "Revised Uniform Limited
1 7 Liability Company Act".
1 8 Sec. 2. NEW SECTION. 489.102 DEFINITIONS.
1 9 As used in this chapter:
1 10 1. "Certificate of organization" means the certificate
1 11 required by section 489.201. The term includes the
1 12 certificate as amended or restated.
1 13 2. "Contribution" means any benefit provided by a person
1 14 to a limited liability company that is any of the following:
1 15 a. In order to become a member upon formation of the
1 16 company and in accordance with an agreement between or among
1 17 the persons that have agreed to become the initial members of
1 18 the company.
1 19 b. In order to become a member after formation of the
1 20 company and in accordance with an agreement between the person
1 21 and the company.
1 22 c. In the person's capacity as a member and in accordance
1 23 with the operating agreement or an agreement between the
1 24 member and the company.
1 25 3. "Domestic cooperative" means an entity organized on a
1 26 cooperative basis under chapter 497, 498, or 499, or a
1 27 cooperative organized under chapter 501 or 501A.
1 28 4. "Debtor in bankruptcy" means a person that is the
1 29 subject of any of the following:
1 30 a. An order for relief under Title 11 of the United States
1 31 Code or a successor statute of general application.
1 32 b. A comparable order under federal, state, or foreign law
1 33 governing insolvency.
1 34 5. "Deliver" or "delivery" means any method of delivery
1 35 used in conventional commercial practice, including delivery
2 1 in person, by mail, commercial delivery, and electronic
2 2 transmission.
2 3 6. "Distribution", except as otherwise provided in section
2 4 489.405, subsection 6, means a transfer of money or other
2 5 property from a limited liability company to another person on
2 6 account of a transferable interest.
2 7 7. "Effective", with respect to a record required or
2 8 permitted to be delivered to the secretary of state for filing
2 9 under this chapter, means effective under section 489.205,
2 10 subsection 3.
2 11 8. "Electronic transmission" means any process of
2 12 communication not directly involving the physical transfer of
2 13 paper that is suitable for the retention, retrieval, and
2 14 reproduction of information by the recipient.
2 15 9. "Foreign limited liability company" means an
2 16 unincorporated entity formed under the law of a jurisdiction
2 17 other than this state and denominated by that law as a limited

2 18 liability company.
2 19 10. "Limited liability company", except in the phrase
2 20 "foreign limited liability company", means an entity formed
2 21 under this chapter.
2 22 11. "Manager" means a person that under the operating
2 23 agreement of a manager=managed limited liability company is
2 24 responsible, alone or in concert with others, for performing
2 25 the management functions stated in section 489.407, subsection
2 26 3.
2 27 12. "Manager=managed limited liability company" means a
2 28 limited liability company that qualifies under section
2 29 489.407, subsection 1.
2 30 13. "Member" means a person that has become a member of a
2 31 limited liability company under section 489.401 and has not
2 32 dissociated under section 489.602.
2 33 14. "Member=managed limited liability company" means a
2 34 limited liability company that is not a manager=managed
2 35 limited liability company.
3 1 15. "Operating agreement" means the agreement, whether or
3 2 not referred to as an operating agreement and whether oral, in
3 3 a record, implied, or in any combination thereof, of all the
3 4 members of a limited liability company, including a sole
3 5 member, concerning the matters described in section 489.110,
3 6 subsection 1. The term includes the agreement as amended or
3 7 restated.
3 8 16. "Organizer" means a person that acts under section
3 9 489.201 to form a limited liability company.
3 10 17. "Person" means an individual, corporation, business
3 11 trust, estate, trust, partnership, limited liability company,
3 12 association, joint venture, public corporation, government or
3 13 governmental subdivision, agency, or instrumentality, or any
3 14 other legal or commercial entity.
3 15 18. "Principal office" means the principal executive
3 16 office of a limited liability company or foreign limited
3 17 liability company, whether or not the office is located in
3 18 this state.
3 19 19. "Record" means information that is inscribed on a
3 20 tangible medium or that is stored in an electronic or other
3 21 medium and is retrievable in perceivable form.
3 22 20. "Registered office" means any of the following:
3 23 a. The office that a limited liability company is required
3 24 to designate and maintain under section 489.113.
3 25 b. The principal office of a foreign limited liability
3 26 company.
3 27 21. "Sign" means, with the present intent to authenticate
3 28 or adopt a record to do any of the following:
3 29 a. Execute or adopt a tangible symbol.
3 30 b. Attach to or logically associate with the record an
3 31 electronic symbol, sound, or process.
3 32 22. "State" means a state of the United States, the
3 33 District of Columbia, Puerto Rico, the United States Virgin
3 34 Islands, or any territory or insular possession subject to the
3 35 jurisdiction of the United States.
4 1 23. "Transfer" includes an assignment, conveyance, deed,
4 2 bill of sale, lease, mortgage, security interest, encumbrance,
4 3 gift, or transfer by operation of law.
4 4 24. "Transferable interest" means the right, as originally
4 5 associated with a person's capacity as a member, to receive
4 6 distributions from a limited liability company in accordance
4 7 with the operating agreement, whether or not the person
4 8 remains a member or continues to own any part of the right.
4 9 25. "Transferee" means a person to which all or part of a
4 10 transferable interest has been transferred, whether or not the
4 11 transferor is a member.
4 12 Sec. 3. NEW SECTION. 489.103 KNOWLEDGE == NOTICE.
4 13 1. A person knows a fact when the person has or is any of
4 14 the following:
4 15 a. Has actual knowledge of it.
4 16 b. Is deemed to know it under subsection 4, paragraph "a",
4 17 or law other than this chapter.
4 18 2. A person has notice of a fact when the person has or is
4 19 any of the following:
4 20 a. Has reason to know the fact from all of the facts known
4 21 to the person at the time in question.
4 22 b. Is deemed to have notice of the fact under subsection
4 23 4, paragraph "b".
4 24 3. A person notifies another of a fact by taking steps
4 25 reasonably required to inform the other person in ordinary
4 26 course, whether or not the other person knows the fact.
4 27 4. A person that is not a member is deemed both of the
4 28 following:

4 29 a. To know of a limitation on authority to transfer real
4 30 property as provided in section 489.302, subsection 7.

4 31 b. To have notice of all of the following regarding a
4 32 limited liability company's:

4 33 (1) Dissolution, ninety days after a statement of
4 34 dissolution under section 489.702, subsection 2, paragraph
4 35 "b", subparagraph (1), becomes effective.

5 1 (2) Termination, ninety days after a statement of
5 2 termination under section 489.702, subsection 2, paragraph
5 3 "b", subparagraph (6), becomes effective.

5 4 (3) Merger, conversion, or domestication, ninety days
5 5 after articles of merger, conversion, or domestication under
5 6 article 10 become effective.

5 7 Sec. 4. NEW SECTION. 489.104 NATURE, PURPOSE, AND
5 8 DURATION OF LIMITED LIABILITY COMPANY.

5 9 1. A limited liability company is an entity distinct from
5 10 its members.

5 11 2. A limited liability company may have any lawful
5 12 purpose, regardless of whether for profit.

5 13 3. A limited liability company has perpetual duration.

5 14 Sec. 5. NEW SECTION. 489.105 POWERS.

5 15 1. Except as otherwise provided in subsection 2, a limited
5 16 liability company has the capacity to sue and be sued in its
5 17 own name and the power to do all things necessary or
5 18 convenient to carry on its activities.

5 19 2. Until a limited liability company has or has had at
5 20 least one member, the company lacks the capacity to do any act
5 21 or carry on any activity except all of the following:

5 22 a. Delivering to the secretary of state for filing a
5 23 statement of change under section 489.114, an amendment to the
5 24 certificate under section 489.202, a statement of correction
5 25 under section 489.206, a biennial report under section
5 26 489.209, or a statement of termination under section 489.702,
5 27 subsection 2, paragraph "b", subparagraph (6).

5 28 b. Admitting a member under section 489.401.

5 29 c. Dissolving under section 489.701.

5 30 3. A limited liability company that has or has had at
5 31 least one member may ratify an act or activity that occurred
5 32 when the company lacked capacity under subsection 2.

5 33 Sec. 6. NEW SECTION. 489.106 GOVERNING LAW.

5 34 The law of this state governs all of the following:

5 35 1. The internal affairs of a limited liability company.

6 1 2. The liability of a member as member and a manager as
6 2 manager for the debts, obligations, or other liabilities of a
6 3 limited liability company.

6 4 Sec. 7. NEW SECTION. 489.107 SUPPLEMENTAL PRINCIPLES OF
6 5 LAW.

6 6 Unless displaced by particular provisions of this chapter,
6 7 the principles of law and equity supplement this chapter.

6 8 Sec. 8. NEW SECTION. 489.108 NAME.

6 9 1. The name of a limited liability company must contain
6 10 the words "limited liability company" or "limited company" or
6 11 the abbreviation "L.L.C.", "LLC", "L.C.", or "LC". "Limited"
6 12 may be abbreviated as "Ltd.", and "company" may be abbreviated
6 13 as "Co."

6 14 2. Unless authorized by subsection 3, the name of a
6 15 limited liability company must be distinguishable in the
6 16 records of the secretary of state from all of the following:

6 17 a. The name of each person that is not an individual and
6 18 that is incorporated, organized, or authorized to transact
6 19 business in this state.

6 20 b. Each name reserved under section 489.109.

6 21 3. A limited liability company may apply to the secretary
6 22 of state for authorization to use a name that does not comply
6 23 with subsection 2. The secretary of state shall authorize use
6 24 of the name applied for if, as to each of the following
6 25 noncomplying names:

6 26 a. The present user, registrant, or owner of the
6 27 noncomplying name consents in a signed record to the use and
6 28 submits an undertaking in a form satisfactory to the secretary
6 29 of state to change the noncomplying name to a name that
6 30 complies with subsection 2 and is distinguishable in the
6 31 records of the secretary of state from the name applied for.

6 32 b. The applicant delivers to the secretary of state a
6 33 certified copy of the final judgment of a court establishing
6 34 the applicant's right to use in this state the name applied
6 35 for.

7 1 4. A limited liability company may use the name, including
7 2 the fictitious name, of another entity that is used in this
7 3 state if the other entity is formed under the law of this
7 4 state or is authorized to transact business in this state and

7 5 the proposed user limited liability company meets any of the
7 6 following conditions:

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

7 10 including the name, of the other entity.
7 11 5. This article does not control the use of fictitious
7 12 names. However, if a limited liability company uses a
7 13 fictitious name in this state, it shall deliver to the
7 14 secretary of state for filing a certified copy of the
7 15 resolution of its members if it is member-managed or its
7 16 managers if it is manager-managed, adopting the fictitious
7 17 name.

7 18 6. Subject to section 489.805, this section applies to a
7 19 foreign limited liability company transacting business in this
7 20 state which has a certificate of authority to transact
7 21 business in this state or which has applied for a certificate
7 22 of authority.

7 23 Sec. 9. NEW SECTION. 489.109 RESERVATION OF NAME.

7 24 1. A person may reserve the exclusive use of the name of a
7 25 limited liability company, including a fictitious or assumed
7 26 name for a foreign limited liability company whose name is not
7 27 available, by delivering an application to the secretary of
7 28 state for filing. The application must state the name and
7 29 address of the applicant and the name proposed to be reserved.
7 30 If the secretary of state finds that the name applied for is
7 31 available, it must be reserved for the applicant's exclusive
7 32 use for a one-hundred-twenty-day period.

7 33 2. The owner of a name reserved for a limited liability
7 34 company may transfer the reservation to another person by
7 35 delivering to the secretary of state for filing a signed
8 1 notice of the transfer which states the name and address of
8 2 the transferee.

8 3 Sec. 10. NEW SECTION. 489.110 OPERATING AGREEMENT ==
8 4 SCOPE, FUNCTION, AND LIMITATIONS.

8 5 1. Except as otherwise provided in subsections 2 and 3,
8 6 the operating agreement governs all of the following:

- 8 7 a. Relations among the members as members and between the
8 8 members and the limited liability company.
- 8 9 b. The rights and duties under this chapter of a person in
8 10 the capacity of manager.
- 8 11 c. The activities of the company and the conduct of those
8 12 activities.
- 8 13 d. The means and conditions for amending the operating
8 14 agreement.

8 15 2. To the extent the operating agreement does not
8 16 otherwise provide for a matter described in subsection 1, this
8 17 chapter governs the matter.

8 18 3. An operating agreement shall not do any of the
8 19 following:

- 8 20 a. Vary a limited liability company's capacity under
8 21 section 489.105 to sue and be sued in its own name.
- 8 22 b. Vary the law applicable under section 489.106.
- 8 23 c. Vary the power of the court under section 489.204.
- 8 24 d. Subject to subsections 4 through 7, eliminate the duty
8 25 of loyalty, the duty of care, or any other fiduciary duty.
- 8 26 e. Subject to subsections 4 through 7, eliminate the
8 27 contractual obligation of good faith and fair dealing under
8 28 section 489.409, subsection 4.
- 8 29 f. Unreasonably restrict the duties and rights stated in
8 30 section 489.410.
- 8 31 g. Vary the power of a court to decree dissolution in the
8 32 circumstances specified in section 489.701, subsection 1,
8 33 paragraphs "d" and "e".
- 8 34 h. Vary the requirement to wind up a limited liability
8 35 company's business as specified in section 489.702, subsection
9 1 1, and subsection 2, paragraph "a".
- 9 2 i. Unreasonably restrict the right of a member to maintain
9 3 an action under article 9.
- 9 4 j. Restrict the right to approve a merger, conversion, or
9 5 domestication under section 489.1014 to a member that will
9 6 have personal liability with respect to a surviving,
9 7 converted, or domesticated organization.
- 9 8 k. Except as otherwise provided in section 489.112,
9 9 subsection 2, restrict the rights under this chapter of a
9 10 person other than a member or manager.

9 11 4. If not manifestly unreasonable, the operating agreement
9 12 may do any of the following:

- 9 13 a. Restrict or eliminate the duty to do any of the
9 14 following:

9 15 (1) As required in section 489.409, subsection 2,

9 16 paragraph "a", and subsection 8, to account to the limited
9 17 liability company and to hold as trustee for it any property,
9 18 profit, or benefit derived by the member in the conduct or
9 19 winding up of the company's business, from a use by the member
9 20 of the company's property, or from the appropriation of a
9 21 limited liability company opportunity.

9 22 (2) As required in section 489.409, subsection 2,
9 23 paragraph "b", and subsection 8, to refrain from dealing with
9 24 the company in the conduct or winding up of the company's
9 25 business as or on behalf of a party having an interest adverse
9 26 to the company.

9 27 (3) As required by section 489.409, subsection 2,
9 28 paragraph "c", and subsection 8, to refrain from competing
9 29 with the company in the conduct of the company's business
9 30 before the dissolution of the company.

9 31 b. Identify specific types or categories of activities
9 32 that do not violate the duty of loyalty.

9 33 c. Alter the duty of care, except to authorize intentional
9 34 misconduct or knowing violation of law.

9 35 d. Alter any other fiduciary duty, including eliminating
10 1 particular aspects of that duty.

10 2 e. Prescribe the standards by which to measure the
10 3 performance of the contractual obligation of good faith and
10 4 fair dealing under section 489.409, subsection 4.

10 5 5. The operating agreement may specify the method by which
10 6 a specific act or transaction that would otherwise violate the
10 7 duty of loyalty may be authorized or ratified by one or more
10 8 disinterested and independent persons after full disclosure of
10 9 all material facts.

10 10 6. To the extent the operating agreement of a
10 11 member-managed limited liability company expressly relieves a
10 12 member of a responsibility that the member would otherwise
10 13 have under this chapter and imposes the responsibility on one
10 14 or more other members, the operating agreement may, to the
10 15 benefit of the member that the operating agreement relieves of
10 16 the responsibility, also eliminate or limit any fiduciary duty
10 17 that would have pertained to the responsibility.

10 18 7. The operating agreement may alter or eliminate the
10 19 indemnification for a member or manager provided by section
10 20 489.408, subsection 1, and may eliminate or limit a member's
10 21 or manager's liability to the limited liability company and
10 22 members for money damages, except for any of the following:

10 23 a. A breach of the duty of loyalty.

10 24 b. A financial benefit received by the member or manager
10 25 to which the member or manager is not entitled.

10 26 c. A breach of a duty under section 489.406.

10 27 d. Intentional infliction of harm on the company or a
10 28 member.

10 29 e. An intentional violation of criminal law.

10 30 8. The court shall decide any claim under subsection 4
10 31 that a term of an operating agreement is manifestly
10 32 unreasonable. All of the following apply:

10 33 a. The court shall make its determination as of the time
10 34 the challenged term became part of the operating agreement and
10 35 by considering only circumstances existing at that time.

11 1 b. The court may invalidate the term only if, in light of
11 2 the purposes and activities of the limited liability company,
11 3 it is readily apparent that any of the following applies:

11 4 (1) The objective of the term is unreasonable.

11 5 (2) The term is an unreasonable means to achieve the
11 6 provision's objective.

11 7 Sec. 11. NEW SECTION. 489.111 OPERATING AGREEMENT ==
11 8 EFFECT ON LIMITED LIABILITY COMPANY AND PERSONS BECOMING
11 9 MEMBERS == PREFORMATION AGREEMENT.

11 10 1. A limited liability company is bound by and may enforce
11 11 the operating agreement, whether or not the company has itself
11 12 manifested assent to the operating agreement.

11 13 2. A person that becomes a member of a limited liability
11 14 company is deemed to assent to the operating agreement.

11 15 3. Two or more persons intending to become the initial
11 16 members of a limited liability company may make an agreement
11 17 providing that upon the formation of the company the agreement
11 18 will become the operating agreement. One person intending to
11 19 become the initial member of a limited liability company may
11 20 assent to terms providing that upon the formation of the
11 21 company the terms will become the operating agreement.

11 22 4. An operating agreement in a signed record that excludes
11 23 modification or rescission except by a signed record cannot be
11 24 otherwise modified or rescinded.

11 25 Sec. 12. NEW SECTION. 489.112 OPERATING AGREEMENT ==
11 26 EFFECT ON THIRD PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE

11 27 ON BEHALF OF LIMITED LIABILITY COMPANY.

11 28 1. A operating agreement may specify that its amendment
11 29 requires the approval of a person that is not a party to the
11 30 operating agreement or the satisfaction of a condition. An
11 31 amendment is ineffective if its adoption does not include the
11 32 required approval or satisfy the specified condition.

11 33 2. The obligations of a limited liability company and its
11 34 members to a person in the person's capacity as a transferee
11 35 or dissociated member are governed by the operating agreement.
12 1 Subject only to any court order issued under section 489.503,
12 2 subsection 2, paragraph "b", to effectuate a charging order,
12 3 an amendment to the operating agreement made after a person
12 4 becomes a transferee or dissociated member is effective with
12 5 regard to any debt, obligation, or other liability of the
12 6 limited liability company or its members to the person in the
12 7 person's capacity as a transferee or dissociated member.

12 8 3. If a record that has been delivered by a limited
12 9 liability company to the secretary of state for filing and has
12 10 become effective under this chapter contains a provision that
12 11 would be ineffective under section 489.110, subsection 3, if
12 12 contained in the operating agreement, the provision is
12 13 likewise ineffective in the record.

12 14 4. Subject to subsection 3, if a record that has been
12 15 delivered by a limited liability company to the secretary of
12 16 state for filing and has become effective under this chapter
12 17 conflicts with a provision of the operating agreement as
12 18 follows:

12 19 a. The operating agreement prevails as to members,
12 20 dissociated members, transferees, and managers.

12 21 b. The record prevails as to other persons to the extent
12 22 they reasonably rely on the record.

12 23 Sec. 13. NEW SECTION. 489.113 REGISTERED OFFICE AND
12 24 REGISTERED AGENT FOR SERVICE OF PROCESS.

12 25 1. A limited liability company shall designate and
12 26 continuously maintain in this state all of the following:

12 27 a. A registered office, which need not be a place of its
12 28 activity in this state.

12 29 b. A registered agent for service of process.

12 30 2. A foreign limited liability company that has a
12 31 certificate of authority under section 489.802 shall designate
12 32 and continuously maintain in this state a registered agent for
12 33 service of process.

12 34 3. A registered agent for service of process of a limited
12 35 liability company or foreign limited liability company must be
13 1 an individual who is a resident of this state or other person
13 2 with authority to transact business in this state.

13 3 Sec. 14. NEW SECTION. 489.114 CHANGE OF REGISTERED
13 4 OFFICE OR REGISTERED AGENT FOR SERVICE OF PROCESS.

13 5 1. A limited liability company or foreign limited
13 6 liability company may change its registered office, its
13 7 registered agent for service of process, or the address of its
13 8 registered agent for service of process by delivering to the
13 9 secretary of state for filing a statement of change containing
13 10 all of the following:

13 11 a. The name of the company.

13 12 b. The street and mailing addresses of its current
13 13 registered office.

13 14 c. If the current registered office is to be changed, the
13 15 street and mailing addresses of the new registered office.

13 16 d. The name and street and mailing addresses of its
13 17 current registered agent for service of process.

13 18 e. If the current registered agent for service of process
13 19 or an address of the registered agent is to be changed, the
13 20 new information.

13 21 2. Subject to section 489.205, subsection 3, a statement
13 22 of change is effective when filed by the secretary of state.

13 23 Sec. 15. NEW SECTION. 489.115 RESIGNATION OF REGISTERED
13 24 AGENT FOR SERVICE OF PROCESS.

13 25 1. To resign as a registered agent for service of process
13 26 of a limited liability company or foreign limited liability
13 27 company, the registered agent must deliver to the secretary of
13 28 state for filing a statement of resignation containing the
13 29 company name and stating that the registered agent is
13 30 resigning.

13 31 2. The secretary of state shall file a statement of
13 32 resignation delivered under subsection 1 and mail or otherwise
13 33 provide or deliver a copy to the registered office of the
13 34 limited liability company or foreign limited liability company
13 35 and another copy to the principal office of the company if the
14 1 mailing address of the principal office appears in the records
14 2 of the secretary of state and is different from the mailing

14 3 address of the registered office.

14 4 3. An agency for service of process terminates on the
14 5 earlier of the following:

14 6 a. The thirty-first day after the secretary of state files
14 7 the statement of resignation.

14 8 b. When a record designating a new registered agent for
14 9 service of process is delivered to the secretary of state for
14 10 filing on behalf of the limited liability company and becomes
14 11 effective.

14 12 Sec. 16. NEW SECTION. 489.116 SERVICE OF PROCESS.

14 13 1. A registered agent for service of process appointed by
14 14 a limited liability company or foreign limited liability
14 15 company is an agent of the company for service of any process,
14 16 notice, or demand required or permitted by law to be served on
14 17 the company.

14 18 2. If a limited liability company has no registered agent,
14 19 or the agent cannot with reasonable diligence be served, the
14 20 limited liability company may be served by registered or
14 21 certified mail, return receipt requested, addressed to the
14 22 limited liability company at its principal office.

14 23 3. Service is effected under subsection 2 at the earliest
14 24 of any of the following:

14 25 a. The date the limited liability company or foreign
14 26 limited liability company receives the process, notice, or
14 27 demand.

14 28 b. The date shown on the return receipt, if signed on
14 29 behalf of the company.

14 30 c. Five days after the process, notice, or demand is
14 31 deposited with the United States postal service, if correctly
14 32 addressed and with sufficient postage.

14 33 4. This section does not affect the right to serve
14 34 process, notice, or demand in any other manner provided by
14 35 law.

15 1 Sec. 17. NEW SECTION. 489.117 FEES.

15 2 1. The secretary of state shall collect the following fees
15 3 when documents described in this subsection are delivered to
15 4 the secretary's office for filing:

15 5 a. Certificate of organization \$ 50

15 6 b. Application for use of indistinguishable name \$ 10

15 7 c. Application for reserved name \$ 10

15 8 d. Notice of transfer of reserved name \$ 10

15 9 e. Application for registered name per month or
15 10 part thereof No fee

15 11 f. Application for renewal of registered name No fee

15 12 g. Statement of change of registered agent or
15 13 registered office or both No fee

15 14 h. Registered agent's statement of change of
15 15 registered office for each affected limited
15 16 liability company No fee

15 17 i. Registered agent's statement of resignation No fee

15 18 j. Amendment to certificate of organization \$ 50

15 19 k. Restatement of certificate of organization
15 20 with amendment of certificate \$ 50

15 21 l. Articles of merger \$ 50

15 22 m. Statement of dissolution \$ 5

15 23 n. Declaration of administrative dissolution No fee

15 24 o. Application for reinstatement following
15 25 administrative dissolution \$ 5

15 26 p. Certificate of reinstatement No fee

15 27 q. Application for certificate of authority \$100

15 28 r. Application for amended certificate of
15 29 authority \$100

15 30 s. Statement of cancellation \$ 10

15 31 t. Certificate of revocation of authority
15 32 to transact business No fee

15 33 u. Statement of correction \$ 5

15 34 v. Application for certificate of existence
15 35 or authorization \$ 5

16 1 w. Any other document required or permitted
16 2 to be filed by this chapter \$ 5

16 3 2. The secretary of state shall collect a fee of five
16 4 dollars each time process is served on the secretary under
16 5 this chapter. The party to a proceeding causing service of
16 6 process is entitled to recover this fee as costs if the party
16 7 prevails in the proceeding.

16 8 3. The secretary of state shall collect the following fees
16 9 for copying and certifying the copy of any filed document
16 10 relating to a domestic or foreign corporation:

16 11 a. One dollar a page for copying.

16 12 b. Five dollars for the certificate.

16 13 ARTICLE 2

16 14 FORMATION == CERTIFICATE OF ORGANIZATION
16 15 AND OTHER FILINGS
16 16 Sec. 18. NEW SECTION. 489.201 FORMATION OF LIMITED
16 17 LIABILITY COMPANY == CERTIFICATE OF ORGANIZATION.
16 18 1. One or more persons may act as organizers to form a
16 19 limited liability company by signing and delivering to the
16 20 secretary of state for filing a certificate of organization.
16 21 2. A certificate of organization must state all of the
16 22 following:
16 23 a. The name of the limited liability company, which must
16 24 comply with section 489.108.
16 25 b. The street and mailing addresses of the initial
16 26 registered office and the name and street and mailing
16 27 addresses of the initial registered agent for service of
16 28 process of the company.
16 29 3. Subject to section 489.110, subsection 3, a certificate
16 30 of organization may also contain statements as to matters
16 31 other than those required by subsection 2. However, a
16 32 statement in a certificate of organization is not effective as
16 33 a statement of authority.
16 34 4. A limited liability company is formed when the
16 35 secretary of state has filed the certificate of organization,
17 1 unless the certificate states a delayed effective date
17 2 pursuant to section 489.205, subsection 3. If the certificate
17 3 states a delayed effective date, a limited liability company
17 4 is not formed if, before the certificate takes effect, a
17 5 statement of cancellation is signed and delivered to the
17 6 secretary of state for filing and the secretary of state files
17 7 the certificate.
17 8 5. Subject to any delayed effective date and except in a
17 9 proceeding by this state to dissolve a limited liability
17 10 company, the filing of the certificate of organization by the
17 11 secretary of state is conclusive proof that the organizer
17 12 satisfied all conditions to the formation of a limited
17 13 liability company.
17 14 Sec. 19. NEW SECTION. 489.202 AMENDMENT OR RESTATEMENT
17 15 OF CERTIFICATE OF ORGANIZATION.
17 16 1. A certificate of organization may be amended or
17 17 restated at any time.
17 18 2. To amend its certificate of organization, a limited
17 19 liability company must deliver to the secretary of state for
17 20 filing an amendment stating all of the following:
17 21 a. The name of the company.
17 22 b. The date of filing of its certificate of organization.
17 23 c. The changes the amendment makes to the certificate as
17 24 most recently amended or restated.
17 25 3. To restate its certificate of organization, a limited
17 26 liability company must deliver to the secretary of state for
17 27 filing a restatement, designated as such in its heading,
17 28 stating all of the following:
17 29 a. In the heading or an introductory paragraph, the
17 30 company's present name and the date of the filing of the
17 31 company's initial certificate of organization.
17 32 b. If the company's name has been changed at any time
17 33 since the company's formation, each of the company's former
17 34 names.
17 35 c. The changes the restatement makes to the certificate as
18 1 most recently amended or restated.
18 2 4. Subject to section 489.112, subsection 3, and section
18 3 489.205, subsection 3, an amendment to or restatement of a
18 4 certificate of organization is effective when filed by the
18 5 secretary of state.
18 6 5. If a member of a member-managed limited liability
18 7 company, or a manager of a manager-managed limited liability
18 8 company, knows that any information in a filed certificate of
18 9 organization was inaccurate when the certificate was filed or
18 10 has become inaccurate owing to changed circumstances, the
18 11 member or manager shall promptly do any of the following:
18 12 a. Cause the certificate to be amended.
18 13 b. If appropriate, deliver to the secretary of state for
18 14 filing a statement of change under section 489.114 or a
18 15 statement of correction under section 489.206.
18 16 Sec. 20. NEW SECTION. 489.203 SIGNING OF RECORDS TO BE
18 17 DELIVERED FOR FILING TO SECRETARY OF STATE.
18 18 1. A record delivered to the secretary of state for filing
18 19 pursuant to this chapter must be signed as follows:
18 20 a. Except as otherwise provided in paragraphs "b" and "c",
18 21 a record signed on behalf of a limited liability company must
18 22 be signed by a person authorized by the company.
18 23 b. A limited liability company's initial certificate of
18 24 organization must be signed by at least one person acting as

18 25 an organizer.

18 26 c. A record filed on behalf of a limited liability company
18 27 that does not have or has not had at least one member must be
18 28 signed by an organizer.

18 29 d. A record filed on behalf of a dissolved limited
18 30 liability company that has no members must be signed by the
18 31 person winding up the company's activities under section
18 32 489.702, subsection 3, or a person appointed under section
18 33 489.702, subsection 4, to wind up those activities.

18 34 e. A statement of cancellation under section 489.201,
18 35 subsection 4, must be signed by each organizer that signed the
19 1 initial certificate of organization, but a personal
19 2 representative of a deceased or incompetent organizer may sign
19 3 in the place of the decedent or incompetent.

19 4 f. A statement of denial by a person under section 489.303
19 5 must be signed by that person.

19 6 g. Any other record must be signed by the person on whose
19 7 behalf the record is delivered to the secretary of state.

19 8 2. Any record filed under this chapter may be signed by an
19 9 agent.

19 10 Sec. 21. NEW SECTION. 489.204 SIGNING AND FILING
19 11 PURSUANT TO JUDICIAL ORDER.

19 12 1. If a person required by this chapter to sign a record
19 13 or deliver a record to the secretary of state for filing under
19 14 this chapter does not do so, any other person that is
19 15 aggrieved may petition the district court to order one or more
19 16 of the following:

19 17 a. The person to sign the record.

19 18 b. The person to deliver the record to the secretary of
19 19 state for filing.

19 20 c. The secretary of state to file the record unsigned.

19 21 2. If a petitioner under subsection 1 is not the limited
19 22 liability company or foreign limited liability company to
19 23 which the record pertains, the petitioner shall make the
19 24 company a party to the action.

19 25 3. If a district court orders an unsigned record to be
19 26 delivered to the secretary of state, the secretary of state
19 27 shall file the record and the court order upon receipt.

19 28 Sec. 22. NEW SECTION. 489.205 DELIVERY TO AND FILING OF
19 29 RECORDS BY SECRETARY OF STATE == EFFECTIVE TIME AND DATE.

19 30 1. A record authorized or required to be delivered to the
19 31 secretary of state for filing under this chapter must be
19 32 captioned to describe the record's purpose, be in a medium
19 33 permitted by the secretary of state, and be delivered to the
19 34 secretary of state. If the filing fees have been paid, unless
19 35 the secretary of state determines that a record does not
20 1 comply with the filing requirements of this chapter, the
20 2 secretary of state shall file the record and any of the
20 3 following applies:

20 4 a. For a statement of denial under section 489.303, send a
20 5 copy of the filed statement and a receipt for the fees to the
20 6 person on whose behalf the statement was delivered for filing
20 7 and to the limited liability company.

20 8 b. For all other records, send a copy of the filed record
20 9 and a receipt for the fees to the person on whose behalf the
20 10 record was filed.

20 11 2. Upon request and payment of the requisite fee, the
20 12 secretary of state shall send to the requester a certified
20 13 copy of a requested record.

20 14 3. Except as otherwise provided in sections 489.115 and
20 15 489.206, and except for a certificate of organization that
20 16 contains a statement as provided in section 489.201,
20 17 subsection 4, a record delivered to the secretary of state for
20 18 filing under this chapter may specify an effective time and a
20 19 delayed effective date. Subject to section 489.115, section
20 20 489.201, subsection 4, and section 489.206, a record filed by
20 21 the secretary of state is effective as follows:

20 22 a. If the record does not specify either an effective time
20 23 or a delayed effective date, on the date and at the time the
20 24 record is filed as evidenced by the secretary of state's
20 25 endorsement of the date and time on the record.

20 26 b. If the record specifies an effective time but not a
20 27 delayed effective date, on the date the record is filed at the
20 28 time specified in the record.

20 29 c. If the record specifies a delayed effective date but
20 30 not an effective time, at 12:01 a.m. on the earlier of any of
20 31 the following:

20 32 (1) The specified date.

20 33 (2) The ninetieth day after the record is filed.

20 34 d. If the record specifies an effective time and a delayed
20 35 effective date, at the specified time on the earlier of any of

21 1 the following:

21 2 (1) The specified date.

21 3 (2) The ninetieth day after the record is filed.

21 4 e. A delayed effective date for a record shall not be
21 5 later than the ninetieth day after the date on which it is
21 6 filed.

21 7 Sec. 23. NEW SECTION. 489.206 CORRECTING FILED RECORD.

21 8 1. A limited liability company or foreign limited
21 9 liability company may deliver to the secretary of state for
21 10 filing a statement of correction to correct a record
21 11 previously delivered by the company to the secretary of state
21 12 and filed by the secretary of state, if at the time of filing
21 13 the record contained inaccurate information or was defectively
21 14 signed.

21 15 2. A statement of correction under subsection 1 shall not
21 16 have a delayed effective date and must do all of the
21 17 following:

21 18 a. Describe the record to be corrected, including its
21 19 filing date, or attach a copy of the record as filed.

21 20 b. Specify the inaccurate information and the reason it is
21 21 inaccurate or the manner in which the signing was defective.

21 22 c. Correct the defective signature or inaccurate
21 23 information.

21 24 3. When filed by the secretary of state, a statement of
21 25 correction under subsection 1 is effective retroactively as of
21 26 the effective date of the record the statement corrects, but
21 27 the statement is effective when filed as to all of the
21 28 following:

21 29 a. For the purposes of section 489.103, subsection 4.

21 30 b. As to persons that previously relied on the uncorrected
21 31 record and would be adversely affected by the retroactive
21 32 effect.

21 33 Sec. 24. NEW SECTION. 489.207 PENALTY FOR SIGNING FALSE
21 34 RECORD.

21 35 1. A person commits an offense if that person signs a
22 1 record the person knows is false in any material respect with
22 2 intent that the record be delivered to the secretary of state
22 3 for filing.

22 4 2. An offense under this section is a serious misdemeanor
22 5 punishable by a fine not to exceed one thousand dollars.

22 6 Sec. 25. NEW SECTION. 489.208 CERTIFICATE OF EXISTENCE
22 7 OR AUTHORIZATION.

22 8 1. The secretary of state, upon request and payment of the
22 9 requisite fee, shall furnish to any person a certificate of
22 10 existence for a limited liability company if the records filed
22 11 in the office of the secretary of state show that the company
22 12 has been formed under section 489.201 and the secretary of
22 13 state has not filed a statement of termination pertaining to
22 14 the company. A certificate of existence must state all of the
22 15 following:

22 16 a. The company's name.

22 17 b. That the company was duly formed under the laws of this
22 18 state and the date of formation.

22 19 c. Whether all fees, taxes, and penalties due under this
22 20 chapter or other law to the secretary of state have been paid.

22 21 d. Whether the company's most recent biennial report
22 22 required by section 489.209 has been filed by the secretary of
22 23 state.

22 24 e. Whether the secretary of state has administratively
22 25 dissolved the company.

22 26 f. Whether the company has delivered to the secretary of
22 27 state for filing a statement of dissolution.

22 28 g. That a statement of termination has not been filed by
22 29 the secretary of state.

22 30 h. Other facts of record in the office of the secretary of
22 31 state which are specified by the person requesting the
22 32 certificate.

22 33 2. The secretary of state, upon request and payment of the
22 34 requisite fee, shall furnish to any person a certificate of
22 35 authorization for a foreign limited liability company if the
23 1 records filed in the office of the secretary of state show
23 2 that the secretary of state has filed a certificate of
23 3 authority, has not revoked the certificate of authority, and
23 4 has not filed a notice of cancellation. A certificate of
23 5 authorization must state all of the following:

23 6 a. The company's name and any alternate name adopted under
23 7 section 489.805, subsection 1, for use in this state.

23 8 b. That the company is authorized to transact business in
23 9 this state.

23 10 c. Whether all fees, taxes, and penalties due under this
23 11 chapter or other law to the secretary of state have been paid.

23 12 d. Whether the company's most recent biennial report
23 13 required by section 489.209 has been filed by the secretary of
23 14 state.

23 15 e. That the secretary of state has not revoked the
23 16 company's certificate of authority and has not filed a notice
23 17 of cancellation.

23 18 f. Other facts of record in the office of the secretary of
23 19 state which are specified by the person requesting the
23 20 certificate.

23 21 3. Subject to any qualification stated in the certificate,
23 22 a certificate of existence or certificate of authorization
23 23 issued by the secretary of state is conclusive evidence that
23 24 the limited liability company is in existence or the foreign
23 25 limited liability company is authorized to transact business
23 26 in this state.

23 27 Sec. 26. NEW SECTION. 489.209 BIENNIAL REPORT FOR
23 28 SECRETARY OF STATE.

23 29 1. A limited liability company or a foreign limited
23 30 liability company authorized to transact business in this
23 31 state shall deliver to the secretary of state for filing a
23 32 biennial report that states all of the following:

23 33 a. The name of the company.

23 34 b. The street and mailing addresses of the company's
23 35 registered office and the name and street and mailing
24 1 addresses of its registered agent for service of process in
24 2 this state.

24 3 c. The street and mailing addresses of its principal
24 4 office.

24 5 d. In the case of a foreign limited liability company, the
24 6 state or other jurisdiction under whose law the company is
24 7 formed and any alternate name adopted under section 489.805,
24 8 subsection 1.

24 9 2. Information in a biennial report under this section
24 10 must be current as of the date the report is delivered to the
24 11 secretary of state for filing.

24 12 3. The first biennial report under this section must be
24 13 delivered to the secretary of state between January 1 and
24 14 April 1 of the first odd-numbered year following the calendar
24 15 year in which a limited liability company was formed or a
24 16 foreign limited liability company was authorized to transact
24 17 business. A subsequent biennial report must be delivered to
24 18 the secretary of state between January 1 and April 1 of each
24 19 following odd-numbered calendar year.

24 20 4. If a biennial report under this section does not
24 21 contain the information required in subsection 1, the
24 22 secretary of state shall promptly notify the reporting limited
24 23 liability company or foreign limited liability company and
24 24 return the report to it for correction. If the report is
24 25 corrected to contain the information required in subsection 1
24 26 and delivered to the secretary of state within thirty days
24 27 after the effective date of the notice, it is timely
24 28 delivered.

24 29 5. If a biennial report under this section contains an
24 30 address of a registered office or the name or address of a
24 31 registered agent for service of process which differs from the
24 32 information shown in the records of the secretary of state
24 33 immediately before the biennial report becomes effective, the
24 34 differing information in the biennial report is considered a
24 35 statement of change under section 489.114.

25 1 ARTICLE 3

25 2 RELATIONS OF MEMBERS AND MANAGERS

25 3 TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

25 4 Sec. 27. NEW SECTION. 489.301 NO AGENCY POWER OF MEMBER
25 5 AS MEMBER.

25 6 1. A member is not an agent of a limited liability company
25 7 solely by reason of being a member.

25 8 2. A person's status as a member does not prevent or
25 9 restrict law other than this chapter from imposing liability
25 10 on a limited liability company because of the person's
25 11 conduct.

25 12 Sec. 28. NEW SECTION. 489.302 STATEMENT OF AUTHORITY.

25 13 1. A limited liability company may deliver to the
25 14 secretary of state for filing a statement of authority. All
25 15 of the following apply to the statement:

25 16 a. It must include the name of the company and the street
25 17 and mailing addresses of its registered office.

25 18 b. With respect to any position that exists in or with
25 19 respect to the company, it may state the authority, or
25 20 limitations on the authority, of all persons holding the
25 21 position to do any of the following:

25 22 (1) Execute an instrument transferring real property held

25 23 in the name of the company.
25 24 (2) Enter into other transactions on behalf of, or
25 25 otherwise act for or bind, the company.
25 26 c. It may state the authority, or limitations on the
25 27 authority, of a specific person to do any of the following:
25 28 (1) Execute an instrument transferring real property held
25 29 in the name of the company.
25 30 (2) Enter into other transactions on behalf of, or
25 31 otherwise act for or bind, the company.
25 32 2. To amend or cancel a statement of authority filed by
25 33 the secretary of state under section 489.205, subsection 1, a
25 34 limited liability company must deliver to the secretary of
25 35 state for filing an amendment or cancellation stating all of
26 1 the following:
26 2 a. The name of the company.
26 3 b. The street and mailing addresses of the company's
26 4 registered office.
26 5 c. The caption of the statement being amended or canceled
26 6 and the date the statement being affected became effective.
26 7 d. The contents of the amendment or a declaration that the
26 8 statement being affected is canceled.
26 9 3. A statement of authority affects only the power of a
26 10 person to bind a limited liability company to persons that are
26 11 not members.
26 12 4. Subject to subsection 3 and section 489.103, subsection
26 13 4, and except as otherwise provided in subsections 6, 7, and
26 14 8, a limitation on the authority of a person or a position
26 15 contained in an effective statement of authority is not by
26 16 itself evidence of knowledge or notice of the limitation by
26 17 any person.
26 18 5. Subject to subsection 3, a grant of authority not
26 19 pertaining to a transfer of real property and contained in an
26 20 effective statement of authority is conclusive in favor of a
26 21 person that gives value in reliance on the grant, except to
26 22 the extent that when the person gives value and any of the
26 23 following applies:
26 24 a. The person has knowledge to the contrary.
26 25 b. The statement has been canceled or restrictively
26 26 amended under subsection 2.
26 27 c. A limitation on the grant is contained in another
26 28 statement of authority that became effective after the
26 29 statement containing the grant became effective.
26 30 6. Subject to subsection 3, an effective statement of
26 31 authority that grants authority to transfer real property held
26 32 in the name of the limited liability company and that is
26 33 recorded by certified copy in the office for recording
26 34 transfers of the real property is conclusive in favor of a
26 35 person that gives value in reliance on the grant without
27 1 knowledge to the contrary, except to the extent that when the
27 2 person gives value and any of the following applies:
27 3 a. The statement has been canceled or restrictively
27 4 amended under subsection 2 and a certified copy of the
27 5 cancellation or restrictive amendment has been recorded in the
27 6 office for recording transfers of the real property.
27 7 b. A limitation on the grant is contained in another
27 8 statement of authority that became effective after the
27 9 statement containing the grant became effective and a
27 10 certified copy of the later-effective statement is recorded in
27 11 the office for recording transfers of the real property.
27 12 7. Subject to subsection 3, if a certified copy of an
27 13 effective statement containing a limitation on the authority
27 14 to transfer real property held in the name of a limited
27 15 liability company is recorded in the office for recording
27 16 transfers of that real property, all persons are deemed to
27 17 know of the limitation.
27 18 8. Subject to subsection 9, an effective statement of
27 19 dissolution or statement of termination is a cancellation of
27 20 any filed statement of authority for the purposes of
27 21 subsection 6 and is a limitation on authority for the purposes
27 22 of subsection 7.
27 23 9. After a statement of dissolution becomes effective, a
27 24 limited liability company may deliver to the secretary of
27 25 state for filing and, if appropriate, may record a statement
27 26 of authority that is designated as a post-dissolution
27 27 statement of authority. The statement operates as provided in
27 28 subsections 6 and 7.
27 29 10. Unless earlier canceled, an effective statement of
27 30 authority is canceled by operation of law five years after the
27 31 date on which the statement, or its most recent amendment,
27 32 becomes effective. This cancellation operates without need
27 33 for any recording under subsection 6 or 7.

27 34 11. An effective statement of denial operates as a
27 35 restrictive amendment under this section and may be recorded
28 1 by certified copy for the purposes of subsection 6, paragraph
28 2 "a".

28 3 Sec. 29. NEW SECTION. 489.303 STATEMENT OF DENIAL.

28 4 A person named in a filed statement of authority granting
28 5 that person authority may deliver to the secretary of state
28 6 for filing a statement of denial that does all of the
28 7 following:

28 8 1. Provides the name of the limited liability company and
28 9 the caption of the statement of authority to which the
28 10 statement of denial pertains.

28 11 2. Denies the grant of authority.

28 12 Sec. 30. NEW SECTION. 489.304 LIABILITY OF MEMBERS AND
28 13 MANAGERS.

28 14 1. For debts, obligations, or other liabilities of a
28 15 limited liability company, whether arising in contract, tort,
28 16 or otherwise all of the following apply:

28 17 a. They are solely the debts, obligations, or other
28 18 liabilities of the company.

28 19 b. They do not become the debts, obligations, or other
28 20 liabilities of a member or manager solely by reason of the
28 21 member acting as a member or manager acting as a manager.

28 22 2. The failure of a limited liability company to observe
28 23 any particular formalities relating to the exercise of its
28 24 powers or management of its activities is not a ground for
28 25 imposing liability on the members or managers for the debts,
28 26 obligations, or other liabilities of the company.

28 27 ARTICLE 4

28 28 RELATIONS OF MEMBERS TO EACH OTHER AND 28 29 TO LIMITED LIABILITY COMPANY

28 30 Sec. 31. NEW SECTION. 489.401 BECOMING MEMBER.

28 31 1. If a limited liability company is to have only one
28 32 member upon formation, a person becomes the member as agreed
28 33 by that person and the organizer of the company or a majority
28 34 of organizers if more than one. That person and the organizer
28 35 may be, but need not be, different persons. If different, the
29 1 organizer acts on behalf of the initial member.

29 2 2. If a limited liability company is to have more than one
29 3 member upon formation, those persons become members as agreed
29 4 by the persons before the formation of the company. The
29 5 organizer acts on behalf of the persons in forming the company
29 6 and may be, but need not be, one of the persons.

29 7 3. If a limited liability company has no members upon
29 8 formation, a person becomes member of the limited liability
29 9 company with the consent of the organizer or a majority of the
29 10 organizers if more than one. The organizers may consent to
29 11 more than one person simultaneously becoming the company's
29 12 initial members.

29 13 4. After formation of a limited liability company, a
29 14 person becomes a member upon any of the following:

29 15 a. As provided in the operating agreement.

29 16 b. As the result of a transaction effective under article
29 17 10.

29 18 c. With the consent of all the members.

29 19 d. If, within ninety consecutive days after the company
29 20 ceases to have any members and all of the following occur:

29 21 (1) The last person to have been a member, or the legal
29 22 representative of that person, designates a person to become a
29 23 member.

29 24 (2) The designated person consents to become a member.

29 25 5. A person may become a member without acquiring a
29 26 transferable interest and without making or being obligated to
29 27 make a contribution to the limited liability company.

29 28 Sec. 32. NEW SECTION. 489.402 FORM OF CONTRIBUTION.

29 29 A contribution may consist of tangible or intangible
29 30 property or other benefit to a limited liability company,
29 31 including money, services performed, promissory notes, other
29 32 agreements to contribute money or property, and contracts for
29 33 services to be performed.

29 34 Sec. 33. NEW SECTION. 489.403 LIABILITY FOR
29 35 CONTRIBUTIONS.

30 1 1. A person's obligation to make a contribution to a
30 2 limited liability company is not excused by the person's
30 3 death, disability, or other inability to perform personally.
30 4 If a person does not make a required contribution, the person
30 5 or the person's estate is obligated to contribute money equal
30 6 to the value of the part of the contribution which has not
30 7 been made, at the option of the company.

30 8 2. A creditor of a limited liability company which extends
30 9 credit or otherwise acts in reliance on an obligation

30 10 described in subsection 1 may enforce the obligation.
30 11 3. An operating agreement may provide that the interest of
30 12 any member who fails to make a contribution that the member is
30 13 obligated to make is subject to specified penalties for, or
30 14 specified consequences of, such failure. The penalty or
30 15 consequence may take the form of reducing or eliminating the
30 16 defaulting member's proportionate interest in a limited
30 17 liability company, subordinating the member's interest to that
30 18 of a nondefaulting member, a forced sale of the member's
30 19 interest, forfeiture of the member's interest, the lending by
30 20 other members of the amount necessary to meet the member's
30 21 commitment, a fixing of the value of the member's interest by
30 22 appraisal or by formula and redemption, or sale of the
30 23 member's interest at such value or other penalty or
30 24 consequence.

30 25 Sec. 34. NEW SECTION. 489.404 SHARING OF AND RIGHT TO
30 26 DISTRIBUTIONS BEFORE DISSOLUTION.

30 27 1. Any distributions made by a limited liability company
30 28 before its dissolution and winding up must be in equal shares
30 29 among members and dissociated members, except to the extent
30 30 necessary to comply with any transfer effective under section
30 31 489.502 and any charging order in effect under section
30 32 489.503.

30 33 2. A person has a right to a distribution before the
30 34 dissolution and winding up of a limited liability company only
30 35 if the company decides to make an interim distribution. A
31 1 person's dissociation does not entitle the person to a
31 2 distribution.

31 3 3. A person does not have a right to demand or receive a
31 4 distribution from a limited liability company in any form
31 5 other than money. Except as otherwise provided in section
31 6 489.708, subsection 3, a limited liability company may
31 7 distribute an asset in kind if each part of the asset is
31 8 fungible with each other part and each person receives a
31 9 percentage of the asset equal in value to the person's share
31 10 of distributions.

31 11 4. If a member or transferee becomes entitled to receive a
31 12 distribution, the member or transferee has the status of, and
31 13 is entitled to all remedies available to, a creditor of the
31 14 limited liability company with respect to the distribution.

31 15 Sec. 35. NEW SECTION. 489.405 LIMITATIONS ON
31 16 DISTRIBUTION.

31 17 1. A limited liability company shall not make a
31 18 distribution if after the distribution any of the following
31 19 applies:

31 20 a. The company would not be able to pay its debts as they
31 21 become due in the ordinary course of the company's activities.

31 22 b. The company's total assets would be less than the sum
31 23 of its total liabilities plus the amount that would be needed,
31 24 if the company were to be dissolved, wound up, and terminated
31 25 at the time of the distribution, to satisfy the preferential
31 26 rights upon dissolution, winding up, and termination of
31 27 members whose preferential rights are superior to those of
31 28 persons receiving the distribution.

31 29 2. A limited liability company may base a determination
31 30 that a distribution is not prohibited under subsection 1 on
31 31 financial statements prepared on the basis of accounting
31 32 practices and principles that are reasonable in the
31 33 circumstances or on a fair valuation or other method that is
31 34 reasonable under the circumstances.

31 35 3. Except as otherwise provided in subsection 5, the
32 1 effect of a distribution under subsection 1 is measured as
32 2 follows:

32 3 a. In the case of a distribution by purchase, redemption,
32 4 or other acquisition of a transferable interest in the
32 5 company, as of the date money or other property is transferred
32 6 or debt incurred by the company.

32 7 b. In all other cases, as follows:

32 8 (1) The date that distribution is authorized, if the
32 9 payment occurs within one hundred twenty days after that date.

32 10 (2) The date that payment is made, if the payment occurs
32 11 more than one hundred twenty days after the distribution is
32 12 authorized.

32 13 4. A limited liability company's indebtedness to a member
32 14 incurred by reason of a distribution made in accordance with
32 15 this section is at parity with the company's indebtedness to
32 16 its general, unsecured creditors.

32 17 5. A limited liability company's indebtedness, including
32 18 indebtedness issued in connection with or as part of a
32 19 distribution, is not a liability for purposes of subsection 1
32 20 if the terms of the indebtedness provide that payment of

32 21 principal and interest are made only to the extent that a
32 22 distribution could be made to members under this section. If
32 23 indebtedness is issued as a distribution, each payment of
32 24 principal or interest on the indebtedness is treated as a
32 25 distribution, the effect of which is measured on the date the
32 26 payment is made.

32 27 6. In subsection 1, "distribution" does not include
32 28 amounts constituting reasonable compensation for present or
32 29 past services or reasonable payments made in the ordinary
32 30 course of business under a bona fide retirement plan or other
32 31 benefits program.

32 32 Sec. 36. NEW SECTION. 489.406 LIABILITY FOR IMPROPER
32 33 DISTRIBUTIONS.

32 34 1. Except as otherwise provided in subsection 2, if a
32 35 member of a member=managed limited liability company or
33 1 manager of a manager=managed limited liability company
33 2 consents to a distribution made in violation of section
33 3 489.405 and in consenting to the distribution fails to comply
33 4 with section 489.409, the member or manager is personally
33 5 liable to the company for the amount of the distribution that
33 6 exceeds the amount that could have been distributed without
33 7 the violation of section 489.405.

33 8 2. To the extent the operating agreement of a
33 9 member=managed limited liability company expressly relieves a
33 10 member of the authority and responsibility to consent to
33 11 distributions and imposes that authority and responsibility on
33 12 one or more other members, the liability stated in subsection
33 13 1 applies to the other members and not the member that the
33 14 operating agreement relieves of authority and responsibility.

33 15 3. A person that receives a distribution knowing that the
33 16 distribution to that person was made in violation of section
33 17 489.405 is personally liable to the limited liability company
33 18 but only to the extent that the distribution received by the
33 19 person exceeded the amount that could have been properly paid
33 20 under section 489.405.

33 21 4. A person against which an action is commenced because
33 22 the person is liable under subsection 1 may do all of the
33 23 following:

33 24 a. Implead any other person that is subject to liability
33 25 under subsection 1 and seek to compel contribution from the
33 26 person.

33 27 b. Implead any person that received a distribution in
33 28 violation of subsection 3 and seek to compel contribution from
33 29 the person in the amount the person received in violation of
33 30 subsection 3.

33 31 5. An action under this section is barred if not commenced
33 32 within two years after the distribution.

33 33 Sec. 37. NEW SECTION. 489.407 MANAGEMENT OF LIMITED
33 34 LIABILITY COMPANY.

33 35 1. A limited liability company is a member=managed limited
34 1 liability company unless the operating agreement does any of
34 2 the following:

34 3 a. Expressly provides that any of the following apply:

- 34 4 (1) The company is or will be "manager=managed".
- 34 5 (2) The company is or will be "managed by managers".
- 34 6 (3) Management of the company is or will be "vested in
34 7 managers".

34 8 b. Includes words of similar import.

34 9 2. In a member=managed limited liability company, all of
34 10 the following rules apply:

34 11 a. The management and conduct of the company are vested in
34 12 the members.

34 13 b. Each member has equal rights in the management and
34 14 conduct of the company's activities.

34 15 c. A difference arising among members as to a matter in
34 16 the ordinary course of the activities of the company may be
34 17 decided by a majority of the members.

34 18 d. An act outside the ordinary course of the activities of
34 19 the company, including selling, leasing, exchanging, or
34 20 otherwise disposing of all, or substantially all, of the
34 21 company's property, with or without the goodwill, may be
34 22 undertaken only with the consent of all members.

34 23 e. The operating agreement may be amended only with the
34 24 consent of all members.

34 25 f. Approve a merger, conversion, or domestication under
34 26 article 10.

34 27 3. In a manager=managed limited liability company, all of
34 28 the following rules apply:

34 29 a. Except as otherwise expressly provided in this chapter,
34 30 any matter relating to the activities of the company is
34 31 decided exclusively by the managers.

34 32 b. Each manager has equal rights in the management and
34 33 conduct of the activities of the company.

34 34 c. A difference arising among managers as to a matter in
34 35 the ordinary course of the activities of the company may be
35 1 decided by a majority of the managers.

35 2 d. The consent of all members is required to do any of the
35 3 following:

35 4 (1) Sell, lease, exchange, or otherwise dispose of all, or
35 5 substantially all, of the company's property, with or without
35 6 the goodwill, outside the ordinary course of the company's
35 7 activities.

35 8 (2) Approve a merger, conversion, or domestication under
35 9 article 10.

35 10 (3) Undertake any other act outside the ordinary course of
35 11 the company's activities.

35 12 (4) Amend the operating agreement.

35 13 e. A manager may be chosen at any time by the consent of a
35 14 majority of the members and remains a manager until a
35 15 successor has been chosen, unless the manager at an earlier
35 16 time resigns, is removed, or dies, or, in the case of a
35 17 manager that is not an individual, terminates. A manager may
35 18 be removed at any time by the consent of a majority of the
35 19 members without notice or cause.

35 20 f. A person need not be a member to be a manager, but the
35 21 dissociation of a member that is also a manager removes the
35 22 person as a manager. If a person that is both a manager and a
35 23 member ceases to be a manager, that cessation does not by
35 24 itself dissociate the person as a member.

35 25 g. A person's ceasing to be a manager does not discharge
35 26 any debt, obligation, or other liability to the limited
35 27 liability company or members which the person incurred while a
35 28 manager.

35 29 4. An action requiring the consent of members under this
35 30 chapter may be taken without a meeting, and a member may
35 31 appoint a proxy or other agent to consent or otherwise act for
35 32 the member by signing an appointing record, personally or by
35 33 the member's agent.

35 34 5. The dissolution of a limited liability company does not
35 35 affect the applicability of this section. However, a person

36 1 that wrongfully causes dissolution of the company loses the
36 2 right to participate in management as a member and a manager.

36 3 6. This chapter does not entitle a member to remuneration
36 4 for services performed for a member-managed limited liability
36 5 company, except for reasonable compensation for services
36 6 rendered in winding up the activities of the company.

36 7 Sec. 38. NEW SECTION. 489.408 INDEMNIFICATION AND
36 8 INSURANCE.

36 9 1. A limited liability company shall reimburse for any
36 10 payment made and indemnify for any debt, obligation, or other
36 11 liability incurred by a member of a member-managed company or
36 12 the manager of a manager-managed company in the course of the
36 13 member's or manager's activities on behalf of the company, if,
36 14 in making the payment or incurring the debt, obligation, or
36 15 other liability, the member or manager complied with the
36 16 duties stated in sections 489.405 and 489.409.

36 17 2. A limited liability company may purchase and maintain
36 18 insurance on behalf of a member or manager of the company
36 19 against liability asserted against or incurred by the member
36 20 or manager in that capacity or arising from that status even
36 21 if, under section 489.110, subsection 7, the operating
36 22 agreement could not eliminate or limit the person's liability
36 23 to the company for the conduct giving rise to the liability.

36 24 Sec. 39. NEW SECTION. 489.409 STANDARDS OF CONDUCT FOR
36 25 MEMBERS AND MANAGERS.

36 26 1. A member of a member-managed limited liability company
36 27 owes to the company and, subject to section 489.901,
36 28 subsection 2, the other members the fiduciary duties of
36 29 loyalty and care stated in subsections 2 and 3.

36 30 2. The duty of loyalty of a member in a member-managed
36 31 limited liability company includes all of the following
36 32 duties:

36 33 a. To account to the company and to hold as trustee for it
36 34 any property, profit, or benefit derived by the member
36 35 regarding any of the following:

37 1 (1) In the conduct or winding up of the company's
37 2 activities.

37 3 (2) From a use by the member of the company's property.

37 4 (3) From the appropriation of a limited liability company
37 5 opportunity.

37 6 b. To refrain from dealing with the company in the conduct
37 7 or winding up of the company's activities as or on behalf of a

37 8 person having an interest adverse to the company.
37 9 c. To refrain from competing with the company in the
37 10 conduct of the company's activities before the dissolution of
37 11 the company.

37 12 3. Subject to the business judgment rule as stated in
37 13 subsection 7, the duty of care of a member of a member=managed
37 14 limited liability company in the conduct and winding up of the
37 15 company's activities is to act with the care that a person in
37 16 a like position would reasonably exercise under similar
37 17 circumstances and in a manner the member reasonably believes
37 18 to be in the best interests of the company. In discharging
37 19 this duty, a member may rely in good faith upon opinions,
37 20 reports, statements, or other information provided by another
37 21 person that the member reasonably believes is a competent and
37 22 reliable source for the information.

37 23 4. A member in a member=managed limited liability company
37 24 or a manager=managed limited liability company shall discharge
37 25 the duties under this chapter or under the operating agreement
37 26 and exercise any rights consistently with the contractual
37 27 obligation of good faith and fair dealing.

37 28 5. It is a defense to a claim under subsection 2,
37 29 paragraph "b", and any comparable claim in equity or at common
37 30 law that the transaction was fair to the limited liability
37 31 company.

37 32 6. All of the members of a member=managed limited
37 33 liability company or a manager=managed limited liability
37 34 company may authorize or ratify, after full disclosure of all
37 35 material facts, a specific act or transaction that otherwise
38 1 would violate the duty of loyalty.

38 2 7. a. A member satisfies the duty of care in subsection 3
38 3 if all of the following apply:

38 4 (1) The member is not interested in the subject matter of
38 5 the business judgment.

38 6 (2) The member is informed with respect to the subject of
38 7 the business judgment to the extent the member reasonably
38 8 believes to be appropriate in the circumstances.

38 9 (3) The member has a rational basis for believing that the
38 10 business judgment is in the best interests of the limited
38 11 liability company.

38 12 b. A person challenging the business judgment of a member
38 13 has the burden of proving a breach of the duty of care, and in
38 14 a damage action, the burden of proving that the breach was the
38 15 legal cause of damage suffered by the limited liability
38 16 company.

38 17 8. In a manager=managed limited liability company, all of
38 18 the following rules apply:

38 19 a. Subsections 1, 2, 3, 5, and 7 apply to the manager or
38 20 managers and not the members.

38 21 b. The duty stated under subsection 2, paragraph "c",
38 22 continues until winding up is completed.

38 23 c. Subsection 4 applies to the members and managers.

38 24 d. Subsection 6 applies only to the members.

38 25 e. A member does not have any fiduciary duty to the
38 26 company or to any other member solely by reason of being a
38 27 member.

38 28 Sec. 40. NEW SECTION. 489.410 RIGHT OF MEMBERS,
38 29 MANAGERS, AND DISSOCIATED MEMBERS TO INFORMATION.

38 30 1. In a member=managed limited liability company, all of
38 31 the following rules apply:

38 32 a. On reasonable notice, a member may inspect and copy
38 33 during regular business hours, at a reasonable location
38 34 specified by the company, any record maintained by the company
38 35 regarding the company's activities, financial condition, and
39 1 other circumstances, to the extent the information is material
39 2 to the member's rights and duties under the operating
39 3 agreement or this chapter.

39 4 b. The company shall furnish to each member all of the
39 5 following:

39 6 (1) Without demand, any information concerning the
39 7 company's activities, financial condition, and other
39 8 circumstances which the company knows and is material to the
39 9 proper exercise of the member's rights and duties under the
39 10 operating agreement or this chapter, except to the extent the
39 11 company can establish that it reasonably believes the member
39 12 already knows the information.

39 13 (2) On demand, any other information concerning the
39 14 company's activities, financial condition, and other
39 15 circumstances, except to the extent the demand or information
39 16 demanded is unreasonable or otherwise improper under the
39 17 circumstances.

39 18 c. The duty to furnish information under paragraph "b"

39 19 also applies to each member to the extent the member knows any
39 20 of the information described in paragraph "b".

39 21 2. In a manager-managed limited liability company, all of
39 22 the following rules apply:

39 23 a. The informational rights stated in subsection 1 and the
39 24 duty stated in subsection 1, paragraph "c", apply to the
39 25 managers and not the members.

39 26 b. During regular business hours and at a reasonable
39 27 location specified by the company, a member may obtain from
39 28 the company and inspect and copy full information regarding
39 29 the activities, financial condition, and other circumstances
39 30 of the company as is just and reasonable if all of the
39 31 following apply:

39 32 (1) The member seeks the information for a purpose
39 33 material to the member's interest as a member.

39 34 (2) The member makes a demand in a record received by the
39 35 company, describing with reasonable particularity the
40 1 information sought and the purpose for seeking the
40 2 information.

40 3 (3) The information sought is directly connected to the
40 4 member's purpose.

40 5 c. Within ten days after receiving a demand pursuant to
40 6 paragraph "b", subparagraph (2), the company shall in a record
40 7 inform the member that made the demand all of the following:

40 8 (1) Of the information that the company will provide in
40 9 response to the demand and when and where the company will
40 10 provide the information.

40 11 (2) If the company declines to provide any demanded
40 12 information, the company's reasons for declining.

40 13 d. Whenever this chapter or an operating agreement
40 14 provides for a member to give or withhold consent to a matter,
40 15 before the consent is given or withheld, the company shall,
40 16 without demand, provide the member with all information that
40 17 is known to the company and is material to the member's
40 18 decision.

40 19 3. On ten days' demand made in a record received by a
40 20 limited liability company, a dissociated member may have
40 21 access to information to which the person was entitled while a
40 22 member if the information pertains to the period during which
40 23 the person was a member, the person seeks the information in
40 24 good faith, and the person satisfies the requirements imposed
40 25 on a member by subsection 2, paragraph "b". The company shall
40 26 respond to a demand made pursuant to this subsection in the
40 27 manner provided in subsection 2, paragraph "c".

40 28 4. A limited liability company may charge a person that
40 29 makes a demand under this section the reasonable costs of
40 30 copying, limited to the costs of labor and material.

40 31 5. A member or dissociated member may exercise rights
40 32 under this section through an agent or, in the case of an
40 33 individual under legal disability, a legal representative.

40 34 Any restriction or condition imposed by the operating
40 35 agreement or under subsection 7 applies both to the agent or

41 1 legal representative and the member or dissociated member.
41 2 6. The rights under this section do not extend to a person
41 3 as transferee.

41 4 7. In addition to any restriction or condition stated in
41 5 its operating agreement, a limited liability company, as a
41 6 matter within the ordinary course of its activities, may
41 7 impose reasonable restrictions and conditions on access to and
41 8 use of information to be furnished under this section,
41 9 including designating information confidential and imposing
41 10 nondisclosure and safeguarding obligations on the recipient.
41 11 In a dispute concerning the reasonableness of a restriction
41 12 under this subsection, the company has the burden of proving
41 13 reasonableness.

41 14 ARTICLE 5

41 15 TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

41 16 Sec. 41. NEW SECTION. 489.501 NATURE OF TRANSFERABLE
41 17 INTEREST.

41 18 A transferable interest is personal property.

41 19 Sec. 42. NEW SECTION. 489.502 TRANSFER OF TRANSFERABLE
41 20 INTEREST.

41 21 1. For a transfer, in whole or in part, all of the
41 22 following applies to a transferable interest:

41 23 a. It is permissible.

41 24 b. It does not by itself cause a member's dissociation or
41 25 a dissolution and winding up of the limited liability
41 26 company's activities.

41 27 c. Subject to section 489.504, it does not entitle the
41 28 transferee to do any of the following:

41 29 (1) Participate in the management or conduct of the

41 30 company's activities.

41 31 (2) Except as otherwise provided in subsection 3, have
41 32 access to records or other information concerning the
41 33 company's activities.

41 34 2. A transferee has the right to receive, in accordance
41 35 with the transfer, distributions to which the transferor would
42 1 otherwise be entitled.

42 2 3. In a dissolution and winding up of a limited liability
42 3 company, a transferee is entitled to an account of the
42 4 company's transactions only from the date of dissolution.

42 5 4. A transferable interest may be evidenced by a
42 6 certificate of the interest issued by the limited liability
42 7 company in a record, and, subject to this section, the
42 8 interest represented by the certificate may be transferred by
42 9 a transfer of the certificate.

42 10 5. A limited liability company need not give effect to a
42 11 transferee's rights under this section until the company has
42 12 notice of the transfer.

42 13 6. A transfer of a transferable interest in violation of a
42 14 restriction on transfer contained in the operating agreement
42 15 or another agreement to which the transferor is a party is
42 16 ineffective as to a person having notice of the restriction at
42 17 the time of transfer.

42 18 7. Except as otherwise provided in section 489.602,
42 19 subsection 4, paragraph "b", when a member transfers a
42 20 transferable interest, the transferor retains the rights of a
42 21 member other than the interest in distributions transferred
42 22 and retains all duties and obligations of a member.

42 23 8. When a member transfers a transferable interest to a
42 24 person that becomes a member with respect to the transferred
42 25 interest, the transferee is liable for the member's
42 26 obligations under section 489.403 and section 489.406,
42 27 subsection 3, known to the transferee when the transferee
42 28 becomes a member.

42 29 Sec. 43. NEW SECTION. 489.503 CHARGING ORDER.

42 30 1. On application by a judgment creditor of a member or
42 31 transferee, a court may enter a charging order against the
42 32 transferable interest of the judgment debtor for the
42 33 unsatisfied amount of the judgment. A charging order
42 34 constitutes a lien on a judgment debtor's transferable
42 35 interest and requires the limited liability company to pay
43 1 over to the person to which the charging order was issued any
43 2 distribution that would otherwise be paid to the judgment
43 3 debtor.

43 4 2. To the extent necessary to effectuate the collection of
43 5 distributions pursuant to a charging order in effect under
43 6 subsection 1, the court may do all of the following:

43 7 a. Appoint a receiver of the distributions subject to the
43 8 charging order, with the power to make all inquiries the
43 9 judgment debtor might have made.

43 10 b. Make all other orders necessary to give effect to the
43 11 charging order.

43 12 3. Upon a showing that distributions under a charging
43 13 order will not pay the judgment debt within a reasonable time,
43 14 the court may foreclose the lien and order the sale of the
43 15 transferable interest. The purchaser at the foreclosure sale
43 16 only obtains the transferable interest, does not thereby
43 17 become a member, and is subject to section 489.502.

43 18 4. At any time before foreclosure under subsection 3, the
43 19 member or transferee whose transferable interest is subject to
43 20 a charging order under subsection 1 may extinguish the
43 21 charging order by satisfying the judgment and filing a
43 22 certified copy of the satisfaction with the court that issued
43 23 the charging order.

43 24 5. At any time before foreclosure under subsection 3, a
43 25 limited liability company or one or more members whose
43 26 transferable interests are not subject to the charging order
43 27 may pay to the judgment creditor the full amount due under the
43 28 judgment and thereby succeed to the rights of the judgment
43 29 creditor, including the charging order.

43 30 6. This chapter does not deprive any member or transferee
43 31 of the benefit of any exemption laws applicable to the
43 32 member's or transferee's transferable interest.

43 33 7. This section provides the exclusive remedy by which a
43 34 person seeking to enforce a judgment against a member or
43 35 transferee may, in the capacity of judgment creditor, satisfy
44 1 the judgment from the judgment debtor's transferable interest.

44 2 Sec. 44. NEW SECTION. 489.504 POWER OF PERSONAL
44 3 REPRESENTATIVE OF DECEASED MEMBER.

44 4 If a member dies, the deceased member's personal
44 5 representative or other legal representative may exercise the

44 6 rights of a transferee provided in section 489.502, subsection
44 7 2, and, for the purposes of settling the estate, the rights of
44 8 a current member under section 489.410.

44 9 ARTICLE 6

44 10 MEMBER'S DISSOCIATION

44 11 Sec. 45. NEW SECTION. 489.601 MEMBER'S POWER TO
44 12 DISSOCIATE == WRONGFUL DISSOCIATION.

44 13 1. A person has the power to dissociate as a member at any
44 14 time, rightfully or wrongfully, by withdrawing as a member by
44 15 express will under section 489.602, subsection 1.

44 16 2. A person's dissociation from a limited liability
44 17 company is wrongful only if any of the following applies to
44 18 the dissociation:

44 19 a. It is in breach of an express provision of the
44 20 operating agreement.

44 21 b. It occurs before the termination of the company and any
44 22 of the following applies:

44 23 (1) The person withdraws as a member by express will.

44 24 (2) The person is expelled as a member by judicial order
44 25 under section 489.602, subsection 5.

44 26 (3) The person is dissociated under section 489.602,
44 27 subsection 7, paragraph "a", by becoming a debtor in
44 28 bankruptcy.

44 29 (4) In the case of a person that is not a trust other than
44 30 a business trust, an estate, or an individual, the person is
44 31 expelled or otherwise dissociated as a member because it
44 32 willfully dissolved or terminated.

44 33 3. A person that wrongfully dissociates as a member is
44 34 liable to the limited liability company and, subject to
44 35 section 489.901, to the other members for damages caused by
45 1 the dissociation. The liability is in addition to any other
45 2 debt, obligation, or other liability of the member to the
45 3 company or the other members.

45 4 Sec. 46. NEW SECTION. 489.602 EVENTS CAUSING
45 5 DISSOCIATION.

45 6 A person is dissociated as a member from a limited
45 7 liability company when any of the following applies:

45 8 1. The company has notice of the person's express will to
45 9 withdraw as a member, but, if the person specified a
45 10 withdrawal date later than the date the company had notice, on
45 11 that later date.

45 12 2. An event stated in the operating agreement as causing
45 13 the person's dissociation occurs.

45 14 3. The person is expelled as a member pursuant to the
45 15 operating agreement.

45 16 4. The person is expelled as a member by the unanimous
45 17 consent of the other members if any of the following applies:

45 18 a. It is unlawful to carry on the company's activities
45 19 with the person as a member.

45 20 b. There has been a transfer of all of the person's
45 21 transferable interest in the company, other than any of the
45 22 following:

45 23 (1) A transfer for security purposes.

45 24 (2) A charging order in effect under section 489.503 which
45 25 has not been foreclosed.

45 26 c. The person is a corporation and, within ninety days
45 27 after the company notifies the person that it will be expelled
45 28 as a member because the person has filed a certificate of
45 29 dissolution or the equivalent, its charter has been revoked,
45 30 or its right to conduct business has been suspended by the
45 31 jurisdiction of its incorporation, the certificate of
45 32 dissolution has not been revoked or its charter or right to
45 33 conduct business has not been reinstated.

45 34 d. The person is a limited liability company or
45 35 partnership that has been dissolved and whose business is
46 1 being wound up.

46 2 5. On application by the company, the person is expelled
46 3 as a member by judicial order because the person has done any
46 4 of the following:

46 5 a. Has engaged, or is engaging, in wrongful conduct that
46 6 has adversely and materially affected, or will adversely and
46 7 materially affect, the company's activities.

46 8 b. Has willfully or persistently committed, or is
46 9 willfully and persistently committing, a material breach of
46 10 the operating agreement or the person's duties or obligations
46 11 under section 489.409.

46 12 c. Has engaged in, or is engaging in, conduct relating to
46 13 the company's activities which makes it not reasonably
46 14 practicable to carry on the activities with the person as a
46 15 member.

46 16 6. In the case of a person who is an individual, any of

46 17 the following applies:
46 18 a. The person dies.
46 19 b. In a member-managed limited liability company any of
46 20 the following applies:
46 21 (1) A guardian or general conservator for the person is
46 22 appointed.
46 23 (2) There is a judicial order that the person has
46 24 otherwise become incapable of performing the person's duties
46 25 as a member under this chapter or the operating agreement.
46 26 7. In a member-managed limited liability company, the
46 27 person does any of the following:
46 28 a. Becomes a debtor in bankruptcy.
46 29 b. Executes an assignment for the benefit of creditors.
46 30 c. Seeks, consents to, or acquiesces in the appointment of
46 31 a trustee, receiver, or liquidator of the person or of all or
46 32 substantially all of the person's property.
46 33 8. In the case of a person that is a trust or is acting as
46 34 a member by virtue of being a trustee of a trust, the trust's
46 35 entire transferable interest in the company is distributed.
47 1 9. In the case of a person that is an estate or is acting
47 2 as a member by virtue of being a personal representative of an
47 3 estate, the estate's entire transferable interest in the
47 4 company is distributed.
47 5 10. In the case of a member that is not an individual,
47 6 partnership, limited liability company, corporation, trust, or
47 7 estate, the termination of the member.
47 8 11. The company participates in a merger under article 10,
47 9 if any of the following applies:
47 10 a. The company is not the surviving entity.
47 11 b. Otherwise as a result of the merger, the person ceases
47 12 to be a member.
47 13 12. The company participates in a conversion under article
47 14 10.
47 15 13. The company participates in a domestication under
47 16 article 10, if, as a result of the domestication, the person
47 17 ceases to be a member.
47 18 14. The company terminates.

47 19 Sec. 47. NEW SECTION. 489.603 EFFECT OF PERSON'S
47 20 DISSOCIATION AS MEMBER.

47 21 1. When a person is dissociated as a member of a limited
47 22 liability company, all of the following apply:
47 23 a. The person's right to participate as a member in the
47 24 management and conduct of the company's activities terminates.
47 25 b. If the company is member-managed, the person's
47 26 fiduciary duties as a member end with regard to matters
47 27 arising and events occurring after the person's dissociation.
47 28 c. Subject to section 489.504 and article 10, any
47 29 transferable interest owned by the person immediately before
47 30 dissociation in the person's capacity as a member is owned by
47 31 the person solely as a transferee.
47 32 2. A person's dissociation as a member of a limited
47 33 liability company does not of itself discharge the person from
47 34 any debt, obligation, or other liability to the company or the
47 35 other members which the person incurred while a member.

48 1 Sec. 48. NEW SECTION. 489.604 MEMBER'S POWER TO
48 2 DISSOCIATE UNDER CERTAIN CIRCUMSTANCES.

48 3 1. If the certificate of organization or an operating
48 4 agreement does not specify the time or the events upon the
48 5 happening of which a member may dissociate, a member may
48 6 dissociate from the limited liability company in the event any
48 7 amendment to the certificate of organization or operating
48 8 agreement that is adopted over the member's written dissent
48 9 adversely affects the rights or preferences of the dissenting
48 10 member's transferable interest in any of the ways described in
48 11 paragraphs "a" through "f". A dissociation in the event of
48 12 such dissent and adverse effect is deemed to have occurred as
48 13 of the effective date of the amendment, if the member gives
48 14 notice to the limited liability company not more than sixty
48 15 days after the date of the amendment. In valuing the member's
48 16 distribution pursuant to this subsection, any depreciation in
48 17 anticipation of the amendment shall be excluded. An amendment
48 18 that does any of the following is subject to this section:
48 19 a. Alters or abolishes a member's right to receive a
48 20 distribution.
48 21 b. Alters or abolishes a member's right to voluntarily
48 22 dissociate.
48 23 c. Alters or abolishes a member's right to vote on any
48 24 matter, except as the rights may be altered or abolished
48 25 through the acceptance of contributions or the making of
48 26 contribution agreements.
48 27 d. Alters or abolishes a member's preemptive right to make

48 28 contributions.
48 29 e. Establishes or changes the conditions for or
48 30 consequences of expulsion.
48 31 f. Waives the application of this section to the limited
48 32 liability company.
48 33 2. A member dissociating under this section is not liable
48 34 for damages for the breach of any agreement not to withdraw.
48 35 3. This section applies to a limited liability company
49 1 whose original articles of organization or certificate of
49 2 organization is filed with the secretary of state on or after
49 3 July 1, 1997.
49 4 4. This section applies to a limited liability company
49 5 whose original articles of organization are filed with the
49 6 secretary of state and effective on or prior to June 30, 1997,
49 7 if such company's operating agreement provides that it is
49 8 subject to this section.
49 9 5. The operating agreement of a limited liability company
49 10 may waive the applicability of this section to the company and
49 11 its members.

49 12 ARTICLE 7

49 13 DISSOLUTION AND WINDING UP

49 14 Sec. 49. NEW SECTION. 489.701 EVENTS CAUSING
49 15 DISSOLUTION.

49 16 1. A limited liability company is dissolved, and its
49 17 activities must be wound up, upon the occurrence of any of the
49 18 following:

49 19 a. An event or circumstance that the operating agreement
49 20 states causes dissolution.

49 21 b. The consent of all the members.

49 22 c. Once the company has at least one member, the passage
49 23 of ninety consecutive days during which the company has no
49 24 members.

49 25 d. On application by a member, the entry by a district
49 26 court of an order dissolving the company on the grounds that
49 27 any of the following applies:

49 28 (1) The conduct of all or substantially all of the
49 29 company's activities is unlawful.

49 30 (2) It is not reasonably practicable to carry on the
49 31 company's activities in conformity with the certificate of
49 32 organization and the operating agreement.

49 33 e. On application by a member or transferree, the entry by
49 34 a district court of an order dissolving the company on the
49 35 grounds that the managers or those members in control of the
50 1 company have done any of the following:

50 2 (1) Have acted, are acting, or will act in a manner that
50 3 is illegal or fraudulent.

50 4 (2) Have acted or are acting in a manner that is
50 5 oppressive and was, is, or will be directly harmful to the
50 6 applicant.

50 7 2. In a proceeding brought under subsection 1, paragraph
50 8 "e", the court may order a remedy other than dissolution.

50 9 Sec. 50. NEW SECTION. 489.702 WINDING UP.

50 10 1. A dissolved limited liability company shall wind up its
50 11 activities, and the company continues after dissolution only
50 12 for the purpose of winding up.

50 13 2. In winding up its activities, all of the following
50 14 apply to a limited liability company:

50 15 a. It shall discharge the company's debts, obligations, or
50 16 other liabilities, settle and close the company's activities,
50 17 and marshal and distribute the assets of the company.

50 18 b. It may do all of the following:

50 19 (1) Deliver to the secretary of state for filing a
50 20 statement of dissolution stating the name of the company and
50 21 that the company is dissolved.

50 22 (2) Preserve the company activities and property as a
50 23 going concern for a reasonable time.

50 24 (3) Prosecute and defend actions and proceedings, whether
50 25 civil, criminal, or administrative.

50 26 (4) Transfer the company's property.

50 27 (5) Settle disputes by mediation or arbitration.

50 28 (6) Deliver to the secretary of state for filing a
50 29 statement of termination stating the name of the company and
50 30 that the company is terminated.

50 31 (7) Perform other acts necessary or appropriate to the
50 32 winding up.

50 33 3. If a dissolved limited liability company has no
50 34 members, the legal representative of the last person to have
50 35 been a member may wind up the activities of the company. If
51 1 the person does so, the person has the powers of a sole
51 2 manager under section 489.407, subsection 3, and is deemed to
51 3 be a manager for the purposes of section 489.304, subsection

51 4 1, paragraph "b".
51 5 4. If the legal representative under subsection 3 declines
51 6 or fails to wind up the company's activities, a person may be
51 7 appointed to do so by the consent of transferees owning a
51 8 majority of the rights to receive distributions as transferees
51 9 at the time the consent is to be effective. All of the
51 10 following applies to a person appointed under this subsection:
51 11 a. The person has the powers of a sole manager under
51 12 section 489.407, subsection 3, and is deemed to be a manager
51 13 for the purposes of section 489.304, subsection 1, paragraph
51 14 "b".
51 15 b. The person shall promptly deliver to the secretary of
51 16 state for filing an amendment to the company's certificate of
51 17 organization to do all of the following:
51 18 (1) State that the company has no members.
51 19 (2) State that the person has been appointed pursuant to
51 20 this subsection to wind up the company.
51 21 (3) Provide the street and mailing addresses of the
51 22 person.
51 23 5. The district court may order judicial supervision of
51 24 the winding up of a dissolved limited liability company,
51 25 including the appointment of a person to wind up the company's
51 26 activities pursuant to any of the following:
51 27 a. On application of a member, if the applicant
51 28 establishes good cause.
51 29 b. On the application of a transferee, if all of the
51 30 following apply:
51 31 (1) The company does not have any members.
51 32 (2) The legal representative of the last person to have
51 33 been a member declines or fails to wind up the company's
51 34 activities.
51 35 (3) Within a reasonable time following the dissolution a
52 1 person has not been appointed pursuant to subsection 3.
52 2 c. In connection with a proceeding under section 489.701,
52 3 subsection 1, paragraph "d" or "e".
52 4 Sec. 51. NEW SECTION. 489.703 KNOWN CLAIMS AGAINST
52 5 DISSOLVED LIMITED LIABILITY COMPANY.
52 6 1. Except as otherwise provided in subsection 4, a
52 7 dissolved limited liability company may give notice of a known
52 8 claim under subsection 2, which has the effect as provided in
52 9 subsection 3.
52 10 2. A dissolved limited liability company may in a record
52 11 notify its known claimants of the dissolution. The notice
52 12 must do all of the following:
52 13 a. Specify the information required to be included in a
52 14 claim.
52 15 b. Provide a mailing address to which the claim is to be
52 16 sent.
52 17 c. State the deadline for receipt of the claim, which may
52 18 not be less than one hundred twenty days after the date the
52 19 notice is received by the claimant.
52 20 d. State that the claim will be barred if not received by
52 21 the deadline.
52 22 3. A claim against a dissolved limited liability company
52 23 is barred if the requirements of subsection 2 are met and any
52 24 of the following applies:
52 25 a. The claim is not received by the specified deadline.
52 26 b. If the claim is timely received but rejected by the
52 27 company, all of the following apply:
52 28 (1) The company causes the claimant to receive a notice in
52 29 a record stating that the claim is rejected and will be barred
52 30 unless the claimant commences an action against the company to
52 31 enforce the claim within ninety days after the claimant
52 32 receives the notice.
52 33 (2) The claimant does not commence the required action
52 34 within the ninety days.
52 35 4. This section does not apply to a claim based on an
53 1 event occurring after the effective date of dissolution or a
53 2 liability that on that date is contingent.
53 3 Sec. 52. NEW SECTION. 489.704 OTHER CLAIMS AGAINST
53 4 DISSOLVED LIMITED LIABILITY COMPANY.
53 5 1. A dissolved limited liability company may publish
53 6 notice of its dissolution and request persons having claims
53 7 against the company to present them in accordance with the
53 8 notice.
53 9 2. The notice authorized by subsection 1 must do all of
53 10 the following:
53 11 a. Be published at least once in a newspaper of general
53 12 circulation in the county in this state in which the dissolved
53 13 limited liability company's principal office is located or, if
53 14 it has none in this state, in the county in which the

53 15 company's registered office is or was last located.

53 16 b. Describe the information required to be contained in a
53 17 claim and provide a mailing address to which the claim is to
53 18 be sent.

53 19 c. State that a claim against the company is barred unless
53 20 an action to enforce the claim is commenced within five years
53 21 after publication of the notice.

53 22 3. If a dissolved limited liability company publishes a
53 23 notice in accordance with subsection 2, unless the claimant
53 24 commences an action to enforce the claim against the company
53 25 within five years after the publication date of the notice,
53 26 the claim of each of the following claimants is barred:

53 27 a. A claimant that did not receive notice in a record
53 28 under section 489.703.

53 29 b. A claimant whose claim was timely sent to the company
53 30 but not acted on.

53 31 c. A claimant whose claim is contingent at, or based on an
53 32 event occurring after, the effective date of dissolution.

53 33 4. A claim not barred under this section may be enforced
53 34 as follows:

53 35 a. Against a dissolved limited liability company, to the
54 1 extent of its undistributed assets.

54 2 b. If assets of the company have been distributed after
54 3 dissolution, against a member or transferee to the extent of
54 4 that person's proportionate share of the claim or of the
54 5 assets distributed to the member or transferee after
54 6 dissolution, whichever is less, but a person's total liability
54 7 for all claims under this paragraph does not exceed the total
54 8 amount of assets distributed to the person after dissolution.

54 9 Sec. 53. NEW SECTION. 489.705 ADMINISTRATIVE
54 10 DISSOLUTION.

54 11 1. The secretary of state may dissolve a limited liability
54 12 company administratively if the company does not do any of the
54 13 following:

54 14 a. Pay, within sixty days after the due date, any fee,
54 15 tax, or penalty due the secretary of state under this chapter
54 16 or law other than this chapter.

54 17 b. Deliver, within sixty days after the due date, its
54 18 biennial report to the secretary of state.

54 19 2. If the secretary of state determines that a ground
54 20 exists for administratively dissolving a limited liability
54 21 company, the secretary of state shall file a record of the
54 22 determination and serve the company with a copy of the filed
54 23 record.

54 24 3. If within sixty days after service of the copy pursuant
54 25 to subsection 2 a limited liability company does not correct
54 26 each ground for dissolution or demonstrate to the reasonable
54 27 satisfaction of the secretary of state that each ground
54 28 determined by the secretary of state does not exist, the
54 29 secretary of state shall dissolve the company administratively
54 30 by preparing, signing, and filing a declaration of dissolution
54 31 that states the grounds for dissolution. The secretary of
54 32 state shall serve the company with a copy of the filed
54 33 declaration.

54 34 4. A limited liability company that has been
54 35 administratively dissolved continues in existence but, subject
55 1 to section 489.706, may carry on only activities necessary to
55 2 wind up its activities and liquidate its assets under sections
55 3 489.702 and 489.708 and to notify claimants under sections
55 4 489.703 and 489.704.

55 5 5. The administrative dissolution of a limited liability
55 6 company does not terminate the authority of its registered
55 7 agent for service of process.

55 8 Sec. 54. NEW SECTION. 489.706 REINSTATEMENT FOLLOWING
55 9 ADMINISTRATIVE DISSOLUTION.

55 10 1. A limited liability company administratively dissolved
55 11 under section 489.705 may apply to the secretary of state for
55 12 reinstatement at any time after the effective date of
55 13 dissolution. The application must be delivered to the
55 14 secretary of state and meet all of the following requirements:

55 15 a. Recite the name of the limited liability company at its
55 16 date of dissolution and the effective date of its
55 17 administrative dissolution.

55 18 b. State that the ground or grounds for dissolution as
55 19 provided in section 489.705 have been eliminated.

55 20 c. If the application is received more than five years
55 21 after the effective date of the administrative dissolution,
55 22 state a name that satisfies the requirements of section
55 23 489.108.

55 24 d. State the federal tax identification number of the
55 25 limited liability company.

55 26 2. The secretary of state shall refer the federal tax
55 27 identification number contained in the application for
55 28 reinstatement to the department of revenue. The department of
55 29 revenue shall report to the secretary of state the tax status
55 30 of the limited liability company. If the department reports
55 31 to the secretary of state that a filing delinquency or
55 32 liability exists against the limited liability company, the
55 33 secretary of state shall not cancel the declaration of
55 34 dissolution until the filing delinquency or liability is
55 35 satisfied.

56 1 3. If the secretary of state determines that the
56 2 application contains the information required by subsection 1,
56 3 and that a delinquency or liability reported pursuant to
56 4 subsection 2 has been satisfied, and that the information is
56 5 correct, the secretary of state shall cancel the declaration
56 6 of dissolution and prepare a certificate of reinstatement that
56 7 recites the secretary of state's determination and the
56 8 effective date of reinstatement, file the original of the
56 9 certificate, and serve a copy on the limited liability company
56 10 under section 489.116. If the limited liability company's
56 11 name in subsection 1, paragraph "c", is different than the
56 12 name in subsection 1, paragraph "a", the certificate of
56 13 reinstatement shall constitute an amendment to the limited
56 14 liability company's certificate of organization insofar as it
56 15 pertains to its name. A limited liability company shall not
56 16 relinquish the right to retain its name as provided in section
56 17 489.108, if the reinstatement is effective within five years
56 18 of the effective date of the limited liability company's
56 19 dissolution.

56 20 4. When the reinstatement is effective, it relates back to
56 21 and takes effect as of the effective date of the
56 22 administrative dissolution as if the administrative
56 23 dissolution had never occurred.

56 24 Sec. 55. NEW SECTION. 489.707 APPEAL FROM REJECTION OF
56 25 REINSTATEMENT.

56 26 1. If the secretary of state rejects a limited liability
56 27 company's application for reinstatement following
56 28 administrative dissolution, the secretary of state shall
56 29 prepare, sign, and file a notice that explains the reason for
56 30 rejection and serve the company with a copy of the notice.

56 31 2. Within thirty days after service of a notice of
56 32 rejection of reinstatement under subsection 1, a limited
56 33 liability company may appeal from the rejection by petitioning
56 34 the district court to set aside the dissolution. The petition
56 35 must be served on the secretary of state and contain a copy of
57 1 the secretary of state's declaration of dissolution, the
57 2 company's application for reinstatement, and the secretary of
57 3 state's notice of rejection.

57 4 3. The court may order the secretary of state to reinstate
57 5 a dissolved limited liability company or take other action the
57 6 court considers appropriate.

57 7 Sec. 56. NEW SECTION. 489.708 DISTRIBUTION OF ASSETS IN
57 8 WINDING UP LIMITED LIABILITY COMPANY'S ACTIVITIES.

57 9 1. In winding up its activities, a limited liability
57 10 company must apply its assets to discharge its obligations to
57 11 creditors, including members that are creditors.

57 12 2. After a limited liability company complies with
57 13 subsection 1, any surplus must be distributed in the following
57 14 order, subject to any charging order in effect under section
57 15 489.503:

57 16 a. To each person owning a transferable interest that
57 17 reflects contributions made by a member and not previously
57 18 returned, an amount equal to the value of the unreturned
57 19 contributions.

57 20 b. In equal shares among members and dissociated members,
57 21 except to the extent necessary to comply with any transfer
57 22 effective under section 489.502.

57 23 3. If a limited liability company does not have sufficient
57 24 surplus to comply with subsection 2, paragraph "a", any
57 25 surplus must be distributed among the owners of transferable
57 26 interests in proportion to the value of their respective
57 27 unreturned contributions.

57 28 4. All distributions made under subsections 2 and 3 must
57 29 be paid in money.

57 30 ARTICLE 8

57 31 FOREIGN LIMITED LIABILITY COMPANIES

57 32 Sec. 57. NEW SECTION. 489.801 GOVERNING LAW.

57 33 1. The law of the state or other jurisdiction under which
57 34 a foreign limited liability company is formed governs all of
57 35 the following:

58 1 a. The internal affairs of the company.

58 2 b. The liability of a member as member and a manager as
58 3 manager for the debts, obligations, or other liabilities of
58 4 the company.

58 5 2. A foreign limited liability company shall not be denied
58 6 a certificate of authority by reason of any difference between
58 7 the law of the jurisdiction under which the company is formed
58 8 and the law of this state.

58 9 3. A certificate of authority does not authorize a foreign
58 10 limited liability company to engage in any business or
58 11 exercise any power that a limited liability company shall not
58 12 engage in or exercise in this state.

58 13 Sec. 58. NEW SECTION. 489.802 APPLICATION FOR
58 14 CERTIFICATE OF AUTHORITY.

58 15 1. A foreign limited liability company may apply for a
58 16 certificate of authority to transact business in this state by
58 17 delivering an application to the secretary of state for
58 18 filing. The application must state all of the following:

58 19 a. The name of the company and, if the name does not
58 20 comply with section 489.108, an alternate name adopted
58 21 pursuant to section 489.805, subsection 1.

58 22 b. The name of the state or other jurisdiction under whose
58 23 law the company is formed.

58 24 c. The street and mailing addresses of the company's
58 25 principal office and, if the law of the jurisdiction under
58 26 which the company is formed require the company to maintain an
58 27 office in that jurisdiction, the street and mailing addresses
58 28 of the required office.

58 29 d. The name and street and mailing addresses of the
58 30 company's initial registered agent for service of process in
58 31 this state.

58 32 2. A foreign limited liability company shall deliver with
58 33 a completed application under subsection 1 a certificate of
58 34 existence or a record of similar import signed by the
58 35 secretary of state or other official having custody of the
59 1 company's publicly filed records in the state or other
59 2 jurisdiction under whose law the company is formed.

59 3 Sec. 59. NEW SECTION. 489.803 ACTIVITIES NOT
59 4 CONSTITUTING TRANSACTING BUSINESS.

59 5 1. Activities of a foreign limited liability company which
59 6 do not constitute transacting business in this state within
59 7 the meaning of this article include all of the following:

59 8 a. Maintaining, defending, or settling an action or
59 9 proceeding.

59 10 b. Carrying on any activity concerning its internal
59 11 affairs, including holding meetings of its members or
59 12 managers.

59 13 c. Maintaining accounts in financial institutions.

59 14 d. Maintaining offices or agencies for the transfer,
59 15 exchange, and registration of the company's own securities or
59 16 maintaining trustees or depositories with respect to those
59 17 securities.

59 18 e. Selling through independent contractors.

59 19 f. Soliciting or obtaining orders, whether by mail or
59 20 electronic means or through employees or agents or otherwise,
59 21 if the orders require acceptance outside this state before
59 22 they become contracts.

59 23 g. Creating or acquiring indebtedness, mortgages, or
59 24 security interests in real or personal property.

59 25 h. Securing or collecting debts or enforcing mortgages or
59 26 other security interests in property securing the debts and
59 27 holding, protecting, or maintaining property so acquired.

59 28 i. Conducting an isolated transaction that is completed
59 29 within thirty days and is not in the course of similar
59 30 transactions.

59 31 j. Transacting business in interstate commerce.

59 32 2. For purposes of this article, the ownership in this
59 33 state of income-producing real property or tangible personal
59 34 property, other than property excluded under subsection 1,
59 35 constitutes transacting business in this state.

60 1 3. This section does not apply in determining the contacts
60 2 or activities that may subject a foreign limited liability
60 3 company to service of process, taxation, or regulation under
60 4 law of this state other than this chapter.

60 5 Sec. 60. NEW SECTION. 489.804 FILING OF CERTIFICATE OF
60 6 AUTHORITY.

60 7 Unless the secretary of state determines that an
60 8 application for a certificate of authority does not comply
60 9 with the filing requirements of this chapter, the secretary of
60 10 state, upon payment of all filing fees, shall file the
60 11 application of a foreign limited liability company, prepare,
60 12 sign, and file a certificate of authority to transact business

60 13 in this state, and send a copy of the filed certificate,
60 14 together with a receipt for the fees, to the company or its
60 15 representative.

60 16 Sec. 61. NEW SECTION. 489.805 NONCOMPLYING NAME OF
60 17 FOREIGN LIMITED LIABILITY COMPANY.

60 18 1. A foreign limited liability company whose name does not
60 19 comply with section 489.108 shall not obtain a certificate of
60 20 authority until it adopts, for the purpose of transacting
60 21 business in this state, an alternate name that complies with
60 22 section 489.108. After obtaining a certificate of authority
60 23 with an alternate name, a foreign limited liability company
60 24 shall transact business in this state under the alternate
60 25 name.

60 26 2. If a foreign limited liability company authorized to
60 27 transact business in this state changes its name to one that
60 28 does not comply with section 489.108, it may not thereafter
60 29 transact business in this state until it complies with
60 30 subsection 1 and obtains an amended certificate of authority.

60 31 Sec. 62. NEW SECTION. 489.806 REVOCATION OF CERTIFICATE
60 32 OF AUTHORITY.

60 33 1. A certificate of authority of a foreign limited
60 34 liability company to transact business in this state may be
60 35 revoked by the secretary of state in the manner provided in
61 1 subsections 2 and 3 if the company does not do any of the
61 2 following:

61 3 a. Pay, within sixty days after the due date, any fee,
61 4 tax, or penalty due the secretary of state under this chapter
61 5 or law other than this chapter.

61 6 b. Deliver, within sixty days after the due date, its
61 7 biennial report required under section 489.209.

61 8 c. Appoint and maintain a registered agent for service of
61 9 process as required by section 489.113, subsection 2.

61 10 d. Deliver for filing a statement of a change under
61 11 section 489.114 within thirty days after a change has occurred
61 12 in the name or address of the registered agent.

61 13 2. To revoke a certificate of authority of a foreign
61 14 limited liability company, the secretary of state must
61 15 prepare, sign, and file a notice of revocation and send a copy
61 16 to the company's registered agent for service of process in
61 17 this state, or if the company does not appoint and maintain a
61 18 proper registered agent in this state, to the company's
61 19 registered office. The notice must state all of the
61 20 following:

61 21 a. The revocation's effective date, which must be at least
61 22 sixty days after the date the secretary of state sends the
61 23 copy.

61 24 b. The grounds for revocation under subsection 1.

61 25 3. The authority of a foreign limited liability company to
61 26 transact business in this state ceases on the effective date
61 27 in the notice of revocation unless before that date the
61 28 company cures each ground for revocation stated in the notice
61 29 filed under subsection 2. If the company cures each ground,
61 30 the secretary of state shall file a record so stating.

61 31 Sec. 63. NEW SECTION. 489.807 CANCELLATION OF
61 32 CERTIFICATE OF AUTHORITY.

61 33 1. To cancel its certificate of authority to transact
61 34 business in this state, a foreign limited liability company
61 35 must deliver to the secretary of state for filing a notice of
62 1 cancellation stating all of the following:

62 2 a. The name of the foreign limited liability company and
62 3 that the company desires to cancel its certificate of
62 4 authority.

62 5 b. That the foreign limited liability company revokes the
62 6 authority of its registered agent to accept service on its
62 7 behalf and appoints the secretary of state as its agent for
62 8 service of process in any proceeding based on a cause of
62 9 action arising during the time it was authorized to transact
62 10 business in this state.

62 11 c. A mailing address to which the secretary of state may
62 12 mail a copy of any process served on the secretary of state
62 13 under paragraph "b".

62 14 d. A commitment to notify the secretary of state in the
62 15 future of any change in the mailing address of the foreign
62 16 limited liability company.

62 17 2. The certificate is canceled when the notice becomes
62 18 effective.

62 19 Sec. 64. NEW SECTION. 489.808 EFFECT OF FAILURE TO HAVE
62 20 CERTIFICATE OF AUTHORITY.

62 21 1. A foreign limited liability company transacting
62 22 business in this state shall not maintain an action or
62 23 proceeding in this state unless it has a certificate of

62 24 authority to transact business in this state.

62 25 2. The failure of a foreign limited liability company to
62 26 have a certificate of authority to transact business in this
62 27 state does not impair the validity of a contract or act of the
62 28 company or prevent the company from defending an action or
62 29 proceeding in this state.

62 30 3. The successor to a foreign limited liability company
62 31 that transacted business in this state without a certificate
62 32 of authority and the assignee of a cause of action arising out
62 33 of that business shall not maintain a proceeding based on that
62 34 cause of action in any court in this state until the foreign
62 35 limited liability company or its successor obtains a
63 1 certificate of authority.

63 2 4. A district court may stay a proceeding commenced by a
63 3 foreign limited liability company, its successor, or assignee
63 4 until it determines whether the foreign limited liability
63 5 company or its successor or assignee requires a certificate of
63 6 authority. If it so determines, the district court may
63 7 further stay the proceeding until the foreign limited
63 8 liability company or its successor or assignee obtains the
63 9 certificate.

63 10 5. A foreign limited liability company is liable for a
63 11 civil penalty not to exceed a total of one thousand dollars if
63 12 it transacts business in this state without a certificate of
63 13 authority. The attorney general may collect penalties due
63 14 under this subsection.

63 15 6. A member or manager of a foreign limited liability
63 16 company is not liable for the debts, obligations, or other
63 17 liabilities of the company solely because the company
63 18 transacted business in this state without a certificate of
63 19 authority.

63 20 7. If a foreign limited liability company transacts
63 21 business in this state without a certificate of authority or
63 22 cancels its certificate of authority, it appoints the
63 23 secretary of state as its registered agent for service of
63 24 process for rights of action arising out of the transaction of
63 25 business in this state.

63 26 Sec. 65. NEW SECTION. 489.809 ACTION BY ATTORNEY
63 27 GENERAL.

63 28 The attorney general may maintain an action to enjoin a
63 29 foreign limited liability company from transacting business in
63 30 this state in violation of this article.

63 31 ARTICLE 9

63 32 ACTIONS BY MEMBERS

63 33 Sec. 66. NEW SECTION. 489.901 DIRECT ACTION BY MEMBER.

63 34 1. Subject to subsection 2, a member may maintain a direct
63 35 action against another member, a manager, or the limited
64 1 liability company to enforce the member's rights and otherwise
64 2 protect the member's interests, including rights and interests
64 3 under the operating agreement or this chapter or arising
64 4 independently of the membership relationship.

64 5 2. A member maintaining a direct action under this section
64 6 must plead and prove an actual or threatened injury that is
64 7 not solely the result of an injury suffered or threatened to
64 8 be suffered by the limited liability company.

64 9 Sec. 67. NEW SECTION. 489.902 DERIVATIVE ACTION.

64 10 A member may maintain a derivative action to enforce a
64 11 right of a limited liability company as follows:

64 12 1. The member first makes a demand on the other members in
64 13 a member-managed limited liability company, or the managers of
64 14 a manager-managed limited liability company, requesting that
64 15 they cause the company to bring an action to enforce the
64 16 right, and the managers or other members do not bring the
64 17 action within ninety days from the date the demand was made
64 18 unless the member has earlier been notified that the demand
64 19 has been rejected by the company or unless irreparable injury
64 20 to the company would result by waiting for the expiration of
64 21 the ninety-day period.

64 22 2. A demand under subsection 1 would be futile.

64 23 Sec. 68. NEW SECTION. 489.903 PROPER PLAINTIFF.

64 24 1. Except as otherwise provided in subsection 2, a
64 25 derivative action under section 489.902 may be maintained only
64 26 by a person that is a member at the time the action is
64 27 commenced and remains a member while the action continues.

64 28 2. If the sole plaintiff in a derivative action dies while
64 29 the action is pending, the court may permit another member of
64 30 the limited liability company to be substituted as plaintiff.

64 31 Sec. 69. NEW SECTION. 489.904 PLEADING.

64 32 In a derivative action under section 489.902, the complaint
64 33 must state with particularity any of the following:

64 34 1. The date and content of the plaintiff's demand and the

64 35 response to the demand by the managers or other members.

65 1 2. If a demand has not been made, the reasons a demand
65 2 under section 489.902, subsection 1, would be futile.

65 3 Sec. 70. NEW SECTION. 489.905 SPECIAL LITIGATION
65 4 COMMITTEE.

65 5 1. If a limited liability company is named as or made a
65 6 party in a derivative proceeding, the company may appoint a
65 7 special litigation committee to investigate the claims
65 8 asserted in the proceeding and determine whether pursuing the
65 9 action is in the best interests of the company. If the
65 10 company appoints a special litigation committee, on motion by
65 11 the committee made in the name of the company, except for good
65 12 cause shown, the court shall stay discovery for the time
65 13 reasonably necessary to permit the committee to make its
65 14 investigation. This subsection does not prevent the court
65 15 from enforcing a person's right to information under section
65 16 489.410 or, for good cause shown, granting extraordinary
65 17 relief in the form of a temporary restraining order or
65 18 preliminary injunction.

65 19 2. A special litigation committee may be composed of one
65 20 or more disinterested and independent individuals, who may be
65 21 members.

65 22 3. A special litigation committee may be appointed as
65 23 follows:

65 24 a. In a member-managed limited liability company, the
65 25 appointment shall be made as follows:

65 26 (1) By the consent of a majority of the members not named
65 27 as defendants or plaintiffs in the proceeding.

65 28 (2) If all members are named as defendants or plaintiffs
65 29 in the proceeding, by a majority of the members named as
65 30 defendants.

65 31 b. In a manager-managed limited liability company, the
65 32 appointment shall be made as follows::

65 33 (1) By a majority of the managers not named as defendants
65 34 or plaintiffs in the proceeding.

65 35 (2) If all managers are named as defendants or plaintiffs
66 1 in the proceeding, by a majority of the managers named as
66 2 defendants.

66 3 4. After appropriate investigation, a special litigation
66 4 committee may determine that it is in the best interests of
66 5 the limited liability company that any of the following occur
66 6 in connection with the proceeding:

66 7 a. Continue under the control of the plaintiff.

66 8 b. Continue under the control of the committee.

66 9 c. Be settled on terms approved by the committee.

66 10 d. Be dismissed.

66 11 5. After making a determination under subsection 4, a
66 12 special litigation committee shall file with the court a
66 13 statement of its determination and its report supporting its
66 14 determination, giving notice to the plaintiff. The court
66 15 shall determine whether the members of the committee were
66 16 disinterested and independent and whether the committee
66 17 conducted its investigation and made its recommendation in
66 18 good faith, independently, and with reasonable care, with the
66 19 committee having the burden of proof. If the court finds that
66 20 the members of the committee were disinterested and
66 21 independent and that the committee acted in good faith,
66 22 independently, and with reasonable care, the court shall
66 23 enforce the determination of the committee. Otherwise, the
66 24 court shall dissolve the stay of discovery entered under
66 25 subsection 1 and allow the action to proceed under the
66 26 direction of the plaintiff.

66 27 Sec. 71. NEW SECTION. 489.906 PROCEEDS AND EXPENSES.

66 28 1. Except as otherwise provided in subsection 2, all of
66 29 the following apply:

66 30 a. Any proceeds or other benefits of a derivative action
66 31 under section 489.902, whether by judgment, compromise, or
66 32 settlement, belong to the limited liability company and not to
66 33 the plaintiff.

66 34 b. If the plaintiff receives any proceeds, the plaintiff
66 35 shall remit them immediately to the company.

67 1 2. If a derivative action under section 489.902 is
67 2 successful in whole or in part, the court may award the
67 3 plaintiff reasonable expenses, including reasonable attorney
67 4 fees and costs, from the recovery of the limited liability
67 5 company.

67 6 ARTICLE 10

67 7 MERGER, CONVERSION, AND DOMESTICATION

67 8 Sec. 72. NEW SECTION. 489.1001 DEFINITIONS.

67 9 As used in this article:

67 10 1. "Constituent limited liability company" means a

67 11 constituent organization that is a limited liability company.

67 12 2. "Constituent organization" means an organization that
67 13 is party to a merger.

67 14 3. "Converted organization" means the organization into
67 15 which a converting organization converts pursuant to sections
67 16 489.1006 through 489.1009.

67 17 4. "Converting limited liability company" means a
67 18 converting organization that is a limited liability company.

67 19 5. "Converting organization" means an organization that
67 20 converts into another organization pursuant to section
67 21 489.1006.

67 22 6. "Domesticated company" means the company that exists
67 23 after a domesticating foreign limited liability company or
67 24 limited liability company effects a domestication pursuant to
67 25 sections 489.1010 through 489.1013.

67 26 7. "Domesticating company" means the company that effects
67 27 a domestication pursuant to sections 489.1010 through
67 28 489.1013.

67 29 8. "Governing statute" means the statute that governs an
67 30 organization's internal affairs.

67 31 9. "Organization" means a general partnership, including a
67 32 limited liability partnership, limited partnership, including
67 33 a limited liability limited partnership, limited liability
67 34 company, business trust, corporation, or any other person
67 35 having a governing statute. The term includes a domestic or
68 1 foreign organization regardless of whether organized for
68 2 profit.

68 3 10. "Organizational documents" means all of the following:

68 4 a. For a domestic or foreign general partnership, its
68 5 partnership agreement.

68 6 b. For a limited partnership or foreign limited
68 7 partnership, its certificate of limited partnership and
68 8 partnership agreement.

68 9 c. For a domestic or foreign limited liability company,
68 10 its certificate or articles of organization and operating
68 11 agreement, or comparable records as provided in its governing
68 12 statute.

68 13 d. For a business trust, its agreement of trust and
68 14 declaration of trust.

68 15 e. For a domestic or foreign corporation for profit, its
68 16 articles of incorporation, bylaws, and other agreements among
68 17 its shareholders which are authorized by its governing
68 18 statute, or comparable records as provided in its governing
68 19 statute.

68 20 f. For any other organization, the basic records that
68 21 create the organization and determine its internal governance
68 22 and the relations among the persons that own it, have an
68 23 interest in it, or are members of it.

68 24 11. "Personal liability" means liability for a debt,
68 25 obligation, or other liability of an organization which is
68 26 imposed on a person that co-owns, has an interest in, or is a
68 27 member of the organization by any of the following:

68 28 a. The governing statute solely by reason of the person
68 29 co-owning, having an interest in, or being a member of the
68 30 organization.

68 31 b. The organization's organizational documents under a
68 32 provision of the governing statute authorizing those documents
68 33 to make one or more specified persons liable for all or
68 34 specified debts, obligations, or other liabilities of the
68 35 organization solely by reason of the person or persons
69 1 co-owning, having an interest in, or being a member of the
69 2 organization.

69 3 12. "Surviving organization" means an organization into
69 4 which one or more other organizations are merged whether the
69 5 organization preexisted the merger or was created by the
69 6 merger.

69 7 Sec. 73. NEW SECTION. 489.1002 MERGER.

69 8 1. A limited liability company may merge with one or more
69 9 other constituent organizations pursuant to this section,
69 10 sections 489.1003 through 489.1005, and a plan of merger, if
69 11 all of the following apply:

69 12 a. The governing statute of each of the other
69 13 organizations authorizes the merger.

69 14 b. The merger is not prohibited by the law of a
69 15 jurisdiction that enacted any of the governing statutes.

69 16 c. Each of the other organizations complies with its
69 17 governing statute in effecting the merger.

69 18 2. A plan of merger must be in a record and must include
69 19 all of the following:

69 20 a. The name and form of each constituent organization.

69 21 b. The name and form of the surviving organization and, if

69 22 the surviving organization is to be created by the merger, a
69 23 statement to that effect.

69 24 c. The terms and conditions of the merger, including the
69 25 manner and basis for converting the interests in each
69 26 constituent organization into any combination of money,
69 27 interests in the surviving organization, and other
69 28 consideration.

69 29 d. If the surviving organization is to be created by the
69 30 merger, the surviving organization's organizational documents
69 31 that are proposed to be in a record.

69 32 e. If the surviving organization is not to be created by
69 33 the merger, any amendments to be made by the merger to the
69 34 surviving organization's organizational documents that are, or
69 35 are proposed to be, in a record.

70 1 Sec. 74. NEW SECTION. 489.1003 ACTION ON PLAN OF MERGER
70 2 BY CONSTITUENT LIMITED LIABILITY COMPANY.

70 3 1. Subject to section 489.1014, a plan of merger must be
70 4 consented to by all the members of a constituent limited
70 5 liability company.

70 6 2. Subject to section 489.1014 and any contractual rights,
70 7 after a merger is approved, and at any time before articles of
70 8 merger are delivered to the secretary of state for filing
70 9 under section 489.1004, a constituent limited liability
70 10 company may amend the plan or abandon the merger as follows:

70 11 a. As provided in the plan.

70 12 b. Except as otherwise prohibited in the plan, with the
70 13 same consent as was required to approve the plan.

70 14 Sec. 75. NEW SECTION. 489.1004 FILINGS REQUIRED FOR
70 15 MERGER == EFFECTIVE DATE.

70 16 1. After each constituent organization has approved a
70 17 merger, articles of merger must be signed on behalf of all of
70 18 the following:

70 19 a. Each constituent limited liability company, as provided
70 20 in section 489.203, subsection 1.

70 21 b. Each other constituent organization, as provided in its
70 22 governing statute.

70 23 2. Articles of merger under this section must include all
70 24 of the following:

70 25 a. The name and form of each constituent organization and
70 26 the jurisdiction of its governing statute.

70 27 b. The name and form of the surviving organization, the
70 28 jurisdiction of its governing statute, and, if the surviving
70 29 organization is created by the merger, a statement to that
70 30 effect.

70 31 c. The date the merger is effective under the governing
70 32 statute of the surviving organization.

70 33 d. If the surviving organization is to be created by the
70 34 merger as follows:

70 35 (1) If it will be a limited liability company, the
71 1 company's certificate of organization.

71 2 (2) If it will be an organization other than a limited
71 3 liability company, the organizational document that creates
71 4 the organization that is in a public record.

71 5 e. If the surviving organization preexists the merger, any
71 6 amendments provided for in the plan of merger for the
71 7 organizational document that created the organization that are
71 8 in a public record.

71 9 f. A statement as to each constituent organization that
71 10 the merger was approved as required by the organization's
71 11 governing statute.

71 12 g. If the surviving organization is a foreign organization
71 13 not authorized to transact business in this state, the street
71 14 and mailing addresses of an office that the secretary of state
71 15 may use for the purposes of section 489.1005, subsection 2.

71 16 h. Any additional information required by the governing
71 17 statute of any constituent organization.

71 18 3. Each constituent limited liability company shall
71 19 deliver the articles of merger for filing in the office of the
71 20 secretary of state.

71 21 4. A merger becomes effective under this article as
71 22 follows:

71 23 a. If the surviving organization is a limited liability
71 24 company, upon the later of any of the following:

71 25 (1) Compliance with subsection 3.

71 26 (2) Subject to section 489.205, subsection 3, as specified
71 27 in the articles of merger.

71 28 b. If the surviving organization is not a limited
71 29 liability company, as provided by the governing statute of the
71 30 surviving organization.

71 31 Sec. 76. NEW SECTION. 489.1005 EFFECT OF MERGER.

71 32 1. When a merger becomes effective all of the following

71 33 apply:
71 34 a. The surviving organization continues or comes into
71 35 existence.
72 1 b. Each constituent organization that merges into the
72 2 surviving organization ceases to exist as a separate entity.
72 3 c. All property owned by each constituent organization
72 4 that ceases to exist vests in the surviving organization.
72 5 d. All debts, obligations, or other liabilities of each
72 6 constituent organization that ceases to exist continue as
72 7 debts, obligations, or other liabilities of the surviving
72 8 organization.
72 9 e. An action or proceeding pending by or against any
72 10 constituent organization that ceases to exist may be continued
72 11 as if the merger had not occurred.
72 12 f. Except as prohibited by other law, all of the rights,
72 13 privileges, immunities, powers, and purposes of each
72 14 constituent organization that ceases to exist vest in the
72 15 surviving organization.
72 16 g. Except as otherwise provided in the plan of merger, the
72 17 terms and conditions of the plan of merger take effect.
72 18 h. Except as otherwise agreed, if a constituent limited
72 19 liability company ceases to exist, the merger does not
72 20 dissolve the limited liability company for the purposes of
72 21 article 7.
72 22 i. If the surviving organization is created by the merger,
72 23 any of the following applies:
72 24 (1) If it is a limited liability company, the certificate
72 25 of organization becomes effective.
72 26 (2) If it is an organization other than a limited
72 27 liability company, the organizational document that creates
72 28 the organization becomes effective.
72 29 j. If the surviving organization preexisted the merger,
72 30 any amendments provided for in the articles of merger for the
72 31 organizational document that created the organization become
72 32 effective.
72 33 2. A surviving organization that is a foreign organization
72 34 consents to the jurisdiction of the courts of this state to
72 35 enforce any debt, obligation, or other liability owed by a
73 1 constituent organization, if before the merger the constituent
73 2 organization was subject to suit in this state on the debt,
73 3 obligation, or other liability. A surviving organization that
73 4 is a foreign organization and not authorized to transact
73 5 business in this state appoints the secretary of state as its
73 6 registered agent for service of process for the purposes of
73 7 enforcing a debt, obligation, or other liability under this
73 8 subsection. Service on the secretary of state under this
73 9 subsection must be made in the same manner and has the same
73 10 consequences as in section 489.116, subsections 3 and 4.
73 11 Sec. 77. NEW SECTION. 489.1006 CONVERSION.
73 12 1. An organization other than a limited liability company
73 13 or a foreign limited liability company may convert to a
73 14 limited liability company, and a limited liability company may
73 15 convert to an organization other than a foreign limited
73 16 liability company pursuant to this section, sections 489.1007
73 17 through 489.1009, and a plan of conversion, if all of the
73 18 following apply:
73 19 a. The other organization's governing statute authorizes
73 20 the conversion.
73 21 b. The conversion is not prohibited by the law of the
73 22 jurisdiction that enacted the other organization's governing
73 23 statute.
73 24 c. The other organization complies with its governing
73 25 statute in effecting the conversion.
73 26 2. A plan of conversion must be in a record and must
73 27 include all of the following:
73 28 a. The name and form of the organization before
73 29 conversion.
73 30 b. The name and form of the organization after conversion.
73 31 c. The terms and conditions of the conversion, including
73 32 the manner and basis for converting interests in the
73 33 converting organization into any combination of money,
73 34 interests in the converted organization, and other
73 35 consideration.
74 1 d. The organizational documents of the converted
74 2 organization that are, or are proposed to be, in a record.
74 3 Sec. 78. NEW SECTION. 489.1007 ACTION ON PLAN OF
74 4 CONVERSION BY CONVERTING LIMITED LIABILITY COMPANY.
74 5 1. Subject to section 489.1014, a plan of conversion must
74 6 be consented to by all the members of a converting limited
74 7 liability company.
74 8 2. Subject to section 489.1014 and any contractual rights,

74 9 after a conversion is approved, and at any time before
74 10 articles of conversion are delivered to the secretary of state
74 11 for filing under section 489.1008, a converting limited
74 12 liability company may amend the plan or abandon the conversion
74 13 as follows:

- 74 14 a. As provided in the plan.
- 74 15 b. Except as otherwise prohibited in the plan, by the same
74 16 consent as was required to approve the plan.

74 17 Sec. 79. NEW SECTION. 489.1008 FILINGS REQUIRED FOR
74 18 CONVERSION == EFFECTIVE DATE.

- 74 19 1. After a plan of conversion is approved, all of the
74 20 following apply:
 - 74 21 a. A converting limited liability company shall deliver to
74 22 the secretary of state for filing articles of conversion,
74 23 which must be signed as provided in section 489.203,
74 24 subsection 1, and must include all of the following:
 - 74 25 (1) A statement that the limited liability company has
74 26 been converted into another organization.
 - 74 27 (2) The name and form of the organization and the
74 28 jurisdiction of its governing statute.
 - 74 29 (3) The date the conversion is effective under the
74 30 governing statute of the converted organization.
 - 74 31 (4) A statement that the conversion was approved as
74 32 required by this chapter.
 - 74 33 (5) A statement that the conversion was approved as
74 34 required by the governing statute of the converted
74 35 organization.
 - 75 1 (6) All documents required to be filed with the secretary
75 2 of state in accordance with the governing statute of the
75 3 converted organization to effectuate the conversion.
 - 75 4 (7) If the converted organization is a foreign
75 5 organization not authorized to transact business in this
75 6 state, the street and mailing addresses of an office which the
75 7 secretary of state may use for the purposes of section
75 8 489.1009, subsection 3.
 - 75 9 b. If the converting organization is not a converting
75 10 limited liability company, the converting organization shall
75 11 deliver to the secretary of state for filing a certificate of
75 12 organization, which must include, in addition to the
75 13 information required by section 489.201, subsection 2, all of
75 14 the following:
 - 75 15 (1) A statement that the converted organization was
75 16 converted from another organization.
 - 75 17 (2) The name and form of that converting organization and
75 18 the jurisdiction of its governing statute.
 - 75 19 (3) A statement that the conversion was approved in a
75 20 manner that complied with the converting organization's
75 21 governing statute.
- 75 22 2. A conversion becomes effective as follows:
 - 75 23 a. If the converted organization is a limited liability
75 24 company, when the certificate of organization takes effect.
 - 75 25 b. If the converted organization is not a limited
75 26 liability company, as provided by the governing statute of the
75 27 converted organization.

75 28 Sec. 80. NEW SECTION. 489.1009 EFFECT OF CONVERSION.

- 75 29 1. An organization that has been converted pursuant to
75 30 this article is for all purposes the same entity that existed
75 31 before the conversion.
- 75 32 2. When a conversion takes effect all of the following
75 33 apply:
 - 75 34 a. All property owned by the converting organization
75 35 remains vested in the converted organization.
 - 76 1 b. All debts, obligations, or other liabilities of the
76 2 converting organization continue as debts, obligations, or
76 3 other liabilities of the converted organization.
 - 76 4 c. An action or proceeding pending by or against the
76 5 converting organization may be continued as if the conversion
76 6 had not occurred.
 - 76 7 d. Except as prohibited by law other than this chapter,
76 8 all of the rights, privileges, immunities, powers, and
76 9 purposes of the converting organization remain vested in the
76 10 converted organization.
 - 76 11 e. Except as otherwise provided in the plan of conversion,
76 12 the terms and conditions of the plan of conversion take
76 13 effect.
 - 76 14 f. Except as otherwise agreed, the conversion does not
76 15 dissolve a converting limited liability company for the
76 16 purposes of article 7.
- 76 17 3. A converted organization that is a foreign organization
76 18 consents to the jurisdiction of the courts of this state to
76 19 enforce any debt, obligation, or other liability for which the

76 20 converting limited liability company is liable if, before the
76 21 conversion, the converting limited liability company was
76 22 subject to suit in this state on the debt, obligation, or
76 23 other liability. A converted organization that is a foreign
76 24 organization and not authorized to transact business in this
76 25 state appoints the secretary of state as its registered agent
76 26 for service of process for purposes of enforcing a debt,
76 27 obligation, or other liability under this subsection. Service
76 28 on the secretary of state under this subsection must be made
76 29 in the same manner and has the same consequences as in section
76 30 489.116, subsections 3 and 4.

76 31 Sec. 81. NEW SECTION. 489.1010 DOMESTICATION.

76 32 1. A foreign limited liability company may become a
76 33 limited liability company pursuant to this section, sections
76 34 489.1011 through 489.1013, and a plan of domestication, if all
76 35 of the following apply:

77 1 a. The foreign limited liability company's governing
77 2 statute authorizes the domestication.

77 3 b. The domestication is not prohibited by the law of the
77 4 jurisdiction that enacted the governing statute.

77 5 c. The foreign limited liability company complies with its
77 6 governing statute in effecting the domestication.

77 7 2. A limited liability company may become a foreign
77 8 limited liability company pursuant to this section, sections
77 9 489.1011 through 489.1013, and a plan of domestication, if all
77 10 of the following apply:

77 11 a. The foreign limited liability company's governing
77 12 statute authorizes the domestication.

77 13 b. The domestication is not prohibited by the law of the
77 14 jurisdiction that enacted the governing statute.

77 15 c. The foreign limited liability company complies with its
77 16 governing statute in effecting the domestication.

77 17 3. A plan of domestication must be in a record and must
77 18 include all of the following:

77 19 a. The name of the domesticating company before
77 20 domestication and the jurisdiction of its governing statute.

77 21 b. The name of the domesticated company after
77 22 domestication and the jurisdiction of its governing statute.

77 23 c. The terms and conditions of the domestication,
77 24 including the manner and basis for converting interests in the
77 25 domesticating company into any combination of money, interests
77 26 in the domesticated company, and other consideration.

77 27 d. The organizational documents of the domesticated
77 28 company that are, or are proposed to be, in a record.

77 29 Sec. 82. NEW SECTION. 489.1011 ACTION ON PLAN OF
77 30 DOMESTICATION BY DOMESTICATING LIMITED LIABILITY COMPANY.

77 31 1. A plan of domestication must be consented to as
77 32 follows:

77 33 a. By all the members, subject to section 489.1014, if the
77 34 domesticating company is a limited liability company.

77 35 b. As provided in the domesticating company's governing
78 1 statute, if the company is a foreign limited liability
78 2 company.

78 3 2. Subject to any contractual rights, after a
78 4 domestication is approved, and at any time before articles of
78 5 domestication are delivered to the secretary of state for
78 6 filing under section 489.1012, a domesticating limited
78 7 liability company may amend the plan or abandon the
78 8 domestication as follows:

78 9 a. As provided in the plan.

78 10 b. Except as otherwise prohibited in the plan, by the same
78 11 consent as was required to approve the plan.

78 12 Sec. 83. NEW SECTION. 489.1012 FILINGS REQUIRED FOR
78 13 DOMESTICATION == EFFECTIVE DATE.

78 14 1. After a plan of domestication is approved, a
78 15 domesticating company shall deliver to the secretary of state
78 16 for filing articles of domestication, which must include all
78 17 of the following:

78 18 a. A statement, as the case may be, that the company has
78 19 been domesticated from or into another jurisdiction.

78 20 b. The name of the domesticating company and the
78 21 jurisdiction of its governing statute.

78 22 c. The name of the domesticated company and the
78 23 jurisdiction of its governing statute.

78 24 d. The date the domestication is effective under the
78 25 governing statute of the domesticated company.

78 26 e. If the domesticating company was a limited liability
78 27 company, a statement that the domestication was approved as
78 28 required by this chapter.

78 29 f. If the domesticating company was a foreign limited
78 30 liability company, a statement that the domestication was

78 31 approved as required by the governing statute of the other
78 32 jurisdiction.

78 33 g. If the domesticated company was a foreign limited
78 34 liability company not authorized to transact business in this
78 35 state, the street and mailing addresses of an office that the
79 1 secretary of state may use for the purposes of section
79 2 489.1013, subsection 2.

79 3 2. A domestication becomes effective as follows:

79 4 a. When the certificate of organization takes effect, if
79 5 the domesticated company is a limited liability company.

79 6 b. According to the governing statute of the domesticated
79 7 company, if the domesticated organization is a foreign limited
79 8 liability company.

79 9 Sec. 84. NEW SECTION. 489.1013 EFFECT OF DOMESTICATION.

79 10 1. When a domestication takes effect, all of the following
79 11 apply:

79 12 a. The domesticated company is for all purposes the
79 13 company that existed before the domestication.

79 14 b. All property owned by the domesticating company remains
79 15 vested in the domesticated company.

79 16 c. All debts, obligations, or other liabilities of the
79 17 domesticating company continue as debts, obligations, or other
79 18 liabilities of the domesticated company.

79 19 d. An action or proceeding pending by or against a
79 20 domesticating company may be continued as if the domestication
79 21 had not occurred.

79 22 e. Except as prohibited by other law, all of the rights,
79 23 privileges, immunities, powers, and purposes of the
79 24 domesticating company remain vested in the domesticated
79 25 company.

79 26 f. Except as otherwise provided in the plan of
79 27 domestication, the terms and conditions of the plan of
79 28 domestication take effect.

79 29 g. Except as otherwise agreed, the domestication does not
79 30 dissolve a domesticating limited liability company for the
79 31 purposes of article 7.

79 32 2. A domesticated company that is a foreign limited
79 33 liability company consents to the jurisdiction of the courts
79 34 of this state to enforce any debt, obligation, or other
79 35 liability owed by the domesticating company, if, before the
80 1 domestication, the domesticating company was subject to suit
80 2 in this state on the debt, obligation, or other liability. A
80 3 domesticated company that is a foreign limited liability
80 4 company and not authorized to transact business in this state
80 5 appoints the secretary of state as its registered agent for
80 6 service of process for purposes of enforcing a debt,
80 7 obligation, or other liability under this subsection. Service
80 8 on the secretary of state under this subsection must be made
80 9 in the same manner and has the same consequences as in section
80 10 489.116, subsections 3 and 4.

80 11 3. If a limited liability company has adopted and approved
80 12 a plan of domestication under section 489.1010 providing for
80 13 the company to be domesticated in a foreign jurisdiction, a
80 14 statement surrendering the company's certificate of
80 15 organization must be delivered to the secretary of state for
80 16 filing setting forth all of the following:

80 17 a. The name of the company.

80 18 b. A statement that the certificate of organization is
80 19 being surrendered in connection with the domestication of the
80 20 company in a foreign jurisdiction.

80 21 c. A statement the domestication was approved as required
80 22 by this chapter.

80 23 d. The jurisdiction of formation of the domesticated
80 24 foreign limited liability company.

80 25 Sec. 85. NEW SECTION. 489.1014 RESTRICTIONS ON APPROVAL
80 26 OF MERGERS, CONVERSIONS, AND DOMESTICATIONS.

80 27 1. If a member of a constituent, converting, or
80 28 domesticating limited liability company will have personal
80 29 liability with respect to a surviving, converted, or
80 30 domesticated organization, approval or amendment of a plan of
80 31 merger, conversion, or domestication is ineffective without
80 32 the consent of the member, unless all of the following apply:

80 33 a. The company's operating agreement provides for approval
80 34 of a merger, conversion, or domestication with the consent of
80 35 fewer than all the members.

81 1 b. The member has consented to the provision of the
81 2 operating agreement.

81 3 2. A member does not give the consent required by
81 4 subsection 1 merely by consenting to a provision of the
81 5 operating agreement that permits the operating agreement to be
81 6 amended with the consent of fewer than all the members.

81 7 Sec. 86. NEW SECTION. 489.1015 MERGER OF DOMESTIC
81 8 COOPERATIVE INTO A DOMESTIC LIMITED LIABILITY COMPANY.
81 9 1. A limited liability company may merge with a domestic
81 10 cooperative only as provided by this section. A limited
81 11 liability company may merge with one or more domestic
81 12 cooperatives if all of the following apply:
81 13 a. Only one limited liability company and one or more
81 14 domestic cooperatives are parties to the merger.
81 15 b. When the merger becomes effective, the separate
81 16 existence of each domestic cooperative ceases and the limited
81 17 liability company is the surviving entity per organization.
81 18 c. As to each domestic cooperative, the plan of merger is
81 19 initiated and adopted, and the merger is effectuated, as
81 20 provided in section 501A.1101.
81 21 d. As to the limited liability company, the plan of merger
81 22 complies with section 489.1002, the plan of merger is approved
81 23 as provided in section 489.1003, and the articles of merger
81 24 are prepared, signed, and filed as provided in section
81 25 489.1004.

81 26 e. Notwithstanding section 489.1002 or 489.1005, the
81 27 surviving organization must be the limited liability company.
81 28 2. Section 501A.1103 governs the abandonment by a domestic
81 29 cooperative of a merger authorized by this section. Section
81 30 489.1003, subsection 2, governs the abandonment by a limited
81 31 liability company of a merger authorized by this section.

81 32 Sec. 87. NEW SECTION. 489.1016 ARTICLE NOT EXCLUSIVE.
81 33 This article does not preclude an entity from being merged,
81 34 converted, or domesticated under law other than this chapter.

81 35 ARTICLE 11
82 1 PROFESSIONAL LIMITED LIABILITY COMPANIES

82 2 Sec. 88. NEW SECTION. 489.1101 DEFINITIONS.
82 3 As used in this article, unless the context otherwise
82 4 requires:

82 5 1. "Employee" or "agent" does not include a clerk,
82 6 stenographer, secretary, bookkeeper, technician, or other
82 7 person who is not usually and ordinarily considered by custom
82 8 and practice to be practicing a profession nor any other
82 9 person who performs all that person's duties for the
82 10 professional limited liability company under the direct
82 11 supervision and control of one or more managers, employees, or
82 12 agents of the professional limited liability company who are
82 13 duly licensed in this state to practice a profession which the
82 14 limited liability company is authorized to practice in this
82 15 state. This article does not require any such persons to be
82 16 licensed to practice a profession if they are not required to
82 17 be licensed under any other law of this state.

82 18 2. "Foreign professional limited liability company" means
82 19 a limited liability company organized under laws other than
82 20 the laws of this state for a purpose for which a professional
82 21 limited liability company may be organized under this article.

82 22 3. "Licensed" includes registered, certified, admitted to
82 23 practice, or otherwise legally authorized under the laws of
82 24 this state.

82 25 4. "Profession" means the profession of certified public
82 26 accountancy, architecture, chiropractic, dentistry, physical
82 27 therapy, psychology, professional engineering, land surveying,
82 28 landscape architecture, law, medicine and surgery, optometry,
82 29 osteopathy, osteopathic medicine and surgery, accounting
82 30 practitioner, podiatry, speech pathology, audiology,
82 31 veterinary medicine, pharmacy, nursing, or marriage and family
82 32 therapy, provided that the marriage and family therapist is
82 33 licensed under chapters 147 and 154D.

82 34 5. "Professional limited liability company" means a
82 35 limited liability company subject to this article, except a
83 1 foreign professional limited liability company.

83 2 6. "Regulating board" means any board, commission, court,
83 3 or governmental authority which, under the laws of this state,
83 4 is charged with the licensing, registration, certification,
83 5 admission to practice, or other legal authorization of the
83 6 practitioners of any profession.

83 7 7. a. "Voluntary transfer" includes a sale, voluntary
83 8 assignment, gift, pledge, or encumbrance; a voluntary change
83 9 of legal or equitable ownership or beneficial interest; or a
83 10 voluntary change of persons having voting rights with respect
83 11 to any transferable interest, except as proxies.

83 12 b. "Voluntary transfer" does not include a transfer of an
83 13 individual's interest in a limited liability company or other
83 14 property to a guardian or conservator appointed for that
83 15 individual or the individual's property.

83 16 Sec. 89. NEW SECTION. 489.1102 PURPOSES AND POWERS.
83 17 A professional limited liability company shall be organized

83 18 only for the purpose of engaging in the practice of one
83 19 specific profession, or two or more specific professions which
83 20 could lawfully be practiced in combination by a licensed
83 21 individual or a partnership of licensed individuals, and for
83 22 the additional purpose of doing all lawful things which may be
83 23 incidental to or necessary or convenient in connection with
83 24 the practice of the profession or professions. The
83 25 certificate of organization of a professional limited
83 26 liability company shall state in substance that the purposes
83 27 for which the professional limited liability company is
83 28 organized are to engage in the general practice of a specified
83 29 profession or professions, or one or more specified branches
83 30 or divisions thereof, and to do all lawful things which may be
83 31 incidental to or necessary or convenient in connection with
83 32 the practice of the profession or professions.

83 33 Sec. 90. NEW SECTION. 489.1103 NAME.

83 34 The name of a professional limited liability company, the
83 35 name of a foreign professional limited liability company or
84 1 its name as modified for use in this state, and any fictitious
84 2 name or trade name adopted by a professional limited liability
84 3 company or foreign professional limited liability company
84 4 shall contain the words "professional limited liability
84 5 company" or the abbreviation "P.L.L.C." or "PLLC", and except
84 6 for the addition of such words or abbreviation, shall be a
84 7 name which could lawfully be used by a licensed individual or
84 8 by a partnership of licensed individuals in the practice in
84 9 this state of a profession which the professional limited
84 10 liability company is authorized to practice. Each regulating
84 11 board may by rule adopt additional requirements as to the
84 12 corporate names and fictitious or trade names of professional
84 13 limited liability companies and foreign professional limited
84 14 liability companies which are authorized to practice a
84 15 profession which is within the jurisdiction of the regulating
84 16 board.

84 17 Sec. 91. NEW SECTION. 489.1104 WHO MAY ORGANIZE.

84 18 One or more individuals having capacity to contract and
84 19 licensed to practice a profession in this state in which the
84 20 professional limited liability company is to be authorized to
84 21 practice, may organize a professional limited liability
84 22 company.

84 23 Sec. 92. NEW SECTION. 489.1105 PRACTICE BY PROFESSIONAL
84 24 LIMITED LIABILITY COMPANY.

84 25 Notwithstanding any other statute or rule of law, a
84 26 professional limited liability company may practice a
84 27 profession, but may do so in this state only through a member,
84 28 manager, employee, or agent, who is licensed to practice the
84 29 same profession in this state. In its practice of a
84 30 profession, a professional limited liability company shall not
84 31 do any act which could not lawfully be done by an individual
84 32 licensed to practice the profession which the professional
84 33 limited liability company is authorized to practice.

84 34 Sec. 93. NEW SECTION. 489.1106 PROFESSIONAL REGULATION.

84 35 A professional limited liability company shall not be
85 1 required to register with or to obtain any license,
85 2 registration, certificate, or other legal authorization from a
85 3 regulating board in order to practice a profession. Except as
85 4 provided in this section, this article does not restrict or
85 5 limit in any manner the authority or duties of any regulating
85 6 board with respect to individuals practicing a profession
85 7 which is within the jurisdiction of the regulating board, even
85 8 if the individual is a member, manager, employee, or agent of
85 9 a professional limited liability company or foreign
85 10 professional limited liability company and practices the
85 11 individual's profession through such professional limited
85 12 liability company.

85 13 Sec. 94. NEW SECTION. 489.1107 RELATIONSHIP AND
85 14 LIABILITY TO PERSONS SERVED.

85 15 This article does not modify any law applicable to the
85 16 relationship between an individual practicing a profession and
85 17 a person receiving professional services, including but not
85 18 limited to any liability arising out of such practice or any
85 19 law respecting privileged communications. This article does
85 20 not modify or affect the ethical standards or standards of
85 21 conduct of any profession, including but not limited to any
85 22 standards prohibiting or limiting the practice of the
85 23 profession by a limited liability company or prohibiting or
85 24 limiting the practice of two or more professions in
85 25 combination. All such standards shall apply to the members,
85 26 managers, employees, and agents through whom a professional
85 27 limited liability company practices any profession in this
85 28 state, to the same extent that the standards apply to an

85 29 individual practitioner.

85 30 Sec. 95. NEW SECTION. 489.1108 ISSUANCE OF INTERESTS.

85 31 An interest of a professional limited liability company

85 32 shall be issued only to an individual who is licensed to

85 33 practice in any state a profession which the professional

85 34 limited liability company is authorized to practice.

85 35 Interests of a professional limited liability company shall

86 1 not at any time be issued in, transferred into, or held in

86 2 joint tenancy, tenancy in common, or any other form of joint

86 3 ownership or co-ownership. Chapter 502 shall not be

86 4 applicable to nor govern any transaction relating to any

86 5 interests of a professional limited liability company.

86 6 Sec. 96. NEW SECTION. 489.1109 ASSIGNMENT OF INTERESTS.

86 7 A member or other person shall not make a voluntary

86 8 assignment of an interest in a professional limited liability

86 9 company to any person, except to the professional limited

86 10 liability company or to an individual who is licensed to

86 11 practice in this state a profession which the limited

86 12 liability company is authorized to practice. The certificate

86 13 of organization or operating agreement of the professional

86 14 limited liability company may contain any additional

86 15 provisions restricting the assignment of interests. Unless

86 16 the certificate of organization or an operating agreement

86 17 otherwise provides, a voluntary assignment requires the

86 18 unanimous consent of the members.

86 19 Sec. 97. NEW SECTION. 489.1110 CONVERTIBLE INTERESTS ==

86 20 RIGHTS AND OPTIONS.

86 21 A professional limited liability company shall not create

86 22 or issue any interest convertible into an interest of the

86 23 professional limited liability company. The provisions of

86 24 this article with respect to the issuance and transfer of

86 25 interests apply to the creation, issuance, and transfer of any

86 26 right or option entitling the holder to purchase from a

86 27 professional limited liability company any interest of the

86 28 professional limited liability company. A right or option

86 29 shall not be transferable, whether voluntarily, involuntarily,

86 30 by operation of law, or in any other manner. Upon the death

86 31 of the holder, or when the holder ceases to be licensed to

86 32 practice a profession in this state which the professional

86 33 limited liability company is authorized to practice, the right

86 34 or option shall expire.

86 35 Sec. 98. NEW SECTION. 489.1111 VOTING TRUST == PROXY.

87 1 A member of a professional limited liability company shall

87 2 not create or enter into a voting trust or any other agreement

87 3 conferring upon any other person the right to vote or

87 4 otherwise represent any interests of a professional limited

87 5 liability company, and no such voting trust or agreement is

87 6 valid or effective. Any proxy of a member of a professional

87 7 limited liability company shall be an individual licensed to

87 8 practice a profession in this state which the professional

87 9 limited liability company is authorized to practice. Any

87 10 provision in any proxy instrument denying the right of the

87 11 member to revoke the proxy at any time or for any period of

87 12 time is not valid or effective. This section does not

87 13 otherwise limit the right of a member to vote by proxy, but

87 14 the certificate of organization or operating agreement of the

87 15 professional limited liability company may further limit or

87 16 deny the right to vote by proxy.

87 17 Sec. 99. NEW SECTION. 489.1112 REQUIRED PURCHASE BY

87 18 PROFESSIONAL LIMITED LIABILITY COMPANY OF ITS OWN INTERESTS.

87 19 1. Notwithstanding any other statute or rule of law, a

87 20 professional limited liability company shall purchase its own

87 21 interests as provided in this section; and a member of a

87 22 professional limited liability company and the member's

87 23 executor, administrator, legal representative, and successors

87 24 in interest, shall sell and transfer the interests held by

87 25 them as provided in this section.

87 26 2. Upon the death of a member, the professional limited

87 27 liability company shall immediately purchase all interests

87 28 held by the deceased member.

87 29 3. In order to remain a member of a professional limited

87 30 liability company, the member shall at all times be licensed

87 31 to practice in this state a profession which the professional

87 32 limited liability company is authorized to practice. When a

87 33 member does not have or ceases to have this qualification, the

87 34 professional limited liability company shall immediately

87 35 purchase all interests held by that member.

88 1 4. When a person other than a member of record becomes

88 2 entitled to have interests of a professional limited liability

88 3 company transferred into that person's name or to exercise

88 4 voting rights, except as a proxy, with respect to interests of

88 5 the professional limited liability company, the professional
88 6 limited liability company shall immediately purchase the
88 7 interests. Without limiting the generality of the foregoing,
88 8 this section shall be applicable whether the event occurs as a
88 9 result of appointment of a guardian or conservator for a
88 10 member or the member's property, transfer of interests by
88 11 operation of law, involuntary transfer of interests, judicial
88 12 proceeding, execution, levy, bankruptcy proceeding,
88 13 receivership proceeding, foreclosure or enforcement of a
88 14 pledge or encumbrance, or any other situation or occurrence.
88 15 However, this section does not apply to any voluntary transfer
88 16 of interests as defined in this article.

88 17 5. Interests purchased by a professional limited liability
88 18 company under this section shall be transferred to the
88 19 professional limited liability company as of the close of
88 20 business on the date of the death or other event which
88 21 requires purchase. The member and the member's executors,
88 22 administrators, legal representatives, or successors in
88 23 interest, shall promptly do all things which may be necessary
88 24 or convenient to cause transfer to be made as of the transfer
88 25 date. However, the interests shall promptly be transferred on
88 26 the books and records of the professional limited liability
88 27 company as of the transfer date, notwithstanding any delay in
88 28 transferring or surrendering the interests or certificates
88 29 representing the interests, and the transfer shall be valid
88 30 and effective for all purposes as of the close of business on
88 31 the transfer date. The purchase price for such interests
88 32 shall be paid as provided in this article, but the transfer of
88 33 interests to the professional limited liability company as
88 34 provided in this section shall not be delayed or affected by
88 35 any delay or default in making payment.

89 1 6. Notwithstanding subsections 1 through 5, purchase by
89 2 the professional limited liability company is not required
89 3 upon the occurrence of any event other than death of a member,
89 4 if the professional limited liability company is dissolved
89 5 within sixty days after the occurrence of the event. The
89 6 certificate of organization or operating agreement of the
89 7 professional limited liability company may provide that
89 8 purchase is not required upon the death of a member, if the
89 9 professional limited liability company is dissolved within
89 10 sixty days after the date of the member's death.

89 11 7. Unless otherwise provided in the certificate of
89 12 organization or an operating agreement of the professional
89 13 limited liability company or in an agreement among all members
89 14 of the professional limited liability company, all of the
89 15 following apply:

89 16 a. The purchase price for interests shall be its book
89 17 value as of the end of the month immediately preceding the
89 18 death or other event which requires purchase. Book value
89 19 shall be determined from the books and records of the
89 20 professional limited liability company in accordance with the
89 21 regular method of accounting used by the professional limited
89 22 liability company, uniformly and consistently applied.
89 23 Adjustments to book value shall be made, if necessary, to take
89 24 into account work in process and accounts receivable. A final
89 25 determination of book value made in good faith by an
89 26 independent certified public account or firm of certified
89 27 public accountants employed by the professional limited
89 28 liability company for the purpose shall be conclusive on all
89 29 persons.

89 30 b. The purchase price shall be paid in cash as follows:

89 31 (1) Upon the death of a member, thirty percent of the
89 32 purchase price shall be paid within ninety days after death,
89 33 and the balance shall be paid in three equal annual
89 34 installments on the first three anniversaries of the death.

89 35 (2) Upon the happening of any other event referred to in
90 1 this section, one-tenth of the purchase price shall be paid
90 2 within ninety days after the date of the event, and the
90 3 balance shall be paid in three equal annual installments on
90 4 the first three anniversaries of the date of the event.

90 5 c. Interest from the date of death or other event shall be
90 6 payable annually on principal payment dates, at the rate of
90 7 six percent per annum on the unpaid balance of the purchase
90 8 price.

90 9 d. All persons who are members of the professional limited
90 10 liability company on the date of death or other event, and
90 11 their executors, administrators, and legal representatives,
90 12 shall, to the extent the professional limited liability
90 13 company fails to meet its obligations under this section, be
90 14 jointly liable for the payment of the purchase price and
90 15 interest in proportion to their percentage of ownership of the

90 16 professional limited liability company's interests,
90 17 disregarding interests of the deceased or withdrawing member.
90 18 e. The part of the purchase price remaining unpaid after
90 19 the initial payment shall be evidenced by a negotiable
90 20 promissory note, which shall be executed by the professional
90 21 limited liability company and all members liable for payment.
90 22 Any person liable on the note shall have the right to prepay
90 23 the note in full or in part at any time.

90 24 f. If the person making any payment is not reasonably able
90 25 to determine which of two or more persons is entitled to
90 26 receive a payment, or if the payment is payable to a person
90 27 who is unknown, or who is under disability and there is no
90 28 person legally competent to receive the payment, or who cannot
90 29 be found after the exercise of reasonable diligence by the
90 30 person making the payment, it shall be deposited with the
90 31 treasurer of state and shall be subject to the provisions of
90 32 section 490.1440 with respect to funds deposited with the
90 33 treasurer of state upon the voluntary or involuntary
90 34 dissolution of a business corporation.

90 35 8. Notwithstanding the other provisions of this section,
91 1 no part of the purchase price shall be required to be paid
91 2 until the certificates, if any, representing the interests
91 3 have been surrendered to the professional limited liability
91 4 company.

91 5 9. Notwithstanding the other provisions of this section,
91 6 payment of any part of the purchase price for interests of a
91 7 deceased member shall not be required until the executor or
91 8 administrator of the deceased member provides any indemnity,
91 9 release, or other document from any taxing authority, which is
91 10 reasonably necessary to protect the professional limited
91 11 liability company against liability for estate, inheritance,
91 12 and death taxes.

91 13 10. The certificate of organization or an operating
91 14 agreement of the professional limited liability company or an
91 15 agreement among all members of a professional limited
91 16 liability company may provide for a different purchase price,
91 17 a different method of determining the purchase price, a
91 18 different interest rate or no interest, and other terms,
91 19 conditions, and schedules of payment.

91 20 11. The certificate of organization or an operating
91 21 agreement of the professional limited liability company or an
91 22 agreement among all members of a professional limited
91 23 liability company may provide for the optional or mandatory
91 24 purchase of its own interests by the professional limited
91 25 liability company in other situations, subject to any
91 26 applicable law regarding such a purchase.

91 27 Sec. 100. NEW SECTION. 489.1113 CERTIFICATES
91 28 REPRESENTING INTERESTS.

91 29 Each certificate representing an interest of a professional
91 30 limited liability company shall state in substance that the
91 31 certificate represents an interest in a professional limited
91 32 liability company and is not transferable except as expressly
91 33 provided in this article and in the certificate of
91 34 organization or an operating agreement of the professional
91 35 limited liability company.

92 1 Sec. 101. NEW SECTION. 489.1114 MANAGEMENT.

92 2 All managers of a professional limited liability company
92 3 shall at all times be individuals who are licensed to practice
92 4 a profession in this state which the limited liability company
92 5 is authorized to practice. A person who is not licensed shall
92 6 have no authority or duties in the management or control of
92 7 the limited liability company. If a manager ceases to have
92 8 this qualification, the manager shall immediately and
92 9 automatically cease to hold such management position.

92 10 Sec. 102. NEW SECTION. 489.1115 MERGER.

92 11 A professional limited liability company shall not merge
92 12 with any entity except another professional limited liability
92 13 company subject to this article or a professional corporation
92 14 subject to chapter 496C. Merger is not permitted unless the
92 15 surviving or new professional limited liability company is a
92 16 professional limited liability company which complies with all
92 17 requirements of this article.

92 18 Sec. 103. NEW SECTION. 489.1116 DISSOLUTION OR
92 19 LIQUIDATION.

92 20 A violation of any provision of this article by a
92 21 professional limited liability company or any of its members
92 22 or managers shall be cause for its involuntary dissolution, or
92 23 liquidation of its assets and business by the district court.
92 24 Upon the death of the last remaining member of a professional
92 25 limited liability company, or when the last remaining member
92 26 is not licensed or ceases to be licensed to practice a

92 27 profession in this state which the professional limited
92 28 liability company is authorized to practice, or when any
92 29 person other than the member of record becomes entitled to
92 30 have all interests of the last remaining member of the
92 31 professional limited liability company transferred into that
92 32 person's name or to exercise voting rights, except as a proxy,
92 33 with respect to such interests, the professional limited
92 34 liability company shall not practice any profession and it
92 35 shall be promptly dissolved. However, if prior to dissolution
93 1 all outstanding interests of the professional limited
93 2 liability company are acquired by two or more persons licensed
93 3 to practice a profession in this state which the professional
93 4 limited liability company is authorized to practice, the
93 5 professional limited liability company need not be dissolved
93 6 and may practice the profession as provided in this article.

93 7 Sec. 104. NEW SECTION. 489.1117 FOREIGN PROFESSIONAL
93 8 LIMITED LIABILITY COMPANY.

93 9 1. A foreign professional limited liability company may
93 10 practice a profession in this state if it complies with the
93 11 provisions of this article. The secretary of state may
93 12 prescribe forms for this purpose. A foreign professional
93 13 limited liability company may practice a profession in this
93 14 state only through members, managers, employees, and agents
93 15 who are licensed to practice the profession in this state.
93 16 The provisions of this article with respect to the practice of
93 17 a profession by a professional limited liability company apply
93 18 to a foreign professional limited liability company.

93 19 2. This article does not prohibit the practice of a
93 20 profession in this state by an individual who is a member,
93 21 manager, employee, or agent of a foreign professional limited
93 22 liability company, if the individual could lawfully practice
93 23 the profession in this state in the absence of any
93 24 relationship to a foreign professional limited liability
93 25 company. This subsection applies regardless of whether or not
93 26 the foreign professional limited liability company is
93 27 authorized to practice a profession in this state.

93 28 Sec. 105. NEW SECTION. 489.1118 LIMITED LIABILITY
93 29 COMPANIES ORGANIZED UNDER THE OTHER LAWS.

93 30 This article does not apply to or interfere with the
93 31 practice of any profession by or through any professional
93 32 limited liability company organized after July 1, 1992, under
93 33 any other law of this state or any other state or country, if
93 34 the practice is lawful under any other statute or rule of law
93 35 of this state. Any such professional limited liability
94 1 company may voluntarily elect to adopt this article and become
94 2 subject to its provisions, by amending its certificate of
94 3 organization to be consistent with all provisions of this
94 4 article and by stating in its amended certificate of
94 5 organization that the limited liability company has
94 6 voluntarily elected to adopt this article. Any limited
94 7 liability company organized under any law of any other state
94 8 or country may become subject to the provisions of this
94 9 article by complying with all provisions of this article with
94 10 respect to foreign professional limited liability companies.

94 11 Sec. 106. NEW SECTION. 489.1119 CONFLICTS WITH OTHER
94 12 PROVISIONS OF THIS CHAPTER.

94 13 The provisions of this article shall prevail over any
94 14 inconsistent provisions of this chapter.

94 15 ARTICLE 12

94 16 SERIES LIMITED LIABILITY COMPANIES

94 17 Sec. 107. NEW SECTION. 489.1201 SERIES OF TRANSFERABLE
94 18 INTERESTS.

94 19 1. An operating agreement may establish or provide for the
94 20 establishment of a designated series of transferable interests
94 21 having separate rights, powers, or duties with respect to
94 22 specified property or obligations of the limited liability
94 23 company or profits and losses associated with specified
94 24 property or obligations, and, to the extent provided in the
94 25 operating agreement, any such series may have a separate
94 26 business purpose or investment objective. The name of each
94 27 series must contain the name of the limited liability company
94 28 and be distinguishable from the name of any other series set
94 29 forth in the certificate of organization.

94 30 2. Notwithstanding contrary provisions of this chapter,
94 31 the debts, liabilities, and obligations incurred, contracted
94 32 for, or otherwise existing with respect to a particular series
94 33 shall be enforceable against the assets of that series only,
94 34 and not against the assets of the limited liability company
94 35 generally, if all of the following apply:

95 1 a. The operating agreement creates one or more series.

95 2 b. Separate and distinct records are maintained for that

95 3 series and separate and distinct records account for the
95 4 assets associated with that series. The assets associated
95 5 with a series must be accounted for separately from the other
95 6 assets of the limited liability company, including another
95 7 series.

95 8 c. The operating agreement provides for such limitation on
95 9 liabilities.

95 10 d. Notice of the establishment of the series and of the
95 11 limitation on liabilities of the series is set forth in the
95 12 certificate of organization of the limited liability company.
95 13 The filing of the certificate of organization containing a
95 14 notice of the limitation on liabilities of a series in the
95 15 office of the secretary of state constitutes notice of the
95 16 limitation on liabilities of such series.

95 17 3. A series meeting all of the conditions of subsection 2,
95 18 shall be treated as a separate entity to the extent set forth
95 19 in the certificate of organization.

95 20 4. Notwithstanding section 489.304, or a contrary
95 21 provision in an operating agreement, a member or manager may
95 22 agree to be obligated personally for any or all of the debts,
95 23 obligations, or liabilities of one or more series.

95 24 5. An operating agreement may provide for classes or
95 25 groups of members or managers associated with a series having
95 26 such relative rights, powers, and duties as the operating
95 27 agreement may provide. The operating agreement may provide
95 28 for the future creation of additional classes or groups of
95 29 members or managers associated with the series having such
95 30 relative rights, powers, and duties as may from time to time
95 31 be established, including rights, powers, and duties senior to
95 32 existing classes and groups of members or managers associated
95 33 with the series. An operating agreement may provide for the
95 34 taking of an action, including the amendment of the operating
95 35 agreement, without the vote or approval of any member or
96 1 manager or class or group of members or managers, including
96 2 all action to create under the provisions of the operating
96 3 agreement a class or group of the series of membership
96 4 interests that was not previously outstanding. An operating
96 5 agreement may provide that any member or class or group of
96 6 members associated with a series does not have voting rights.

96 7 6. An operating agreement may grant to all or certain
96 8 identified members or managers or a specified class or group
96 9 of the members or managers associated with a series the right
96 10 to vote on any matter separately or with all or any class or
96 11 group of the members or managers associated with the series.
96 12 Voting by members or managers associated with a series may be
96 13 on a per capita, number, financial interest, class, group, or
96 14 other basis.

96 15 7. Except to the extent modified by this article, the
96 16 provisions of this chapter which are generally applicable to a
96 17 limited liability company, and its managers, members and
96 18 transferees, shall be applicable to each series with respect
96 19 to the operations of such series.

96 20 Sec. 108. NEW SECTION. 489.1202 MANAGEMENT OF A SERIES.

96 21 1. A series is member-managed unless the operating
96 22 agreement does any of the following:

96 23 a. Expressly provides any of the following:

96 24 (1) The series is or will be "manager-managed".
96 25 (2) The series is or will be "managed by managers".
96 26 (3) Management of the series is or will be "vested in
96 27 managers".

96 28 b. Includes words of similar import.

96 29 2. In a member-managed series, unless modified pursuant to
96 30 section 489.1201, subsections 5 and 6, all of the following
96 31 rules apply:

96 32 a. The management and conduct of the series are vested in
96 33 the members of the series.

96 34 b. Each series member has equal rights in the management
96 35 and conduct of the series' activities.

97 1 c. A difference arising among series members as to a
97 2 matter in the ordinary course of the activities of the series
97 3 may be decided by a majority of the series members.

97 4 d. An act outside the ordinary course of the activities of
97 5 the series may be undertaken only with the consent of all
97 6 members of the series.

97 7 e. The operating agreement may be amended only with the
97 8 consent of all members of the series.

97 9 3. In a manager-managed series, all of the following rules
97 10 apply:

97 11 a. Except as otherwise expressly provided in this chapter,
97 12 any matter relating to the activities of the series is decided
97 13 exclusively by the managers of the series.

97 14 b. Each series manager has equal rights in the management
97 15 and conduct of the activities of the series.

97 16 c. A difference arising among managers of a series as to a
97 17 matter in the ordinary course of the activities of the series
97 18 may be decided by a majority of the managers of the series.

97 19 d. Unless modified pursuant to section 489.1201,
97 20 subsections 5 and 6, the consent of all members of the series
97 21 is required to do any of the following:

97 22 (1) Sell, lease, exchange, or otherwise dispose of all, or
97 23 substantially all, of the series' property, with or without
97 24 the goodwill, outside the ordinary course of the series'
97 25 activities.

97 26 (2) Approve a merger, conversion, or domestication under
97 27 article 10.

97 28 (3) Undertake any other act outside the ordinary course of
97 29 the series' activities.

97 30 (4) Amend the operating agreement as it pertains to the
97 31 series.

97 32 e. A manager of the series may be chosen at any time by
97 33 the consent of a majority of the members of the series and
97 34 remains a manager of the series until a successor has been
97 35 chosen, unless the series manager at an earlier time resigns,
98 1 is removed, or dies, or, in the case of a series manager that
98 2 is not an individual, terminates. A series manager may be
98 3 removed at any time by the consent of a majority of the
98 4 members without notice or cause.

98 5 f. A person need not be a series member to be a manager of
98 6 a series, but the dissociation of a series member that is also
98 7 a series manager removes the person as a manager of the
98 8 series. If a person that is both a series manager and a
98 9 series member ceases to be a manager of the series, that
98 10 cessation does not by itself dissociate the person as a member
98 11 of the series.

98 12 g. A person's ceasing to be a series manager does not
98 13 discharge any debt, obligation, or other liability to the
98 14 series or members of the series which the person incurred
98 15 while a manager of the series.

98 16 4. An action requiring the consent of members of a series
98 17 under this chapter may be taken without a meeting, and a
98 18 member of a series may appoint a proxy or other agent to
98 19 consent or otherwise act for the series member by signing an
98 20 appointing record, personally or by the series member's agent.

98 21 5. The dissolution of a series does not affect the
98 22 applicability of this section. However, a person that
98 23 wrongfully causes dissolution of the series loses the right to
98 24 participate in management as a series member and a series
98 25 manager.

98 26 6. This chapter does not entitle a series member of a
98 27 series to remuneration for services performed for a
98 28 member-managed series, except for reasonable compensation for
98 29 services rendered in winding up the activities of the series.

98 30 Sec. 109. NEW SECTION. 489.1203 SERIES DISTRIBUTIONS.

98 31 1. Any distribution made by a series before its
98 32 dissolution and winding up must be in equal shares among the
98 33 series members and dissociated series members, except to the
98 34 extent necessary to comply with any transfer effective under
98 35 section 489.502 and any charging order in effect under section
99 1 489.503.

99 2 2. A person has a right to a distribution before the
99 3 dissolution and winding up of a series only if the series
99 4 decides to make an interim distribution. A person's
99 5 dissociation does not entitle the person to a distribution.

99 6 3. A person does not have a right to demand or receive a
99 7 distribution from a series in any form other than money.
99 8 Except as otherwise provided in section 489.708, subsection 3,
99 9 a series may distribute an asset in kind if each part of the
99 10 asset is fungible with each other part and each person
99 11 receives a percentage of the asset equal in value to the
99 12 person's share of distributions.

99 13 4. If a series member or transferee becomes entitled to
99 14 receive a distribution, the series member or transferee has
99 15 the status of, and is entitled to all remedies available to, a
99 16 creditor of the series with respect to the distribution.

99 17 5. a. A series shall not make a distribution if after the
99 18 distribution any of the following occurs:

99 19 (1) The series would not be able to pay its debts as they
99 20 become due in the ordinary course of the series' activities.

99 21 (2) The series' total assets would be less than the sum of
99 22 its total liabilities plus the amount that would be needed, if
99 23 the series were to be dissolved, wound up, and terminated at
99 24 the time of the distribution, to satisfy the preferential

99 25 rights upon dissolution, winding up, and termination of
99 26 members whose preferential rights are superior to those of
99 27 persons receiving the distribution.
99 28 b. As used in paragraph "a", "distribution" does not
99 29 include amounts constituting reasonable compensation for
99 30 present or past services or reasonable payments made in the
99 31 ordinary course of business under a bona fide retirement plan
99 32 or other benefits program.

99 33 6. A series may base a determination that a distribution
99 34 is not prohibited under subsection 1 on financial statements
99 35 prepared on the basis of accounting practices and principles
100 1 that are reasonable in the circumstances or on a fair
100 2 valuation or other method that is reasonable under the
100 3 circumstances.

100 4 7. Except as otherwise provided in subsection 9, the
100 5 effect of a distribution under subsection 1 is measured as
100 6 follows:

100 7 a. In the case of a distribution by purchase, redemption,
100 8 or other acquisition of a transferable interest in the series,
100 9 as of the date money or other property is transferred or debt
100 10 incurred by the series.

100 11 b. In all other cases, as of the date when one of the
100 12 following occurs:

100 13 (1) The distribution is authorized, if the payment occurs
100 14 within one hundred twenty days after that date.

100 15 (2) The payment is made, if the payment occurs more than
100 16 one hundred twenty days after the distribution is authorized.

100 17 8. A series' indebtedness to a series member incurred by
100 18 reason of a distribution made in accordance with this section
100 19 is at parity with the series' indebtedness to its general,
100 20 unsecured creditors.

100 21 9. A series' indebtedness, including indebtedness issued
100 22 in connection with or as part of a distribution, is not a
100 23 liability for purposes of subsection 5 if the terms of the
100 24 indebtedness provide that payment of principal and interest
100 25 are made only to the extent that a distribution could be made
100 26 to members of the series under this section. If such
100 27 indebtedness is issued as a distribution, each payment of
100 28 principal or interest on the indebtedness is treated as a
100 29 distribution, the effect of which is measured on the date the
100 30 payment is made.

100 31 10. a. Except as otherwise provided in paragraph "b", if
100 32 a member of a member-managed series or manager of a
100 33 manager-managed series consents to a distribution made in
100 34 violation of this section and in consenting to the
100 35 distribution fails to comply with section 489.409, the member
101 1 or manager is personally liable to the series for the amount
101 2 of the distribution that exceeds the amount that could have
101 3 been distributed without the violation of section 489.405.

101 4 b. To the extent the operating agreement of a
101 5 member-managed series expressly relieves a series member of
101 6 the authority and responsibility to consent to distributions
101 7 and imposes that authority and responsibility on one or more
101 8 other members of the series, the liability stated in paragraph
101 9 "a", applies to the other members of the series and not the
101 10 member of the series that the operating agreement relieves of
101 11 authority and responsibility.

101 12 11. A person that receives a distribution knowing that the
101 13 distribution to that person was made in violation of section
101 14 489.405 is personally liable to the limited liability company
101 15 but only to the extent that the distribution received by the
101 16 person exceeded the amount that could have been properly paid
101 17 under section 489.405.

101 18 12. A person against which an action is commenced because
101 19 the person is liable under subsection 10 may do any of the
101 20 following:

101 21 a. Implead any other person that is subject to liability
101 22 under subsection 10 and seek to compel contribution from the
101 23 person.

101 24 b. Implead any person that received a distribution in
101 25 violation of subsection 11 and seek to compel contribution
101 26 from the person in the amount the person received in violation
101 27 of that subsection.

101 28 13. An action under this section is barred if not
101 29 commenced within two years after the distribution.

101 30 Sec. 110. NEW SECTION. 489.1204 DISSOCIATION FROM A
101 31 SERIES.

101 32 Unless otherwise provided in the operating agreement, a
101 33 member shall cease to be associated with a series and to have
101 34 the power to exercise any rights or powers of a member with
101 35 respect to such series upon the assignment of all of the

102 1 member's transferable interest with respect to such series.
102 2 Except as otherwise provided in an operating agreement, an
102 3 event under this chapter or identified in an operating
102 4 agreement that causes a member to cease to be associated with
102 5 a series, by itself, shall not cause such member to cease to
102 6 be associated with any other series or terminate the continued
102 7 membership of a member in the limited liability company.

102 8 Sec. 111. NEW SECTION. 489.1205 TERMINATION OF A SERIES.

102 9 1. Except to the extent otherwise provided in the
102 10 operating agreement, a series may be terminated and its
102 11 affairs wound up without causing the dissolution of the
102 12 limited liability company. The termination of a series
102 13 established pursuant to section 489.1201, subsection 1, shall
102 14 not affect the limitation on a liability of such series
102 15 provided by section 489.1201, subsection 2. A series is not
102 16 terminated and its affairs shall continue despite the
102 17 dissolution of the limited liability company under article 7
102 18 but the series shall be terminated and its affairs shall be
102 19 wound up upon the first to occur of any of the events
102 20 described in section 489.701, subsection 1, paragraphs "a"
102 21 through "e", as applied to the series.

102 22 2. Notwithstanding section 489.702, unless otherwise
102 23 provided in the operating agreement, any of the following
102 24 persons may wind up the affairs of a series:

102 25 a. A manager associated with a series who has not
102 26 wrongfully terminated the series.

102 27 b. If there is no manager of a series, the members
102 28 associated with the series or a person approved by the members
102 29 associated with the series.

102 30 c. If there is more than one class or group of members
102 31 associated with the series, then by each class or group of
102 32 members associated with the series, in either case, by members
102 33 who own more than fifty percent of the transferable interests
102 34 of the series owned by all of the members associated with the
102 35 series or by the members of each class or group associated
103 1 with the series.

103 2 3. The persons winding up the affairs of a series, in the
103 3 name of the series and for and on behalf of the series, may
103 4 take all actions with respect to the series as are permitted
103 5 under section 489.702 for a limited liability company. The
103 6 persons winding up the affairs of a series shall provide for
103 7 the claims and obligations of the series as provided in
103 8 section 489.708 for a limited liability company and distribute
103 9 the assets of the series as provided in section 489.708 for a
103 10 limited liability company. An action taken pursuant to this
103 11 subsection shall not affect the liability of a member and
103 12 shall not impose liability on a liquidating trustee.

103 13 Sec. 112. NEW SECTION. 489.1206 FOREIGN SERIES.

103 14 A foreign limited liability company that is authorized to
103 15 do business in this state under article 8 which is governed by
103 16 an operating agreement that establishes or provides for the
103 17 establishment of designated series of transferable interests
103 18 having separate rights, powers, or duties with respect to
103 19 specified property or obligations of the foreign limited
103 20 liability company, or profits and losses associated with the
103 21 specified property or obligations, shall indicate that fact on
103 22 the application for a certificate of authority as a foreign
103 23 limited liability company. In addition, the foreign limited
103 24 liability company shall state on the application whether the
103 25 debts, liabilities, and obligations incurred, contracted for,
103 26 or otherwise existing with respect to a particular series, if
103 27 any, are enforceable against the assets of such series only,
103 28 and not against the assets of the foreign limited liability
103 29 company generally.

103 30 ARTICLE 13

103 31 MISCELLANEOUS PROVISIONS

103 32 Sec. 113. NEW SECTION. 489.1301 UNIFORMITY OF
103 33 APPLICATION AND CONSTRUCTION.

103 34 In applying and construing this chapter, consideration must
103 35 be given to the need to promote uniformity of the law with
104 1 respect to its subject matter among states that enact it.

104 2 Sec. 114. NEW SECTION. 489.1302 RELATION TO ELECTRONIC
104 3 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

104 4 This chapter modifies, limits, and supersedes the federal
104 5 Electronic Signatures in Global and National Commerce Act, 15
104 6 U.S.C. } 7001 et seq., but does not modify, limit, or
104 7 supersede section 101(c) of that Act, 15 U.S.C. } 7001(c), or
104 8 authorize electronic delivery of any of the notices described
104 9 in section 103(b) of that Act, 15 U.S.C. } 7003(b).

104 10 Sec. 115. NEW SECTION. 489.1303 SAVINGS CLAUSE.

104 11 This chapter does not affect an action commenced,

104 12 proceeding brought, or right accrued before this chapter takes
104 13 effect.

104 14 Sec. 116. NEW SECTION. 489.1304 APPLICATION TO EXISTING
104 15 RELATIONSHIPS.

104 16 1. Before January 1, 2011, this chapter governs all of the
104 17 following:

104 18 a. A limited liability company formed on or after January
104 19 1, 2009.

104 20 b. Except as otherwise provided in subsection 3, a limited
104 21 liability company formed before January 1, 2009, which elects,
104 22 in the manner provided in its operating agreement or by law
104 23 for amending the operating agreement, to be subject to this
104 24 chapter.

104 25 2. Except as otherwise provided in subsection 3, on and
104 26 after January 1, 2011, this chapter governs all limited
104 27 liability companies.

104 28 3. For the purposes of applying this chapter to a limited
104 29 liability company formed before January 1, 2009, all of the
104 30 following apply:

104 31 a. The limited liability company's articles of
104 32 organization are deemed to be the company's certificate of
104 33 organization.

104 34 b. For the purposes of applying section 489.102,
104 35 subsection 10, and subject to section 489.112, subsection 4,
105 1 language in the limited liability company's articles of
105 2 organization designating the limited liability company's
105 3 management structure operates as if that language were in the
105 4 operating agreement.

105 5 DIVISION II

105 6 CONVERSION FOR CORPORATIONS AND OTHER ENTITIES

105 7 Sec. 117. Section 490.122, subsection 1, paragraph 1, Code
105 8 Supplement 2007, is amended to read as follows:

105 9 1. Articles of merger, ~~or~~ share exchange, or
105 10 conversion \$ 50

105 11 Sec. 118. Section 490.1101, Code 2007, is amended by
105 12 adding the following new subsections:

105 13 NEW SUBSECTION. 0A. "Converted entity" means a
105 14 corporation or other entity into which a converting entity
105 15 converts pursuant to sections 490.1111 through 490.1114.

105 16 NEW SUBSECTION. 0B. "Converting entity" means a
105 17 corporation or other entity that converts into an other entity
105 18 or corporation pursuant to section 490.1101.

105 19 NEW SUBSECTION. 0C. "Governing statute" of a corporation
105 20 or other entity means the statute that governs the corporation
105 21 or other entity's internal affairs.

105 22 Sec. 119. NEW SECTION. 490.1111 CONVERSION.

105 23 1. An other entity may convert to a domestic corporation,
105 24 and a domestic corporation may convert to an other entity
105 25 pursuant to this section and sections 490.1112 through
105 26 490.1114 and a plan of conversion, if all of the following
105 27 apply:

105 28 a. The other entity's governing statute authorizes the
105 29 conversion.

105 30 b. The conversion is not prohibited by the law of the
105 31 jurisdiction that enacted the governing statute.

105 32 c. The other entity complies with its governing statute in
105 33 effecting the conversion.

105 34 2. A plan of conversion must be in a record and must
105 35 include all of the following:

106 1 a. The name and form of the converting entity before
106 2 conversion.

106 3 b. The name and form of the converted entity after
106 4 conversion.

106 5 c. The terms and conditions of the conversion, including
106 6 the manner and basis for converting interests in the
106 7 converting entity into any combination of money, interests in
106 8 the converted entity, and other consideration.

106 9 d. The organizational documents or articles of
106 10 incorporation and bylaws of the converted entity.

106 11 Sec. 120. NEW SECTION. 490.1112 ACTION OR PLAN OF
106 12 CONVERSION BY CONVERTING DOMESTIC CORPORATION.

106 13 1. In the case of a domestic corporation that is being
106 14 converted into an other entity all of the following apply:

106 15 a. The plan of conversion must be adopted by the domestic
106 16 corporation's board of directors.

106 17 b. After adopting the plan of conversion, the domestic
106 18 corporation's board of directors must submit the plan to the
106 19 domestic corporation's shareholders for their approval. The
106 20 board of directors must also transmit to the shareholders a
106 21 recommendation that the shareholders approve the plan, unless
106 22 the board of directors makes a determination that because of

106 23 conflicts of interest or other special circumstances it should
106 24 not make such a recommendation, in which case the board of
106 25 directors must transmit to the shareholders the basis for that
106 26 determination.

106 27 c. The domestic corporation must notify each shareholder
106 28 of the domestic corporation, whether or not entitled to vote,
106 29 of the meeting of shareholders at which the plan is to be
106 30 submitted for approval. The notice must state that the
106 31 purpose, or one of the purposes, of the meeting is to consider
106 32 the plan of conversion and must contain or be accompanied by a
106 33 copy or summary of the plan of conversion.

106 34 d. The domestic corporation's board of directors may
106 35 condition its submission of the plan of conversion to the
107 1 domestic corporation's shareholders on any basis.

107 2 e. Unless the articles of incorporation, bylaws, or the
107 3 board of directors of the domestic corporation require a
107 4 greater vote or a greater number of votes to be present, the
107 5 approval of the plan of conversion shall require the approval
107 6 of the domestic corporation's shareholders at a meeting at
107 7 which a quorum consisting of at least a majority of the votes
107 8 entitled to be cast on the plan exists, and, if any classes or
107 9 series of shares is entitled to vote as a separate group on
107 10 the plan of conversion, the approval of each such separate
107 11 voting group at a meeting at which a quorum of the voting
107 12 group consisting of at least a majority of the votes entitled
107 13 to be cast on the conversion by that voting group is present.

107 14 f. If any provision of the articles of incorporation,
107 15 bylaws or an agreement of the domestic corporation to which
107 16 any of the directors or shareholders of the domestic
107 17 corporation are parties, adopted or entered into before the
107 18 effective date of this section, applies to a merger of the
107 19 corporation and the document does not refer to a conversion of
107 20 the corporation, the provision shall be deemed to apply to a
107 21 conversion of the corporation until such provision is
107 22 subsequently amended.

107 23 g. If as a result of the conversion as provided in this
107 24 subsection, one or more shareholders of the domestic
107 25 corporation would become subject to owner liability for the
107 26 debts, obligations, or liabilities of any other person or
107 27 entity approval of the plan of conversion shall require the
107 28 execution, by each such shareholder of the domestic
107 29 corporation, of a separate written consent to become so
107 30 subject to such owner liability.

107 31 2. After a conversion is approved as provided in
107 32 subsection 1, and at any time before a filing is made under
107 33 section 490.1113, a domestic corporation that is being
107 34 converted may amend its plan of conversion or abandon the
107 35 planned conversion as follows:

108 1 a. As provided in the plan of conversion.

108 2 b. Except as prohibited by the plan of conversion, by the
108 3 same consent as was required to approve the plan of
108 4 conversion.

108 5 Sec. 121. NEW SECTION. 490.1113 FILINGS REQUIRED FOR
108 6 CONVERSION == EFFECTIVE DATE.

108 7 1. After a plan of conversion is approved, all of the
108 8 following apply:

108 9 a. A domestic corporation that is being converted into an
108 10 other entity shall deliver to the secretary of state for
108 11 filing articles of conversion, which must include all of the
108 12 following:

108 13 (1) A statement that the domestic corporation has been
108 14 converted into an other entity.

108 15 (2) The name and form of the other entity and the
108 16 jurisdiction of its governing statute.

108 17 (3) The date the conversion is effective under the
108 18 governing statute of the converted entity.

108 19 (4) A statement that the conversion was approved as
108 20 required by this chapter.

108 21 (5) A statement that the conversion was approved as
108 22 required by the governing statute of the converted entity.

108 23 (6) If the converted entity is a foreign other entity not
108 24 authorized to transact business in this state, the street and
108 25 mailing address of an office which the secretary of state may
108 26 use for the purposes of section 490.1114, subsection 3.

108 27 b. If the converting entity is not a converting domestic
108 28 corporation, the converting entity shall deliver to the
108 29 secretary of state for filing articles of incorporation, which
108 30 must include, in addition to the information required by
108 31 section 490.202, all of the following:

108 32 (1) A statement that the domestic corporation was
108 33 converted from an other entity.

108 34 (2) The name and form of the other entity and the
108 35 jurisdiction of its governing statute.

109 1 (3) A statement that the conversion was approved in a
109 2 manner that complied with the other entity's governing
109 3 statute.

109 4 2. A conversion becomes effective according to the
109 5 following:

109 6 a. If the converted entity is a domestic corporation, when
109 7 the articles of incorporation are filed.

109 8 b. If the converted entity is not a domestic corporation,
109 9 as provided by the governing statute of the converted other
109 10 entity.

109 11 Sec. 122. NEW SECTION. 490.1114 EFFECT OF CONVERSION.

109 12 1. A domestic corporation or other entity that has been
109 13 converted pursuant to this article is for all purposes the
109 14 same domestic corporation or other entity that existed before
109 15 the conversion.

109 16 2. When a conversion takes effect, all of the following
109 17 apply:

109 18 a. All property owned by the converting entity remains
109 19 vested in the converted entity.

109 20 b. All debts, liabilities, and other obligations of the
109 21 converting entity continue as obligations of the converted
109 22 entity.

109 23 c. An action or proceeding pending by or against the
109 24 converting entity may be continued as if the conversion had
109 25 not occurred.

109 26 d. The shares or interests of the converting entity are
109 27 reclassified into shares, interests, other securities,
109 28 obligations, rights to acquire shares, interests or other
109 29 securities, or into cash or other property in accordance with
109 30 the plan of conversion; and the shareholders or interest
109 31 holders of the converting entity are entitled only to the
109 32 rights provided to them under the terms of the conversion and
109 33 to any appraisal rights they may have under the organic law of
109 34 the converting entity.

109 35 e. Except as prohibited by other law, all of the rights,
110 1 privileges, immunities, powers, and purposes of the converting
110 2 entity remain vested in the converted entity.

110 3 f. Except as otherwise provided in the plan of conversion
110 4 as provided in section 490.1112, the terms and conditions of
110 5 the plan of conversion take effect.

110 6 g. Except as otherwise agreed, the conversion does not
110 7 dissolve a converting domestic corporation for the purposes of
110 8 division XIV.

110 9 3. A converted entity that is a foreign other entity
110 10 consents to the jurisdiction of the courts of this state to
110 11 enforce any obligation owed by the converting corporation, if
110 12 before the conversion the converting corporation was subject
110 13 to suit in this state on the obligation. A converted other
110 14 entity that is a foreign other entity and not authorized to
110 15 transact business in this state appoints the secretary of
110 16 state as its agent for service of process for purposes of
110 17 enforcing an obligation under this subsection. Service on the
110 18 secretary of state under this subsection is made in the same
110 19 manner and with the same consequences as in section 490.504.

110 20 Sec. 123. Section 490.1302, subsection 1, Code 2007, is
110 21 amended by adding the following new subsection:

110 22 NEW PARAGRAPH. f. Consummation of a conversion of the
110 23 corporation to an other entity pursuant to sections 490.1111
110 24 through 490.1114.

110 25
110 26 DIVISION III
110 27 CONFORMING AMENDMENTS

110 28 Sec. 124. Section 9H.1, subsection 16, Code 2007, is
110 29 amended to read as follows:

110 30 16. "Limited liability company" means a limited liability
110 31 company as defined in section 489.102 or 490A.102.

110 32 Sec. 125. Section 9H.4, subsection 8, Code 2007, is
110 33 amended to read as follows:

110 34 8. A corporation or its subsidiary organized under chapter
110 35 489 or 490A and to which section 312.8 is applicable.

111 1 Sec. 126. Section 10.1, subsection 9, Code 2007, is
111 2 amended to read as follows:

111 3 9. "Farmers cooperative limited liability company" means a
111 4 limited liability company organized under chapter 489 or 490A,
111 5 if cooperative associations hold one hundred percent of all
111 6 membership interests in the limited liability company.
111 7 Farmers cooperative associations must hold at least seventy
111 8 percent of all membership interests in the limited liability
111 9 company. If more than one type of membership interest is

111 10 established, including any series as provided in section
111 11 489.1201 or 490A.305 or any class or group as provided in
111 12 section 489.1201 or 490A.307, farmers cooperative associations
111 13 must hold at least seventy percent of all membership interests
111 14 of that type.
111 15 Sec. 127. Section 10.1, subsection 17, Code 2007, is
111 16 amended to read as follows:
111 17 17. "Networking farmers limited liability company" means a
111 18 limited liability company, other than a family farm limited
111 19 liability company as defined in section 9H.1, organized under
111 20 chapter 489 or 490A if all of the following conditions are
111 21 satisfied:
111 22 a. Qualified farmers must hold at least fifty-one percent
111 23 of all membership interests in the limited liability company.
111 24 If more than one type of membership interest is established,
111 25 including any series as provided in section 489.1201 or
111 26 490A.305 or any class or group as provided in section 489.1201
111 27 or 490A.307, qualified farmers must hold at least fifty-one
111 28 percent of all membership interests of that type.
111 29 b. Qualified persons must hold at least seventy percent of
111 30 all membership interests in the limited liability company. If
111 31 more than one type of membership interest is established,
111 32 including any series as provided in section 489.1201 or
111 33 490A.305 or any class or group as provided in section 489.1201
111 34 or 490A.307, qualified persons must hold at least seventy
111 35 percent of all membership interests of that type.
112 1 Sec. 128. Section 10.10, subsection 1, paragraph c, Code
112 2 2007, is amended to read as follows:
112 3 c. Less than fifty percent of the interest in the farmers
112 4 cooperative limited liability company is held by members which
112 5 are parties to intra-company loan agreements. If more than
112 6 one type of membership interest is established, including any
112 7 series as provided in section 489.1201 or 490A.305 or any
112 8 class or group as provided in section 489.1201 or 490A.307,
112 9 less than fifty percent of the interest in each type of
112 10 membership shall be held by members which are parties to
112 11 intra-company loan agreements.
112 12 Sec. 129. Section 10B.1, subsection 7, Code 2007, is
112 13 amended to read as follows:
112 14 7. "Limited liability company" means a foreign or domestic
112 15 limited liability company, including a limited liability
112 16 company as defined in section 489.102 or 490A.102.
112 17 Sec. 130. Section 10B.4, subsection 1, Code 2007, is
112 18 amended to read as follows:
112 19 1. A biennial report shall be filed by a reporting entity
112 20 with the secretary of state on or before March 31 of each
112 21 odd-numbered year as required by rules adopted by the
112 22 secretary of state pursuant to chapter 17A. However, a
112 23 reporting entity required to file a biennial report pursuant
112 24 to chapter 489 or 490A, 490, ~~490A~~, 496C, 497, 498, 499, 501,
112 25 501A, or 504 shall file the report required by this section in
112 26 the same year as required by that chapter. The reporting
112 27 entity may file the report required by this section together
112 28 with the biennial report required to be filed by one of the
112 29 other chapters referred to in this subsection. The reports
112 30 shall be filed on forms prepared and supplied by the secretary
112 31 of state. The secretary of state may provide for combining
112 32 its reporting forms with other biennial reporting forms
112 33 required to be used by the reporting entities.
112 34 Sec. 131. Section 10B.7, unnumbered paragraph 1, Code
112 35 Supplement 2007, is amended to read as follows:
113 1 Lessees of agricultural land under section 9H.4, subsection
113 2 2, paragraph "c", for research or experimental purposes, shall
113 3 file a biennial report with the secretary of state on or
113 4 before March 31 of each odd-numbered year on forms adopted
113 5 pursuant to chapter 17A and supplied by the secretary of
113 6 state. However, a lessee required to file a biennial report
113 7 pursuant to chapter 489 or 490A, 490, ~~490A~~, 496C, 497, 498,
113 8 499, 501, 501A, or 504 shall file the report required by this
113 9 section in the same year as required by that chapter. The
113 10 lessee may file the report required by this section together
113 11 with the biennial report required to be filed by one of the
113 12 other chapters referred to in this paragraph. The report
113 13 shall contain the following information for the reporting
113 14 period:
113 15 Sec. 132. Section 10C.1, subsection 11, Code 2007, is
113 16 amended to read as follows:
113 17 11. "Limited liability company" means a limited liability
113 18 company as defined in section 489.102 or 490A.102.
113 19 Sec. 133. Section 10D.1, subsection 3, Code 2007, is
113 20 amended to read as follows:

113 21 3. "Qualified enterprise" or "enterprise" means a limited
113 22 liability company as defined in section 489.102 or 490A.102, a
113 23 domestic or foreign corporation subject to chapter 490, a
113 24 nonprofit corporation organized under chapter 504, a limited
113 25 liability company as defined in section 490A.102, a
113 26 cooperative association as defined in section 10.1, or a
113 27 foreign business as defined in section 9I.1.

113 28 Sec. 134. Section 203.1, subsection 10, paragraph j,
113 29 unnumbered paragraph 1, Code Supplement 2007, is amended to
113 30 read as follows:

113 31 A limited liability company as defined in section 489.102
113 32 or 490A.102 that meets all of the following requirements:

113 33 Sec. 135. Section 421.26, Code Supplement 2007, is amended
113 34 to read as follows:

113 35 421.26 PERSONAL LIABILITY FOR TAX DUE.

114 1 If a licensee or other person under section 452A.65, a
114 2 retailer or purchaser under chapter 423A, 423B, or 423E, or
114 3 section 423.31 or 423.33, or a retailer or purchaser under
114 4 section 423.32, a user under section 423.34, or a permit
114 5 holder or licensee under section 453A.13, 453A.16, or 453A.44
114 6 fails to pay a tax under those sections when due, an officer
114 7 of a corporation or association, notwithstanding ~~sections~~
114 8 section 489.304 or sections 490A.601 and 490A.602, a member or
114 9 manager of a limited liability company, or a partner of a
114 10 partnership, having control or supervision of or the authority
114 11 for remitting the tax payments and having a substantial legal
114 12 or equitable interest in the ownership of the corporation,
114 13 association, limited liability company, or partnership, who
114 14 has intentionally failed to pay the tax is personally liable
114 15 for the payment of the tax, interest, and penalty due and
114 16 unpaid. However, this section shall not apply to taxes on
114 17 accounts receivable. The dissolution of a corporation,
114 18 association, limited liability company, or partnership shall
114 19 not discharge a person's liability for failure to remit the
114 20 tax due.

114 21 Sec. 136. Section 422.16, subsection 4, Code Supplement
114 22 2007, is amended to read as follows:

114 23 4. Every withholding agent who fails to withhold or pay to
114 24 the department any sums required by this chapter to be
114 25 withheld and paid, shall be personally, individually, and
114 26 corporately liable therefor to the state of Iowa, and any sum
114 27 or sums withheld in accordance with the provisions of
114 28 subsections 1 and 12, shall be deemed to be held in trust for
114 29 the state of Iowa. Notwithstanding ~~sections~~ section 489.304
114 30 or sections 490A.601 and 490A.602, this subsection applies to
114 31 a member or manager of a limited liability company.

114 32 Sec. 137. Section 476C.1, subsection 6, paragraph b,
114 33 subparagraph (6), Code 2007, is amended to read as follows:

114 34 (6) A cooperative corporation organized pursuant to
114 35 chapter 497 or a limited liability corporation organized
115 1 pursuant to chapter 489 or 490A whose shares and membership
115 2 are held by an entity that is not prohibited from owning
115 3 agricultural land under chapter 9H.

115 4 Sec. 138. Section 488.108, subsection 4, paragraph b,
115 5 subparagraph (4), Code 2007, is amended to read as follows:

115 6 (4) For a limited liability company, under chapter 489,
115 7 section 489.108, 489.109, or 489.706 and for a limited
115 8 liability company under chapter 490A, section 490A.401,
115 9 490A.402, or 490A.1322.

115 10 Sec. 139. Section 490.401, subsection 2, paragraph b,
115 11 subparagraph (4), Code 2007, is amended to read as follows:

115 12 (4) For a limited liability company, under chapter 489,
115 13 section 489.108, 489.109, or 489.706 and for a limited
115 14 liability company under chapter 490A, section 490A.401,
115 15 490A.402, or 490A.1322.

115 16 Sec. 140. Section 501A.102, subsections 9 and 13, Code
115 17 2007, are amended to read as follows:

115 18 9. "Domestic business entity" means a business entity
115 19 organized under the laws of this state, including but not
115 20 limited to a limited liability company as defined in section
115 21 489.102 or 490A.102; a corporation organized pursuant to
115 22 chapter 490; a nonprofit corporation organized under chapter
115 23 504; a limited liability company as defined in section
115 24 490A.102; a partnership, limited partnership, limited
115 25 liability partnership, or limited liability limited
115 26 partnership as provided in chapter 486A or 488; or a
115 27 cooperative association or other cooperative organized under
115 28 this chapter or chapter 497, 498, 499, or 501.

115 29 13. "Iowa limited liability company" means a limited
115 30 liability company governed by chapter 489 or 490A.

115 31 Sec. 141. Section 501A.1101, subsection 1, Code Supplement

115 32 2007, is amended to read as follows:

115 33 1. AUTHORIZATION. Unless otherwise prohibited,
115 34 cooperatives organized under the laws of this state, including
115 35 cooperatives organized under this chapter or traditional
116 1 cooperatives, may merge or consolidate with each other, an
116 2 Iowa limited liability company under the provisions of section
116 3 489.1015 or 490A.1207, or other business entities organized
116 4 under the laws of another state by complying with the
116 5 provisions of this section and the law of the state where the
116 6 surviving or new business entity will exist. A cooperative
116 7 shall not merge or consolidate with a business entity
116 8 organized under the laws of this state, other than a
116 9 traditional cooperative, unless the law governing the business
116 10 entity expressly authorizes merger or consolidation with a
116 11 cooperative. This subsection does not authorize a foreign
116 12 business entity to do any act not authorized by the law
116 13 governing the foreign business entity.

116 14 Sec. 142. Section 501A.1101, subsection 2, paragraphs a
116 15 through c, Code Supplement 2007, are amended to read as
116 16 follows:

116 17 a. The names of the constituent domestic cooperative, the
116 18 name of any Iowa limited liability company that is a party to
116 19 the merger, to the extent authorized under section 489.1015 or
116 20 490A.1207, and any foreign business entities.

116 21 b. The name of the surviving or new domestic cooperative,
116 22 Iowa limited liability company as required by section 489.1015
116 23 or 490A.1207, or other foreign business entity.

116 24 c. The manner and basis of converting membership or
116 25 ownership interests of the constituent domestic cooperative,
116 26 the Iowa limited liability company that is a party as provided
116 27 in section 489.1015 or 490A.1207, or foreign business entity
116 28 into membership or ownership interests in the surviving or new
116 29 domestic cooperative, the surviving Iowa limited liability
116 30 company as authorized in section 489.1015 or 490A.1207, or
116 31 foreign business entity.

116 32 Sec. 143. Section 501A.1101, subsection 5, paragraph c,
116 33 Code Supplement 2007, is amended to read as follows:

116 34 c. If a merger involves an Iowa limited liability company,
116 35 this subsection is subject to the provisions of section
117 1 489.1015 or 490A.1207.

117 2 Sec. 144. Section 501A.1102, subsection 2, unnumbered
117 3 paragraph 1, Code 2007, is amended to read as follows:

117 4 An Iowa limited liability company may only participate in a
117 5 merger under this section to the extent authorized under
117 6 section 489.1015 or 490A.1207. A parent domestic cooperative
117 7 or a subsidiary that is a domestic cooperative may complete
117 8 the merger of a subsidiary as provided in this section.

117 9 However, if either the parent cooperative or the subsidiary is
117 10 a business entity organized under the laws of this state, the
117 11 merger of the subsidiary is not authorized under this section
117 12 unless the law governing the business entity expressly
117 13 authorizes merger with a cooperative.

117 14 Sec. 145. Section 501A.1103, subsection 2, paragraph a,
117 15 subparagraphs (3) and (6), Code 2007, are amended to read as
117 16 follows:

117 17 (3) The abandonment is approved in such manner as may be
117 18 required by section 489.1015 or 490A.1207 for the involvement
117 19 of an Iowa limited liability company, or for a foreign
117 20 business entity by the laws of the state under which the
117 21 foreign business entity is organized.

117 22 (6) The plan is abandoned before the effective date of the
117 23 plan by a resolution of the board of any constituent domestic
117 24 cooperative abandoning the plan of merger approved by the
117 25 affirmative vote of a majority of the directors present,
117 26 subject to the contract rights of any other person under the
117 27 plan. If a plan of merger is with a domestic business entity
117 28 or foreign business entity, the plan of merger may be
117 29 abandoned before the effective date of the plan by a
117 30 resolution of the foreign business entity adopted according to
117 31 the laws of the state under which the foreign business entity
117 32 is organized, subject to the contract rights of any other
117 33 person under the plan. If the plan of merger is with an Iowa
117 34 limited liability company, the plan of merger may be abandoned
117 35 by the Iowa limited liability company as provided in section
118 1 489.1015 or 490A.1207, subject to the contractual rights of
118 2 any other person under the plan.

118 3 Sec. 146. Section 504.401, subsection 2, paragraph b,
118 4 subparagraph (4), Code 2007, is amended to read as follows:

118 5 (4) For a limited liability company, under chapter 489,
118 6 section 489.108, 489.109, or 489.706 and for a limited
118 7 liability company under chapter 490A, section 490A.401,

118 8 490A.402, or 490A.1322.
118 9 Sec. 147. Section 504.403, subsection 1, paragraph b,
118 10 subparagraph (4), Code 2007, is amended to read as follows:
118 11 (4) For a limited liability company, under chapter 489,
118 12 section 289.108, 489.109, or 489.706 and for a limited
118 13 liability company under chapter 490A, section 490A.401,
118 14 490A.402, or 490A.1322.
118 15 Sec. 148. Section 524.303, subsection 2, Code 2007, is
118 16 amended to read as follows:
118 17 2. Applicable fees, payable to the secretary of state as
118 18 specified in section 489.117 or 490A.124 or section 490.122 or
118 19 490A.124, for the filing and recording of the articles of
118 20 incorporation.
118 21 Sec. 149. Section 524.315, subsection 1, Code 2007, is
118 22 amended to read as follows:
118 23 1. A state bank organized as a limited liability company
118 24 under this chapter shall also be subject to chapter 489, the
118 25 revised uniform limited liability company Act or chapter 490A,
118 26 the Iowa limited liability company Act. If a provision of
118 27 chapter 489, the revised uniform limited liability company
118 28 Act, or chapter 490A, the Iowa limited liability company Act
118 29 conflicts with a provision of this chapter or any rule of the
118 30 superintendent adopted pursuant to this chapter, the
118 31 provisions of this chapter or rule of the superintendent shall
118 32 control.
118 33 Sec. 150. Section 524.1309, unnumbered paragraph 1, Code
118 34 2007, is amended to read as follows:
118 35 In lieu of the dissolution procedure prescribed in sections
119 1 524.1303 to 524.1306, a state bank may cease to carry on the
119 2 business of banking and, after compliance with this section,
119 3 continue as a corporation subject to chapter 490; or if the
119 4 state bank is organized as a limited liability company under
119 5 this chapter, continue as a limited liability company subject
119 6 to chapter 489 or 490A.
119 7 Sec. 151. Section 524.1309, subsections 1, 3, 5, 6, 7, 8,
119 8 and 9, Code 2007, are amended to read as follows:
119 9 1. A state bank that has commenced business may propose to
119 10 voluntarily cease to carry on the business of banking and
119 11 become a corporation subject to chapter 490, or a limited
119 12 liability company subject to chapter 489 or 490A, upon the
119 13 affirmative vote of the holders of at least a majority of the
119 14 shares entitled to vote on such proposal, adopting a plan
119 15 involving both a provision for acquisition of its assets and
119 16 assumption of its liabilities by another state bank, national
119 17 bank, or other financial institution insured by the federal
119 18 deposit insurance corporation, and a provision for continuance
119 19 of its business if acquisition of its assets and assumption of
119 20 its liabilities is not effected, or any other plan providing
119 21 for the cessation of banking business and the payment of its
119 22 liabilities.
119 23 3. Immediately upon adoption and approval of a plan to
119 24 voluntarily cease to carry on the business of banking and
119 25 become a corporation subject to chapter 490, or a limited
119 26 liability company subject to chapter 489 or 490A, the state
119 27 bank shall deliver to the superintendent a plan to cease the
119 28 business of banking and become a corporation subject to
119 29 chapter 490, or a limited liability company subject to chapter
119 30 489 or 490A, which shall be signed by two of its duly
119 31 authorized officers and shall contain the name of the state
119 32 bank, the post office address of its principal place of
119 33 business, the name and address of its officers and directors,
119 34 the number of shares entitled to vote on the plan and the
119 35 number of shares voted for or against the plan, respectively,
120 1 the nature of the business to be conducted by the corporation
120 2 under chapter 490, or by the limited liability company subject
120 3 to chapter 489 or 490A, and the general nature of the assets
120 4 to be held by the corporation or company.
120 5 5. The board of directors has full power to complete the
120 6 settlement of the affairs of the state bank. Within thirty
120 7 days after approval by the superintendent of the plan to cease
120 8 the business of banking and become a corporation subject to
120 9 chapter 490, or a limited liability company subject to chapter
120 10 489 or 490A, the state bank shall give notice of its intent to
120 11 persons identified in section 524.1305, subsection 3, in the
120 12 manner provided for in that subsection. In completing the
120 13 settlement of its affairs as a state bank, the state bank
120 14 shall also follow the procedure prescribed in section
120 15 524.1305, subsections 4, 5, and 6.
120 16 6. Upon completion of all the requirements of this
120 17 section, the state bank shall deliver to the superintendent
120 18 articles of intent to be subject to chapter 490 or 489 or

120 19 490A, together with the applicable filing and recording fees,
120 20 which shall set forth that the state bank has complied with
120 21 this section, that it has ceased to carry on the business of
120 22 banking, and the information required by section 490.202
120 23 relative to the contents of articles of incorporation under
120 24 chapter 490, or articles of organization under chapter 489 or
120 25 490A. If the superintendent finds that the state bank has
120 26 complied with this section and that the articles of intent to
120 27 be subject to chapter 490 or 489 or 490A satisfy the
120 28 requirements of this section, the superintendent shall deliver
120 29 them to the secretary of state for filing and recording in the
120 30 secretary of state's office, and the superintendent shall file
120 31 and record them in the office of the county recorder.

120 32 7. Upon the filing of the articles of intent to be subject
120 33 to chapter 490 or 489 or 490A, the state bank shall cease to
120 34 be a state bank subject to this chapter, and shall cease to
120 35 have the powers of a state bank subject to this chapter and
121 1 shall become a corporation subject to chapter 490 or a limited
121 2 liability company subject to chapter 489 or 490A. The
121 3 secretary of state shall issue a certificate as to the filing
121 4 of the articles of intent to be subject to chapter 490 or 489
121 5 or 490A and send the certificate to the corporation or limited
121 6 liability company or its representative. The articles of
121 7 intent to be subject to chapter 490 or 489 or 490A shall be
121 8 the articles of incorporation of the corporation or a limited
121 9 liability company. The provisions of chapter 490 or 489 or
121 10 490A becoming applicable to a corporation or limited liability
121 11 company formerly doing business as a state bank shall not
121 12 affect any right accrued or established, or liability or
121 13 penalty incurred under this chapter prior to the filing with
121 14 the secretary of state of the articles of intent to be subject
121 15 to chapter 490 or 489 or 490A.

121 16 8. A shareholder of a state bank who objects to adoption
121 17 by the state bank of a plan to cease to carry on the business
121 18 of banking and to continue as a corporation subject to chapter
121 19 490, or a limited liability company subject to chapter 489 or
121 20 490A, is entitled to appraisal rights provided for in chapter
121 21 490, division XIII, or in chapter 489, section 489.604 or
121 22 490A, subchapter VII.

121 23 9. A state bank, at any time prior to the approval of the
121 24 articles of intent to become subject to chapter 490 or 489 or
121 25 490A, may revoke the proceedings in the manner prescribed by
121 26 section 524.1306.

121 27 Sec. 152. Section 524.2001, Code 2007, is amended to read
121 28 as follows:

121 29 524.2001 APPLICABILITY OF OTHER CHAPTERS.
121 30 Chapters 489, 490, 490A, 491, 492, and 493 do not apply to
121 31 banks except as provided by this chapter.

121 32 Sec. 153. Section 547.1, Code 2007, is amended to read as
121 33 follows:

121 34 547.1 USE OF TRADE NAME == VERIFIED STATEMENT REQUIRED.
121 35 A person shall not engage in or conduct a business under a
122 1 trade name, or an assumed name of a character other than the
122 2 true surname of each person owning or having an interest in
122 3 the business, unless the person first records with the county
122 4 recorder of the county in which the business is to be
122 5 conducted a verified statement showing the name, post office
122 6 address, and residence address of each person owning or having
122 7 an interest in the business, and the address where the
122 8 business is to be conducted. However, this provision does not
122 9 apply to any person organized or incorporated in this state as
122 10 a domestic entity or authorized to do business in this state
122 11 as a foreign entity, if the person is a limited partnership
122 12 under chapter 488; a corporation under chapter 490; a limited
122 13 liability company under chapter 489 or 490A; a professional
122 14 corporation under chapter 496C; a cooperative or cooperative
122 15 association under chapter 497, 498, 499, 501, or 501A; or a
122 16 nonprofit corporation under chapter 504.

122 17 DIVISION IV
122 18 REPEALS
122 19 SUBCHAPTER XVII
122 20 REPEAL

122 21 Sec. 154. NEW SECTION. 490A.1701 REPEAL.

122 22 This chapter is repealed on December 31, 2010.

122 23 Sec. 155. FUTURE ELIMINATION OF NONCONFORMING REFERENCES.

122 24 The following sections, as amended by this Act, or as
122 25 amended by a subsequent Act, are amended as follows:

122 26 1. Sections 9H.1, 10B.1, 10C.1, 10D.1, 203.1, and
122 27 501A.102, by striking from the sections the word and figure
122 28 "or 490A.102".

122 29 2. Sections 9H.4, 10.1, 10B.4, 10B.7, 476C.1, 501A.102,

122 30 524.1309, and 547.1, by striking from the sections the word
122 31 and figure "or 490A".
122 32 3. Sections 10.1 and 10.10, by striking from the sections
122 33 the word and figure "or 490A.305".
122 34 4. Sections 10.1 and 10.10, by striking from the sections
122 35 the word and figure "or 490A.307".
123 1 5. Sections 421.26 and 422.16, by striking from the
123 2 sections the words and figures "or sections 490A.601 and
123 3 490A.602".
123 4 6. Sections 488.108, 490.401, 504.401, and 504.403, by
123 5 striking from the sections the words and figures "and for a
123 6 limited liability company under chapter 490A, section
123 7 490A.401, 490A.402, or 490A.1322".
123 8 7. Sections 501A.1101, 501A.1102, and 501A.1103, by
123 9 striking from the sections the word and figure "or 490A.1207".
123 10 8. Section 524.303, by striking from the section the word
123 11 and figure "or 490A.124".
123 12 9. Section 524.315, by striking from the section the words
123 13 and figure "or chapter 490A, the Iowa limited liability
123 14 company Act".
123 15 10. Section 524.1309, by striking from the section the
123 16 words and figures "or 490A, subchapter VII".
123 17 11. Section 524.2001, by striking from the section the
123 18 figure "490A,".

123 19 DIVISION V
123 20 EFFECTIVE DATES

123 21 Sec. 156. EFFECTIVE DATES.

123 22 1. Except as provided in subsection 2, this Act takes
123 23 effect on January 1, 2009.
123 24 2. The section of division IV of this Act that provides
123 25 for the future elimination of nonconforming references takes
123 26 effect on December 31, 2010.

123 27 EXPLANATION

123 28 GENERAL. This bill creates a new Code chapter 489,
123 29 entitled the "Revised Uniform Limited Liability Company Act".
123 30 On January 1, 2011, it will entirely replace the "Iowa Limited
123 31 Liability Company Act" codified in Code chapter 490A. Both
123 32 chapters are based on so-called uniform acts drafted by the
123 33 national conference of commissioners on uniform state laws.

123 34 A limited liability company (company) is a kind of business
123 35 organization usually perpetual in duration and formed for
124 1 capital acquisition and the distribution of any profits. A
124 2 domestic company is formed by filing a certificate of
124 3 organization with the secretary of state. It is often
124 4 organized in a manner similar to a limited partnership with a
124 5 number of passive investors and one or more managers who owe a
124 6 fiduciary duty of care when making decisions affecting the
124 7 company, although the law also recognizes member-managed
124 8 organizational structure. The business organization is
124 9 governed by an operating agreement executed by the members,
124 10 which generally may supersede statutory provisions, and is
124 11 comparable to partnership agreement in a general or limited
124 12 partnership. Members and managers are shielded from personal
124 13 liability similar to shareholders of a corporation; but unlike
124 14 a corporation, taxes are "passed through" to investors without
124 15 being taxed at the business level (i.e., no double taxation).

124 16 DIVISION I == MODEL ACT PROVISIONS. Division I provides
124 17 for the "Revised Uniform Limited Liability Company Act" which
124 18 is organized according to articles.

124 19 Article 1 provides general provisions applicable to the
124 20 Code chapter, including a short title; definitions; when a
124 21 person has notice of a fact under the law; the distinctness
124 22 and duration of a company; its powers; principles of law
124 23 supplementing the new Code chapter; the regulation of a
124 24 company's name; the scope, function, and limitations of
124 25 operating agreements; the effect of an operating agreement on
124 26 its members and third parties; and service of process and the
124 27 regulation of persons who may be served. The article
124 28 establishes a schedule of fees for persons filing documents
124 29 with the secretary of state.

124 30 Article 2 provides for the formation of a company and the
124 31 filing of a certificate of registration with the secretary of
124 32 state; the signing of documents for the secretary of state or
124 33 pursuant to a court order; and filing biennial reports with
124 34 the secretary of state.

124 35 Article 3 provides for the relations of the membership and
125 1 managers, including by restricting the power of a member to be
125 2 an agent of another member solely by being a member; the
125 3 option of a company to file a statement of authority with the
125 4 secretary of state describing the authority of persons holding
125 5 a position in the company and that a person named in the

125 6 statement may file a statement of denial of such authority
125 7 with the secretary of state; and limitations upon the
125 8 liability of members and managers.

125 9 Article 4 provides for relations of members to each other
125 10 and to the company, including provisions for becoming a member
125 11 and the member's obligation to make a contribution and acquire
125 12 a membership interest; the right of a member to receive
125 13 distributions before the company's dissolution; limitations
125 14 upon distributions (e.g., the payment of debts prior to a
125 15 distribution); and the liability for improper distributions.
125 16 The article provides that a company is a member-managed
125 17 company unless the operating agreement provides otherwise, and
125 18 provides for the selection of a manager by consent of the
125 19 members. The article provides for the management of the
125 20 company, including the purchase of insurance, standards of
125 21 conduct for members and managers; and the right of members and
125 22 managers to inspect the company's business records.

125 23 Article 5 provides for transferable interests and rights of
125 24 transferees and creditors, including by providing for the
125 25 rights of creditors or members in cases involving a company's
125 26 decision to transfer an interest in the company; and the
125 27 powers of a representative of a deceased member.

125 28 Article 6 provides for a member's dissociation, including
125 29 by withdrawing their membership subject to a number of
125 30 restrictions (e.g., breach of the operating agreement); and
125 31 the effect of a person's dissociation as a member on their
125 32 right to participate in the company.

125 33 Article 7 provides for the dissolution and winding up of a
125 34 company, including by the terms of the operating agreement, or
125 35 upon application by a member or transferee to district court;
126 1 the winding up of the company's business affairs which may be
126 2 under judicial supervision; and the payment of claims against
126 3 a dissolved limited liability company. It provides for
126 4 administrative dissolution by the secretary of state, the
126 5 reinstatement following administrative dissolution, and an
126 6 appeal from a rejection by the secretary of state to reinstate
126 7 the company.

126 8 Article 8 provides for foreign limited liability companies,
126 9 including their governing law; a process to apply for a
126 10 certificate of authority by the secretary of state; activities
126 11 that do not constitute transacting business in the state; the
126 12 filing of the certificate of authority; the regulation of the
126 13 foreign limited liability company's name; the revocation of a
126 14 company's certificate of authority; the effect of failing to
126 15 have a certificate of authority; and actions by the attorney
126 16 general to enjoin a foreign company from transacting business
126 17 in violation of the article.

126 18 Article 9 provides for actions by members against another
126 19 member or the company, including maintaining a derivative
126 20 action (becoming a plaintiff and pleading); the establishment
126 21 of a special litigation committee; and the payment of proceeds
126 22 and expenses of persons involved in the action.

126 23 Article 10 provides for mergers, conversions, and
126 24 domestication. It includes special definitions applicable to
126 25 the article. The article provides for the process necessary
126 26 for merger to occur; the presentment of a merger plan to the
126 27 members and provides for their approval; the filing of
126 28 articles of merger with the secretary of state; and the effect
126 29 of the merger on the surviving organization (e.g., the
126 30 assumption of debts by the surviving entity). The article
126 31 provides for conversion (to another form of business
126 32 organization). The article provides for the process necessary
126 33 for the conversion to occur, the presentment of a plan of
126 34 conversion to the membership for consent; the filing of the
126 35 conversion plan with the secretary of state; the approval by
127 1 the plan by the membership; and the effect of conversion (the
127 2 retention of assets and liabilities by the converted company).
127 3 The article provides for domestication in which a foreign
127 4 company may become a domestic company organized under the laws
127 5 of this state. It provides for the process necessary for
127 6 domestication to occur; the presentment of plan of
127 7 domestication to the membership for consent; the filing of the
127 8 domestication plan with the secretary of state; and the effect
127 9 of the domestication (e.g., the retention of assets and
127 10 liabilities by the domesticated company). The article
127 11 restricts the approval of mergers, conversions, and
127 12 domestications, and allows for them under other provisions of
127 13 law.

127 14 Article 11 provides for professional limited liability
127 15 companies. It includes a special definitional section;
127 16 provides that the company can only participate in the practice

127 17 of one profession or two or more closely related professions.
127 18 The article provides for its name; the process for
127 19 organization; states that the form of the organization is
127 20 unrelated to a member's professional conduct or status;
127 21 restricts membership only to those individuals who are
127 22 licensed professionals in a specific field; restricts a member
127 23 from assigning an interest in the professional company;
127 24 restricts a professional company from transferring interests
127 25 of the professional company. The article provides for the
127 26 purchase of a member's interest, including upon the death of
127 27 the member. The article provides for the issuance of a
127 28 certificate of interest and restricts the management of the
127 29 professional company to persons who are licensed to practice
127 30 in the profession. The article provides that a professional
127 31 company may only merge with another professional company. It
127 32 provides for the dissolution of or liquidation of the
127 33 professional company; for foreign professional companies; and
127 34 for professional companies organized under other law.

127 35 Article 12 includes provisions not recommended by the
128 1 uniform commissioners. Specifically, it provides for the
128 2 establishment of designated series of transferable interests
128 3 having separate rights, powers, or duties. The article
128 4 provides for the management of a series, including for a
128 5 series manager; the distribution of a series; the right of a
128 6 member to dissociate from a series; the termination of a
128 7 series; and a foreign series.

128 8 Article 13 includes a number of miscellaneous provisions
128 9 including provisions relating to the application of the
128 10 chapter; the applicability of federal law regulating
128 11 electronic signatures; and the application of the new Code
128 12 chapter with Code chapter 490A.

128 13 DIVISION II == CONVERSION FOR CORPORATIONS AND OTHER
128 14 ENTITIES. This division provides that another business
128 15 referred to as an "entity", such as a limited liability
128 16 company, may convert to a domestic corporation and a domestic
128 17 corporation may convert to another entity. The corporation or
128 18 entity must adopt a plan of conversion. A corporation must
128 19 notify each shareholder and the plan which must be approved by
128 20 the corporation's shareholders. If approved, the plan of
128 21 conversion must be filed with the secretary of state. The
128 22 division provides for the effect of the conversion (the
128 23 retention of assets and liabilities) and the conversion of
128 24 interests from the old to the new entity. The division
128 25 provides for conversion of domestic cooperative associations.

128 26 DIVISION III == CONFORMING AMENDMENTS. This division
128 27 amends a number of provisions which refer to Code chapter 490A
128 28 or a section in Code chapter 490A. The division includes the
128 29 new reference to new Code chapter 489 or an appropriate Code
128 30 section in the new Code chapter.

128 31 DIVISION IV == REPEALS. This division repeals Code chapter
128 32 490A on December 31, 2010. It also strikes references
128 33 throughout the Code to Code chapter 490A.

128 34 DIVISION V == EFFECTIVE DATES. This division provides that
128 35 the bill takes effect on January 1, 2009, except for those
129 1 provisions which eliminate references to Code chapter 490A or
129 2 a Code section within that chapter, which takes effect on
129 3 December 31, 2010.

129 4 LSB 5668HC 82

129 5 da/rj/5