

FIRST REGULAR SESSION

# HOUSE BILL NO. 718

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MARSHALL.

1293L.02I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 135.460, 287.037, 347.010, 347.015, 347.017, 347.020, 347.025, 347.030, 347.033, 347.035, 347.037, 347.039, 347.041, 347.043, 347.045, 347.047, 347.048, 347.049, 347.051, 347.053, 347.055, 347.057, 347.059, 347.061, 347.063, 347.065, 347.067, 347.069, 347.071, 347.073, 347.075, 347.077, 347.079, 347.081, 347.083, 347.085, 347.088, 347.090, 347.091, 347.093, 347.095, 347.097, 347.099, 347.101, 347.103, 347.105, 347.107, 347.109, 347.111, 347.113, 347.115, 347.117, 347.119, 347.121, 347.123, 347.125, 347.127, 347.128, 347.129, 347.131, 347.133, 347.135, 347.137, 347.139, 347.141, 347.143, 347.145, 347.147, 347.149, 347.151, 347.153, 347.155, 347.157, 347.160, 347.161, 347.163, 347.165, 347.167, 347.169, 347.171, 347.173, 347.175, 347.177, 347.179, 347.181, 347.183, 347.185, 347.187, 347.189, 347.700, 347.705, 347.710, 347.720, and 356.071, RSMo, and to enact in lieu thereof ninety-five new sections relating to the uniform limited liability company act.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 135.460, 287.037, 347.010, 347.015, 347.017, 347.020, 347.025,  
2 347.030, 347.033, 347.035, 347.037, 347.039, 347.041, 347.043, 347.045, 347.047, 347.048,  
3 347.049, 347.051, 347.053, 347.055, 347.057, 347.059, 347.061, 347.063, 347.065, 347.067,  
4 347.069, 347.071, 347.073, 347.075, 347.077, 347.079, 347.081, 347.083, 347.085, 347.088,  
5 347.090, 347.091, 347.093, 347.095, 347.097, 347.099, 347.101, 347.103, 347.105, 347.107,  
6 347.109, 347.111, 347.113, 347.115, 347.117, 347.119, 347.121, 347.123, 347.125, 347.127,  
7 347.128, 347.129, 347.131, 347.133, 347.135, 347.137, 347.139, 347.141, 347.143, 347.145,  
8 347.147, 347.149, 347.151, 347.153, 347.155, 347.157, 347.160, 347.161, 347.163, 347.165,  
9 347.167, 347.169, 347.171, 347.173, 347.175, 347.177, 347.179, 347.181, 347.183, 347.185,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

10 347.187, 347.189, 347.700, 347.705, 347.710, 347.720, and 356.071, RSMo, are repealed and  
11 ninety-five new sections enacted in lieu thereof, to be known as sections 135.460, 287.037,  
12 347.700, 347.705, 347.710, 347.720, 347.1-101, 347.1-102, 347.1-103, 347.1-104, 347.1-105,  
13 347.1-106, 347.1-107, 347.1-108, 347.1-109, 347.1-110, 347.1-111, 347.1-112, 347.1-113,  
14 347.1-114, 347.1-115, 347.1-116, 347.2-201, 347.2-202, 347.2-203, 347.2-204, 347.2-205,  
15 347.2-206, 347.2-207, 347.2-208, 347.2-209, 347.3-301, 347.3-302, 347.3-303, 347.3-304,  
16 347.4-401, 347.4-402, 347.4-403, 347.4-404, 347.4-405, 347.4-406, 347.4-407, 347.4-408,  
17 347.4-409, 347.4-410, 347.5-501, 347.5-502, 347.5-503, 347.5-504, 347.6-601, 347.6-602,  
18 347.6-603, 347.7-701, 347.7-702, 347.7-703, 347.7-704, 347.7-705, 347.7-706, 347.7-707,  
19 347.7-708, 347.8-801, 347.8-802, 347.8-803, 347.8-804, 347.8-805, 347.8-806, 347.8-807,  
20 347.8-808, 347.8-809, 347.9-901, 347.9-902, 347.9-903, 347.9-904, 347.9-905, 347.9-906,  
21 347.10-1001, 347.10-1002, 347.10-1003, 347.10-1004, 347.10-1005, 347.10-1006, 347.10-1007,  
22 347.10-1008, 347.10-1009, 347.10-1010, 347.10-1011, 347.10-1012, 347.10-1013, 347.10-1014,  
23 347.10-1015, 347.11-1101, 347.11-1102, 347.11-1103, 347.11-1104, and 356.071, to read as  
24 follows:

135.460. 1. This section and sections 620.1100 and 620.1103 shall be known and may  
2 be cited as the "Youth Opportunities and Violence Prevention Act".  
3 2. As used in this section, the term "taxpayer" shall include corporations as defined in  
4 section 143.441 or 143.471, any charitable organization which is exempt from federal income  
5 tax and whose Missouri unrelated business taxable income, if any, would be subject to the state  
6 income tax imposed under chapter 143, and individuals, individual proprietorships and  
7 partnerships.  
8 3. A taxpayer shall be allowed a tax credit against the tax otherwise due pursuant to  
9 chapter 143, excluding withholding tax imposed by sections 143.191 to 143.265, chapter 147,  
10 chapter 148, or chapter 153 in an amount equal to thirty percent for property contributions and  
11 fifty percent for monetary contributions of the amount such taxpayer contributed to the programs  
12 described in subsection 5 of this section, not to exceed two hundred thousand dollars per taxable  
13 year, per taxpayer; except as otherwise provided in subdivision (5) of subsection 5 of this  
14 section. The department of economic development shall prescribe the method for claiming the  
15 tax credits allowed in this section. No rule or portion of a rule promulgated under the authority  
16 of this section shall become effective unless it has been promulgated pursuant to the provisions  
17 of chapter 536. All rulemaking authority delegated prior to June 27, 1997, is of no force and  
18 effect and repealed; however, nothing in this section shall be interpreted to repeal or affect the  
19 validity of any rule filed or adopted prior to June 27, 1997, if such rule complied with the  
20 provisions of chapter 536. The provisions of this section and chapter 536 are nonseverable and  
21 if any of the powers vested with the general assembly pursuant to chapter 536, including the

22 ability to review, to delay the effective date, or to disapprove and annul a rule or portion of a  
23 rule, are subsequently held unconstitutional, then the purported grant of rulemaking authority and  
24 any rule so proposed and contained in the order of rulemaking shall be invalid and void.

25 4. The tax credits allowed by this section shall be claimed by the taxpayer to offset the  
26 taxes that become due in the taxpayer's tax period in which the contribution was made. Any tax  
27 credit not used in such tax period may be carried over the next five succeeding tax periods.

28 5. The tax credit allowed by this section may only be claimed for monetary or property  
29 contributions to public or private programs authorized to participate pursuant to this section by  
30 the department of economic development and may be claimed for the development,  
31 establishment, implementation, operation, and expansion of the following activities and  
32 programs:

33 (1) An adopt-a-school program. Components of the adopt- a-school program shall  
34 include donations for school activities, seminars, and functions; school-business employment  
35 programs; and the donation of property and equipment of the corporation to the school;

36 (2) Expansion of programs to encourage school dropouts to reenter and complete high  
37 school or to complete a graduate equivalency degree program;

38 (3) Employment programs. Such programs shall initially, but not exclusively, target  
39 unemployed youth living in poverty and youth living in areas with a high incidence of crime;

40 (4) New or existing youth clubs or associations;

41 (5) Employment/internship/apprenticeship programs in business or trades for persons  
42 less than twenty years of age, in which case the tax credit claimed pursuant to this section shall  
43 be equal to one-half of the amount paid to the intern or apprentice in that tax year, except that  
44 such credit shall not exceed ten thousand dollars per person;

45 (6) Mentor and role model programs;

46 (7) Drug and alcohol abuse prevention training programs for youth;

47 (8) Donation of property or equipment of the taxpayer to schools, including schools  
48 which primarily educate children who have been expelled from other schools, or donation of the  
49 same to municipalities, or not-for-profit corporations or other not-for-profit organizations which  
50 offer programs dedicated to youth violence prevention as authorized by the department;

51 (9) Not-for-profit, private or public youth activity centers;

52 (10) Nonviolent conflict resolution and mediation programs;

53 (11) Youth outreach and counseling programs.

54 6. Any program authorized in subsection 5 of this section shall, at least annually, submit  
55 a report to the department of economic development outlining the purpose and objectives of such  
56 program, the number of youth served, the specific activities provided pursuant to such program,  
57 the duration of such program and recorded youth attendance where applicable.

58           7. The department of economic development shall, at least annually submit a report to  
59 the Missouri general assembly listing the organizations participating, services offered and the  
60 number of youth served as the result of the implementation of this section.

61           8. The tax credit allowed by this section shall apply to all taxable years beginning after  
62 December 31, 1995.

63           9. For the purposes of the credits described in this section, in the case of a corporation  
64 described in section 143.471, partnership, limited liability company described in section  
65 [347.015] **347.1-102**, cooperative, marketing enterprise, or partnership, in computing Missouri's  
66 tax liability, such credits shall be allowed to the following:

67           (1) The shareholders of the corporation described in section 143.471;

68           (2) The partners of the partnership;

69           (3) The members of the limited liability company; and

70           (4) Individual members of the cooperative or marketing enterprise. Such credits shall be  
71 apportioned to the entities described in subdivisions (1) and (2) of this subsection in proportion  
72 to their share of ownership on the last day of the taxpayer's tax period.

287.037. Notwithstanding any other provision of law to the contrary, beginning January  
2 1, 1997, those insurance companies providing coverage pursuant to chapter 287, to a limited  
3 liability company, as defined in section [347.015] **347.1-102**, shall provide coverage for the  
4 employees of the limited liability company who are not members of the limited liability  
5 company. Members of the limited liability company, as defined in section [347.015] **347.1-102**,  
6 shall also be provided coverage pursuant to chapter 287, but such members may individually  
7 elect to reject such coverage by providing a written notice of such rejection on a form developed  
8 by the department of insurance, financial institutions and professional registration to the limited  
9 liability company and its insurer. Failure to provide notice to the limited liability company shall  
10 not be grounds for any member to claim that the rejection of such coverage is not legally  
11 effective. A member who elects to reject such coverage shall not thereafter be entitled to  
12 workers' compensation benefits under the policy, even if serving or working in the capacity of  
13 an employee of the limited liability company, at least until such time as said member provides  
14 the limited liability company and its insurer with a written notice which rescinds the prior  
15 rejection of such coverage. The written notice which rescinds the prior rejection of such  
16 coverage shall be on a form developed by the department of insurance, financial institutions and  
17 professional registration. Any rescission shall be prospective in nature and shall entitle the  
18 member only to such benefits which accrue on or after the date the notice of rescission form is  
19 received by the insurance company.

347.700. 1. A merger or consolidation solely between any two or more domestic corporations or one or more domestic corporations and one or more foreign corporations shall be governed by and subject to chapter 351 or 355, as is applicable.

2. A merger or consolidation solely between any two or more domestic general partnerships or one or more domestic general partnerships and one or more foreign general partnerships shall be governed by and subject to section 358.520.

3. A merger or consolidation solely between any two or more domestic limited partnerships or one or more domestic limited partnerships and one or more foreign limited partnerships shall be governed by and subject to section 359.165.

4. A merger or consolidation solely between any two or more domestic limited liability companies or one or more domestic limited liability companies and one or more foreign limited liability companies shall be governed by sections [347.127 to 347.133] **347.10-1001 to 347.10-1015**.

5. A business combination involving any resident domestic corporation and any interested shareholder of such resident domestic corporation shall be governed by and subject to section 351.459.

6. Subject to the provisions of this section, any merger or consolidation between one or more domestic corporations and any one or more constituent entities at least one of which is not a corporation, one or more domestic general partnerships and any one or more constituent entities at least one of which is not a general partnership, one or more domestic limited partnerships and any one or more constituent entities at least one of which is not a limited partnership, one or more domestic limited liability partnerships and any one or more constituent entities at least one of which is not a limited liability partnership, one or more domestic limited liability limited partnerships and any one or more constituent entities at least one of which is not a limited liability limited partnership, or one or more domestic limited liability companies and any one or more constituent entities at least one of which is not a limited liability company shall be governed by and subject to the provisions of sections 347.700 to 347.735.

347.705. As used in sections 347.700 to 347.735, the following terms mean:

(1) "Constituent entity", each person that is a party to a merger or consolidation subject to sections 347.700 to 347.735;

(2) "New entity", the person into which constituent entities consolidate, as identified in the agreement of consolidation or articles of consolidation provided for in sections 347.700 to 347.735;

(3) "Organizational document", with respect to a corporation, its articles of corporation or their equivalent, with respect to a general partnership, its fictitious name registration or its equivalent, with respect to a limited partnership, its certificate of limited partnership or its

10 equivalent, [with respect to a limited liability company, its articles of organization or their  
11 equivalent,] with respect to a limited liability partnership, its registration as a limited liability  
12 partnership or its equivalent, with respect to a limited liability limited partnership, its certificate  
13 of limited partnership and its registration as a limited liability partnership or their equivalent, and  
14 with respect to any other type of person, the documents, if any, necessary to form and organize  
15 such person under the laws of the jurisdiction under which such person was or is formed and  
16 organized;

17 (4) "Person", a domestic or foreign general partnership, limited partnership, limited  
18 liability partnership, limited liability limited partnership, [limited liability company,] corporation,  
19 trust, business trust, real estate investment trust and other association or business entity;

20 (5) "Surviving entity", the constituent entity surviving a merger, as identified in the  
21 agreement of merger or articles of merger provided for in sections 347.700 to 347.735.

347.710. Subject to the provisions of sections 347.700 to 347.735, any one or more  
2 domestic corporations may merge or consolidate into or with any one or more persons at least  
3 one of which is not a corporation, any one or more domestic general partnerships may merge or  
4 consolidate into or with any one or more persons at least one of which is not a general  
5 partnership, any one or more domestic limited partnerships may merge or consolidate into or  
6 with any one or more persons at least one of which is not a limited partnership, **and** any one or  
7 more domestic limited liability limited partnerships may merge or consolidate into or with any  
8 one or more persons at least one of which is not a limited liability limited partnership[, and any  
9 one or more domestic limited liability companies may merge or consolidate into or with any one  
10 or more persons at least one of which is not a limited liability company].

347.720. 1. The agreement of merger or consolidation required by section 347.715 shall  
2 be authorized and approved in the following manner:

3 (1) A constituent entity that is a domestic general partnership shall have the agreement  
4 of merger or consolidation authorized and approved by all of the partners, unless otherwise  
5 provided in the articles or agreement of partnership;

6 (2) A constituent entity that is a domestic limited partnership shall have the agreement  
7 of merger or consolidation approved by all general partners and by all of the limited partners  
8 unless otherwise provided in the articles or agreement of limited partnership;

9 (3) A constituent entity that is a domestic corporation shall have the agreement of merger  
10 or consolidation approved in the manner applicable to a merger of two or more domestic  
11 corporations as provided in chapter 351 or 355, as is applicable; **and**

12 (4) [A constituent entity that is a domestic limited liability company shall have the  
13 agreement of merger or consolidation approved in the manner provided in section 347.079; and

14 (5)] Each constituent entity formed under the laws of a jurisdiction other than this state  
 15 shall have the agreement of merger or consolidation approved in accordance with the laws of  
 16 such other jurisdiction.

17 2. The fact that the agreement of merger or consolidation has been authorized and  
 18 approved in accordance with this section shall be certified on the agreement of merger or  
 19 consolidation on behalf of each constituent entity:

20 (1) In the case of any domestic general or limited partnership, by any general partner;

21 (2) In the case of any domestic corporation, by its president or a vice president, and by  
 22 its secretary or an assistant secretary; **and**

23 (3) [In the case of any domestic limited liability company, by any authorized person as  
 24 defined in section 347.015; and

25 (4)] In the case of any constituent entity formed under the laws of any jurisdiction other  
 26 than this state, in accordance with the laws of such other jurisdiction.

27 3. After the agreement of merger or consolidation is authorized and approved, unless the  
 28 agreement of merger or consolidation provides otherwise, and at any time before the agreement  
 29 of merger or consolidation or certificate of merger or consolidation is effective as provided for  
 30 in section 347.725, the agreement of merger or consolidation may be abandoned, subject to any  
 31 contractual rights, in accordance with the procedure set forth in the agreement of merger or  
 32 consolidation or, if none is set forth, with the approval of those persons or individuals entitled  
 33 to approve the merger or consolidation as provided in subsection 1 of this section.

**ARTICLE 1**

**GENERAL PROVISIONS**

**347.1-101. SHORT TITLE.**

2 **This act may be cited as the Revised Uniform Limited Liability Company Act.**

**347.1-102. DEFINITIONS.**

2 **In this act:**

3 (1) **"Certificate of organization"** means the certificate required by Section 347.2-  
 4 **201. The term includes the certificate as amended or restated.**

5 (2) **"Contribution"** means any benefit provided by a person to a limited liability  
 6 **company:**

7 (A) **in order to become a member upon formation of the company and in**  
 8 **accordance with an agreement between or among the persons that have agreed to become**  
 9 **the initial members of the company;**

10 (B) **in order to become a member after formation of the company and in**  
 11 **accordance with an agreement between the person and the company; or**

12 (C) in the person's capacity as a member and in accordance with the operating  
13 agreement or an agreement between the member and the company.

14 (3) "Debtor in bankruptcy" means a person that is the subject of:

15 (A) an order for relief under Title 11 of the United States Code or a successor  
16 statute of general application; or

17 (B) a comparable order under federal, state, or foreign law governing insolvency.

18 (4) "Designated office" means:

19 (A) the office that a limited liability company is required to designate and maintain  
20 under Section 347.1-113; or

21 (B) the principal office of a foreign limited liability company.

22 (5) "Distribution", except as otherwise provided in Section 405(g), means a transfer  
23 of money or other property from a limited liability company to another person on account  
24 of a transferable interest.

25 (6) "Effective", with respect to a record required or permitted to be delivered to  
26 the Secretary of State for filing under this act, means effective under Section 347.2-205(c).

27 (7) "Foreign limited liability company" means an unincorporated entity formed  
28 under the law of a jurisdiction other than this state and denominated by that law as a  
29 limited liability company.

30 (8) "Limited liability company", except in the phrase "foreign limited liability  
31 company", means an entity formed under this act.

32 (9) "Manager" means a person that under the operating agreement of a  
33 manager-managed limited liability company is responsible, alone or in concert with others,  
34 for performing the management functions stated in Section 347.4-407(c).

35 (10) "Manager-managed limited liability company" means a limited liability  
36 company that qualifies under Section 407(a).

37 (11) "Member" means a person that has become a member of a limited liability  
38 company under Section 347.4-401 and has not dissociated under Section 347.6-602.

39 (12) "Member-managed limited liability company" means a limited liability  
40 company that is not a manager-managed limited liability company.

41 (13) "Operating agreement" means the agreement, whether or not referred to as  
42 an operating agreement and whether oral, in a record, implied, or in any combination  
43 thereof, of all the members of a limited liability company, including a sole member,  
44 concerning the matters described in Section 347.1-110(a). The term includes the agreement  
45 as amended or restated.

46 (14) "Organizer" means a person that acts under Section 201 to form a limited  
47 liability company.

48           (15) "Person" means an individual, corporation, business trust, estate, trust,  
49 partnership, limited liability company, association, joint venture, public corporation,  
50 government or governmental subdivision, agency, or instrumentality, or any other legal  
51 or commercial entity.

52           (16) "Principal office" means the principal executive office of a limited liability  
53 company or foreign limited liability company, whether or not the office is located in this  
54 state.

55           (17) "Record" means information that is inscribed on a tangible medium or that  
56 is stored in an electronic or other medium and is retrievable in perceivable form.

57           (18) "Sign" means, with the present intent to authenticate or adopt a record:

58           (A) to execute or adopt a tangible symbol; or

59           (B) to attach to or logically associate with the record an electronic symbol, sound,  
60 or process.

61           (19) "State" means a state of the United States, the District of Columbia, Puerto  
62 Rico, the United States Virgin Islands, or any territory or insular possession subject to the  
63 jurisdiction of the United States.

64           (20) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease,  
65 mortgage, security interest, encumbrance, gift, and transfer by operation of law.

66           (21) "Transferable interest" means the right, as originally associated with a  
67 person's capacity as a member, to receive distributions from a limited liability company  
68 in accordance with the operating agreement, whether or not the person remains a member  
69 or continues to own any part of the right.

70           (22) "Transferee" means a person to which all or part of a transferable interest has  
71 been transferred, whether or not the transferor is a member.

**347.1-103. KNOWLEDGE; NOTICE.**

2           (a) A person knows a fact when the person:

3           (1) has actual knowledge of it; or

4           (2) is deemed to know it under subsection (d)(1) or law other than this act.

5           (b) A person has notice of a fact when the person:

6           (1) has reason to know the fact from all of the facts known to the person at the time  
7 in question; or

8           (2) is deemed to have notice of the fact under subsection (d)(2).

9           (c) A person notifies another of a fact by taking steps reasonably required to inform  
10 the other person in ordinary course, whether or not the other person knows the fact.

11           (d) A person that is not a member is deemed:

- 12 (1) to know of a limitation on authority to transfer real property as provided in
- 13 Section 347.3-302(g); and
- 14 (2) to have notice of a limited liability company's:
- 15 (A) dissolution, 90 days after a statement of dissolution under Section 347.7-
- 16 702(b)(2)(A) becomes effective;
- 17 (B) termination, 90 days after a statement of termination Section 347.7-702(b)(2)(F)
- 18 becomes effective; and
- 19 (C) merger, conversion, or domestication, 90 days after articles of merger,
- 20 conversion, or domestication under Article 10 become effective.

**347.1-104. NATURE, PURPOSE, AND DURATION OF LIMITED LIABILITY  
2 COMPANY.**

- 3 (a) A limited liability company is an entity distinct from its members.
- 4 (b) A limited liability company may have any lawful purpose, regardless of whether
- 5 for profit.
- 6 (c) A limited liability company has perpetual duration.

7 **Legislative Note:** This state should consider whether to amend statutes protecting the  
8 public interest in organizations formed for charitable or similar purposes.

**347.1-105. POWERS.**  
2 A limited liability company has the capacity to sue and be sued in its own name and  
3 the power to do all things necessary or convenient to carry on its activities.

**347.1-106. GOVERNING LAW.**  
2 The law of this state governs:  
3 (1) the internal affairs of a limited liability company; and  
4 (2) the liability of a member as member and a manager as manager for the debts,  
5 obligations, or other liabilities of a limited liability company.

**347.1-107. SUPPLEMENTAL PRINCIPLES OF LAW.**  
2 Unless displaced by particular provisions of this act, the principles of law and equity  
3 supplement this act.

**347.1-108. NAME.**  
2 (a) The name of a limited liability company must contain the words "limited  
3 liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.",  
4 or "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated  
5 as "Co.".

6 (b) Unless authorized by subsection (c), the name of a limited liability company  
7 must be distinguishable in the records of the Secretary of State from:

8 (1) the name of each person that is not an individual and that is incorporated,  
9 organized, or authorized to transact business in this state;

10 (2) the limited liability company name stated in each certificate of organization that  
11 contains the statement as provided in Section 347.2-201(b)(3) and that has not lapsed; and

12 (3) each name reserved under Section 109 and any other state law allowing the  
13 reservation or registration of business names, including fictitious or assumed name.

14 (c) A limited liability company may apply to the Secretary of State for  
15 authorization to use a name that does not comply with subsection (b). The Secretary of  
16 State shall authorize use of the name applied for if, as to each noncomplying name:

17 (1) the present user, registrant, or owner of the noncomplying name consents in a  
18 signed record to the use and submits an undertaking in a form satisfactory to the Secretary  
19 of State to change the noncomplying name to a name that complies with subsection (b) and  
20 is distinguishable in the records of the Secretary of State from the name applied for; or

21 (2) the applicant delivers to the Secretary of State a certified copy of the final  
22 judgment of a court establishing the applicant's right to use in this state the name applied  
23 for.

24 (d) Subject to Section 347.8-805, this section applies to a foreign limited liability  
25 company transacting business in this state which has a certificate of authority to transact  
26 business in this state or which has applied for a certificate of authority.

#### 347.1-109. RESERVATION OF NAME.

2 (a) A person may reserve the exclusive use of the name of a limited liability  
3 company, including a fictitious or assumed name for a foreign limited liability company  
4 whose name is not available, by delivering an application to the Secretary of State for  
5 filing. The application must state the name and address of the applicant and the name  
6 proposed to be reserved. If the Secretary of State finds that the name applied for is  
7 available, it must be reserved for the applicant's exclusive use for a 120-day period.

8 (b) The owner of a name reserved for a limited liability company may transfer the  
9 reservation to another person by delivering to the Secretary of State for filing a signed  
10 notice of the transfer which states the name and address of the transferee.

#### 347.1-110. OPERATING AGREEMENT; SCOPE, FUNCTION, AND 2 LIMITATIONS.

3 (a) Except as otherwise provided in subsections (b) and (c), the operating  
4 agreement governs:

5 (1) relations among the members as members and between the members and the  
6 limited liability company;

7 (2) the rights and duties under this act of a person in the capacity of manager;

- 8           **(3) the activities of the company and the conduct of those activities; and**  
9           **(4) the means and conditions for amending the operating agreement.**  
10          **(b) To the extent the operating agreement does not otherwise provide for a matter**  
11 **described in subsection (a), this act governs the matter.**  
12          **(c) An operating agreement may not:**  
13           **(1) vary a limited liability company's capacity under Section 347.1-105 to sue and**  
14 **be sued in its own name;**  
15           **(2) vary the law applicable under Section 347.1-106;**  
16           **(3) vary the power of the court under Section 347.2-204;**  
17           **(4) subject to subsections (d) through (g), eliminate the duty of loyalty, the duty of**  
18 **care, or any other fiduciary duty;**  
19           **(5) subject to subsections (d) through (g), eliminate the contractual obligation of**  
20 **good faith and fair dealing under Section 347.4-409(d);**  
21           **(6) unreasonably restrict the duties and rights stated in Section 347.4-410;**  
22           **(7) vary the power of a court to decree dissolution in the circumstances specified**  
23 **in Section 347.7-701(a)(4) and (5);**  
24           **(8) vary the requirement to wind up a limited liability company's business as**  
25 **specified in Section 347.7-702(a) and (b)(1);**  
26           **(9) unreasonably restrict the right of a member to maintain an action under Article**  
27 **9;**  
28           **(10) restrict the right to approve a merger, conversion, or domestication under**  
29 **Section 347.10-1014 to a member that will have personal liability with respect to a**  
30 **surviving, converted, or domesticated organization; or**  
31           **(11) except as otherwise provided in Section 347.1-112(b), restrict the rights under**  
32 **this act of a person other than a member or manager.**  
33          **(d) If not manifestly unreasonable, the operating agreement may:**  
34           **(1) restrict or eliminate the duty:**  
35            **(A) as required in Section 347.4-409(b)(1) and (g), to account to the limited liability**  
36 **company and to hold as trustee for it any property, profit, or benefit derived by the**  
37 **member in the conduct or winding up of the company's business, from a use by the**  
38 **member of the company's property, or from the appropriation of a limited liability**  
39 **company opportunity;**  
40            **(B) as required in Section 347.4-409(b)(2) and (g), to refrain from dealing with the**  
41 **company in the conduct or winding up of the company's business as or on behalf of a party**  
42 **having an interest adverse to the company; and**

43 (C) as required by Section 347.4-409(b)(3) and (g), to refrain from competing with  
44 the company in the conduct of the company's business before the dissolution of the  
45 company;

46 (2) identify specific types or categories of activities that do not violate the duty of  
47 loyalty;

48 (3) alter the duty of care, except to authorize intentional misconduct or knowing  
49 violation of law;

50 (4) alter any other fiduciary duty, including eliminating particular aspects of that  
51 duty; and

52 (5) prescribe the standards by which to measure the performance of the contractual  
53 obligation of good faith and fair dealing under Section 347.4-409(d).

54 (e) The operating agreement may specify the method by which a specific act or  
55 transaction that would otherwise violate the duty of loyalty may be authorized or ratified  
56 by one or more disinterested and independent persons after full disclosure of all material  
57 facts.

58 (f) To the extent the operating agreement of a member-managed limited liability  
59 company expressly relieves a member of a responsibility that the member would otherwise  
60 have under this act and imposes the responsibility on one or more other members, the  
61 operating agreement may, to the benefit of the member that the operating agreement  
62 relieves of the responsibility, also eliminate or limit any fiduciary duty that would have  
63 pertained to the responsibility.

64 (g) The operating agreement may alter or eliminate the indemnification for a  
65 member or manager provided by Section 347.4-408(a) and may eliminate or limit a  
66 member or manager's liability to the limited liability company and members for money  
67 damages, except for:

68 (1) breach of the duty of loyalty;

69 (2) a financial benefit received by the member or manager to which the member or  
70 manager is not entitled;

71 (3) a breach of a duty under Section 347.4-406;

72 (4) intentional infliction of harm on the company or a member; or

73 (5) an intentional violation of criminal law.

74 (h) The court shall decide any claim under subsection (d) that a term of an  
75 operating agreement is manifestly unreasonable. The court:

76 (1) shall make its determination as of the time the challenged term became part of  
77 the operating agreement and by considering only circumstances existing at that time; and

78           (2) may invalidate the term only if, in light of the purposes and activities of the  
79 limited liability company, it is readily apparent that:

80           (A) the objective of the term is unreasonable; or

81           (B) the term is an unreasonable means to achieve the provision's objective.

**347.1-111. OPERATING AGREEMENT; EFFECT ON LIMITED LIABILITY  
2 COMPANY AND PERSONS BECOMING MEMBERS; PREFORMATION  
3 AGREEMENT.**

4           (a) A limited liability company is bound by and may enforce the operating  
5 agreement, whether or not the company has itself manifested assent to the operating  
6 agreement.

7           (b) A person that becomes a member of a limited liability company is deemed to  
8 assent to the operating agreement.

9           (c) Two or more persons intending to become the initial members of a limited  
10 liability company may make an agreement providing that upon the formation of the  
11 company the agreement will become the operating agreement. One person intending to  
12 become the initial member of a limited liability company may assent to terms providing  
13 that upon the formation of the company the terms will become the operating agreement.

**347.1-112. OPERATING AGREEMENT; EFFECT ON THIRD PARTIES AND  
2 RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF LIMITED LIABILITY  
3 COMPANY.**

4           (a) An operating agreement may specify that its amendment requires the approval  
5 of a person that is not a party to the operating agreement or the satisfaction of a condition.  
6 An amendment is ineffective if its adoption does not include the required approval or  
7 satisfy the specified condition.

8           (b) The obligations of a limited liability company and its members to a person in  
9 the person's capacity as a transferee or dissociated member are governed by the operating  
10 agreement. Subject only to any court order issued under Section 347.5-503(b)(2) to  
11 effectuate a charging order, an amendment to the operating agreement made after a person  
12 becomes a transferee or dissociated member is effective with regard to any debt, obligation,  
13 or other liability of the limited liability company or its members to the person in the  
14 person's capacity as a transferee or dissociated member.

15           (c) If a record that has been delivered by a limited liability company to the  
16 Secretary of State for filing and has become effective under this act contains a provision  
17 that would be ineffective under Section 347.1-110(c) if contained in the operating  
18 agreement, the provision is likewise ineffective in the record.

19 (d) Subject to subsection (c), if a record that has been delivered by a limited liability  
20 company to the Secretary of State for filing and has become effective under this act  
21 conflicts with a provision of the operating agreement:

22 (1) the operating agreement prevails as to members, dissociated members,  
23 transferees, and managers; and

24 (2) the record prevails as to other persons to the extent they reasonably rely on the  
25 record.

**347.1-113. OFFICE AND AGENT FOR SERVICE OF PROCESS.**

2 (a) A limited liability company shall designate and continuously maintain in this  
3 state:

4 (1) an office, which need not be a place of its activity in this state; and

5 (2) an agent for service of process.

6 (b) A foreign limited liability company that has a certificate of authority under  
7 Section 347.8-802 shall designate and continuously maintain in this state an agent for  
8 service of process.

9 (c) An agent for service of process of a limited liability company or foreign limited  
10 liability company must be an individual who is a resident of this state or other person with  
11 authority to transact business in this state.

**347.1-114. CHANGE OF DESIGNATED OFFICE OR AGENT FOR SERVICE  
2 OF PROCESS.**

3 (a) A limited liability company or foreign limited liability company may change its  
4 designated office, its agent for service of process, or the address of its agent for service of  
5 process by delivering to the Secretary of State for filing a statement of change containing:

6 (1) the name of the company;

7 (2) the street and mailing addresses of its current designated office;

8 (3) if the current designated office is to be changed, the street and mailing addresses  
9 of the new designated office;

10 (4) the name and street and mailing addresses of its current agent for service of  
11 process; and

12 (5) if the current agent for service of process or an address of the agent is to be  
13 changed, the new information.

14 (b) Subject to Section 347.2-205(c), a statement of change is effective when filed by  
15 the Secretary of State.

**347.1-115. RESIGNATION OF AGENT FOR SERVICE OF PROCESS.**

2 (a) To resign as an agent for service of process of a limited liability company or  
3 foreign limited liability company, the agent must deliver to the Secretary of State for filing

4 a statement of resignation containing the company name and stating that the agent is  
5 resigning.

6 (b) The Secretary of State shall file a statement of resignation delivered under  
7 subsection (a) and mail or otherwise provide or deliver a copy to the designated office of  
8 the limited liability company or foreign limited liability company and another copy to the  
9 principal office of the company if the mailing addresses of the principal office appears in  
10 the records of the Secretary of State and is different from the mailing address of the  
11 designated office.

12 (c) An agency for service of process terminates on the earlier of:

13 (1) the 31st day after the Secretary of State files the statement of resignation;

14 (2) when a record designating a new agent for service of process is delivered to the  
15 Secretary of State for filing on behalf of the limited liability company and becomes  
16 effective.

#### 347.1-116. SERVICE OF PROCESS.

2 (a) An agent for service of process appointed by a limited liability company or  
3 foreign limited liability company is an agent of the company for service of any process,  
4 notice, or demand required or permitted by law to be served on the company.

5 (b) If a limited liability company or foreign limited liability company does not  
6 appoint or maintain an agent for service of process in this state or the agent for service of  
7 process cannot with reasonable diligence be found at the agent's street address, the  
8 Secretary of State is an agent of the company upon whom process, notice, or demand may  
9 be served.

10 (c) Service of any process, notice, or demand on the Secretary of State as agent for  
11 a limited liability company or foreign limited liability company may be made by delivering  
12 to the Secretary of State duplicate copies of the process, notice, or demand. If a process,  
13 notice, or demand is served on the Secretary of State, the Secretary of State shall forward  
14 one of the copies by registered or certified mail, return receipt requested, to the company  
15 at its designated office.

16 (d) Service is effected under subsection (c) at the earliest of:

17 (1) the date the limited liability company or foreign limited liability company  
18 receives the process, notice, or demand;

19 (2) the date shown on the return receipt, if signed on behalf of the company; or

20 (3) five days after the process, notice, or demand is deposited with the United States  
21 Postal Service, if correctly addressed and with sufficient postage.

22 (e) The Secretary of State shall keep a record of each process, notice, and demand  
23 served pursuant to this section and record the time of, and the action taken regarding, the  
24 service.

25 (f) This section does not affect the right to serve process, notice, or demand in any  
26 other manner provided by law.

## ARTICLE 2

### FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

347.2-201. FORMATION OF LIMITED LIABILITY COMPANY;  
2 CERTIFICATE OF ORGANIZATION.

3 (a) One or more persons may act as organizers to form a limited liability company  
4 by signing and delivering to the Secretary of State for filing a certificate of organization.

5 (b) A certificate of organization must state:

6 (1) the name of the limited liability company, which must comply with Section  
7 347.1-108;

8 (2) the street and mailing addresses of the initial designated office and the name  
9 and street and mailing addresses of the initial agent for service of process of the company;  
10 and

11 (3) if the company will have no members when the Secretary of State files the  
12 certificate, a statement to that effect.

13 (c) Subject to Section 347.1-112(c), a certificate of organization may also contain  
14 statements as to matters other than those required by subsection (b). However, a statement  
15 in a certificate of organization is not effective as a statement of authority.

16 (d) Unless the filed certificate of organization contains the statement as provided  
17 in subsection (b)(3), the following rules apply:

18 (1) A limited liability company is formed when the Secretary of State has filed the  
19 certificate of organization and the company has at least one member, unless the certificate  
20 states a delayed effective date pursuant to Section 347.2-205(c).

21 (2) If the certificate states a delayed effective date, a limited liability company is not  
22 formed if, before the certificate takes effect, a statement of cancellation is signed and  
23 delivered to the Secretary of State for filing and the Secretary of State files the certificate.

24 (3) Subject to any delayed effective date and except in a proceeding by this state to  
25 dissolve a limited liability company, the filing of the certificate of organization by the  
26 Secretary of State is conclusive proof that the organizer satisfied all conditions to the  
27 formation of a limited liability company.

28 (e) If a filed certificate of organization contains a statement as provided in  
29 subsection (b)(3), the following rules apply:

30 (1) The certificate lapses and is void unless, within 90 days from the date the  
31 Secretary of State files the certificate, an organizer signs and delivers to the Secretary of  
32 State for filing a notice stating:

33 (A) that the limited liability company has at least one member; and

34 (B) the date on which a person or persons became the company's initial member  
35 or members.

36 (2) If an organizer complies with paragraph (1), a limited liability company is  
37 deemed formed as of the date of initial membership stated in the notice delivered pursuant  
38 to paragraph (1).

39 (3) Except in a proceeding by this state to dissolve a limited liability company, the  
40 filing of the notice described in paragraph (1) by the Secretary of State is conclusive proof  
41 that the organizer satisfied all conditions to the formation of a limited liability company.

2 **347.2-202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF ORGANIZATION.**

3 (a) A certificate of organization may be amended or restated at any time.

4 (b) To amend its certificate of organization, a limited liability company must deliver  
5 to the Secretary of State for filing an amendment stating:

6 (1) the name of the company;

7 (2) the date of filing of its certificate of organization; and

8 (3) the changes the amendment makes to the certificate as most recently amended  
9 or restated.

10 (c) To restate its certificate of organization, a limited liability company must deliver  
11 to the Secretary of State for filing a restatement, designated as such in its heading, stating:

12 (1) in the heading or an introductory paragraph, the company's present name and  
13 the date of the filing of the company's initial certificate of organization;

14 (2) if the company's name has been changed at any time since the company's  
15 formation, each of the company's former names; and

16 (3) the changes the restatement makes to the certificate as most recently amended  
17 or restated.

18 (d) Subject to Sections 347.1-112(c) and 347.2-205(c), an amendment to or  
19 restatement of a certificate of organization is effective when filed by the Secretary of State.

20 (e) If a member of a member-managed limited liability company, or a manager of  
21 a manager-managed limited liability company, knows that any information in a filed  
22 certificate of organization was inaccurate when the certificate was filed or has become  
23 inaccurate owing to changed circumstances, the member or manager shall promptly:

24 (1) cause the certificate to be amended; or

25 (2) if appropriate, deliver to the Secretary of State for filing a statement of change  
26 under Section 347.1-114 or a statement of correction under Section 347.2-206.

2 **347.2-203. SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO  
3 SECRETARY OF STATE.**

3 (a) A record delivered to the Secretary of State for filing pursuant to this act must  
4 be signed as follows:

5 (1) Except as otherwise provided in paragraphs (2) through (4), a record signed on  
6 behalf of a limited liability company must be signed by a person authorized by the  
7 company.

8 (2) A limited liability company's initial certificate of organization must be signed  
9 by at least one person acting as an organizer.

10 (3) A notice under Section 347.2-201(e)(1) must be signed by an organizer.

11 (4) A record filed on behalf of a dissolved limited liability company that has no  
12 members must be signed by the person winding up the company's activities under Section  
13 347.7-702(c) or a person appointed under Section 347.7-702(d) to wind up those activities.

14 (5) A statement of cancellation under Section 347.2-201(d)(2) must be signed by  
15 each organizer that signed the initial certificate of organization, but a personal  
16 representative of a deceased or incompetent organizer may sign in the place of the decedent  
17 or incompetent.

18 (6) A statement of denial by a person under Section 347.3-303 must be signed by  
19 that person.

20 (7) Any other record must be signed by the person on whose behalf the record is  
21 delivered to the Secretary of State.

22 (b) Any record filed under this act may be signed by an agent.

**347.2-204. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.**

2 (a) If a person required by this act to sign a record or deliver a record to the  
3 Secretary of State for filing under this act does not do so, any other person that is  
4 aggrieved may petition the appropriate court to order:

5 (1) the person to sign the record;

6 (2) the person to deliver the record to the Secretary of State for filing; or

7 (3) the Secretary of State to file the record unsigned.

8 (b) If a petitioner under subsection (a) is not the limited liability company or  
9 foreign limited liability company to which the record pertains, the petitioner shall make  
10 the company a party to the action.

**347.2-205. DELIVERY TO AND FILING OF RECORDS BY SECRETARY OF  
2 STATE; EFFECTIVE TIME AND DATE.**

3 (a) A record authorized or required to be delivered to the Secretary of State for  
4 filing under this act must be captioned to describe the record's purpose, be in a medium  
5 permitted by the Secretary of State, and be delivered to the Secretary of State. If the filing  
6 fees have been paid, unless the Secretary of State determines that a record does not comply  
7 with the filing requirements of this act, the Secretary of State shall file the record and:

8 (1) for a statement of denial under Section 347.3-303, send a copy of the filed  
9 statement and a receipt for the fees to the person on whose behalf the statement was  
10 delivered for filing and to the limited liability company; and

11 (2) for all other records, send a copy of the filed record and a receipt for the fees  
12 to the person on whose behalf the record was filed.

13 (b) Upon request and payment of the requisite fee, the Secretary of State shall send  
14 to the requester a certified copy of a requested record.

15 (c) Except as otherwise provided in Sections 347.1-115 and 347.2-206 and except  
16 for a certificate of organization that contains a statement as provided in Section 347.2-  
17 201(b)(3), a record delivered to the Secretary of State for filing under this act may specify  
18 an effective time and a delayed effective date. Subject to Sections 347.1-115, 347.2-  
19 201(d)(1), and 347.2-206, a record filed by the Secretary of State is effective:

20 (1) if the record does not specify either an effective time or a delayed effective date,  
21 on the date and at the time the record is filed as evidenced by the Secretary of State's  
22 endorsement of the date and time on the record;

23 (2) if the record specifies an effective time but not a delayed effective date, on the  
24 date the record is filed at the time specified in the record;

25 (3) if the record specifies a delayed effective date but not an effective time, at 12:01  
26 a.m. on the earlier of:

27 (A) the specified date; or

28 (B) the 90th day after the record is filed; or

29 (4) if the record specifies an effective time and a delayed effective date, at the  
30 specified time on the earlier of:

31 (A) the specified date; or

32 (B) the 90th day after the record is filed.

**347.2-206. CORRECTING FILED RECORD.**

2 (a) A limited liability company or foreign limited liability company may deliver to  
3 the Secretary of State for filing a statement of correction to correct a record previously  
4 delivered by the company to the Secretary of State and filed by the Secretary of State, if  
5 at the time of filing the record contained inaccurate information or was defectively signed.

6 (b) A statement of correction under subsection (a) may not state a delayed effective  
7 date and must:

8 (1) describe the record to be corrected, including its filing date, or attach a copy of  
9 the record as filed;

10 (2) specify the inaccurate information and the reason it is inaccurate or the manner  
11 in which the signing was defective; and

12 (3) correct the defective signature or inaccurate information.

13 (c) When filed by the Secretary of State, a statement of correction under subsection  
14 (a) is effective retroactively as of the effective date of the record the statement corrects, but  
15 the statement is effective when filed:

16 (1) for the purposes of Section 347.1-103(d); and

17 (2) as to persons that previously relied on the uncorrected record and would be  
18 adversely affected by the retroactive effect.

**347.2-207. LIABILITY FOR INACCURATE INFORMATION IN FILED  
2 RECORD.**

3 (a) If a record delivered to the Secretary of State for filing under this act and filed  
4 by the Secretary of State contains inaccurate information, a person that suffers a loss by  
5 reliance on the information may recover damages for the loss from:

6 (1) a person that signed the record, or caused another to sign it on the person's  
7 behalf, and knew the information to be inaccurate at the time the record was signed; and

8 (2) subject to subsection (b), a member of a member-managed limited liability  
9 company or the manager of a manager-managed limited liability company, if:

10 (A) the record was delivered for filing on behalf of the company; and

11 (B) the member or manager had notice of the inaccuracy for a reasonably sufficient  
12 time before the information was relied upon so that, before the reliance, the member or  
13 manager reasonably could have:

14 (i) effected an amendment under Section 347.2-202;

15 (ii) filed a petition under Section 347.2-204; or

16 (iii) delivered to the Secretary of State for filing a statement of change under  
17 Section 347.1-114 or a statement of correction under Section 347.2-206.

18 (b) To the extent that the operating agreement of a member-managed limited  
19 liability company expressly relieves a member of responsibility for maintaining the  
20 accuracy of information contained in records delivered on behalf of the company to the  
21 Secretary of State for filing under this act and imposes that responsibility on one or more  
22 other members, the liability stated in subsection (a)(2) applies to those other members and  
23 not to the member that the operating agreement relieves of the responsibility.

24 (c) An individual who signs a record authorized or required to be filed under this  
25 act affirms under penalty of perjury that the information stated in the record is accurate.

**347.2-208. CERTIFICATE OF EXISTENCE OR AUTHORIZATION.**

2 (a) The Secretary of State, upon request and payment of the requisite fee, shall  
3 furnish to any person a certificate of existence for a limited liability company if the records  
4 filed in the office of the Secretary of State show that the company has been formed under  
5 Section 347.2-201 and the Secretary of State has not filed a statement of termination  
6 pertaining to the company. A certificate of existence must state:

7 (1) the company's name;

8 (2) that the company was duly formed under the laws of this state and the date of  
9 formation;

10 (3) whether all fees, taxes, and penalties due under this act or other law to the  
11 Secretary of State have been paid;

12 (4) whether the company's most recent annual report required by Section 347.2-209  
13 has been filed by the Secretary of State;

14 (5) whether the Secretary of State has administratively dissolved the company;

15 (6) whether the company has delivered to the Secretary of State for filing a  
16 statement of dissolution;

17 (7) that a statement of termination has not been filed by the Secretary of State; and

18 (8) other facts of record in the office of the Secretary of State which are specified  
19 by the person requesting the certificate.

20 (b) The Secretary of State, upon request and payment of the requisite fee, shall  
21 furnish to any person a certificate of authorization for a foreign limited liability company  
22 if the records filed in the office of the Secretary of State show that the Secretary of State  
23 has filed a certificate of authority, has not revoked the certificate of authority, and has not  
24 filed a notice of cancellation. A certificate of authorization must state:

25 (1) the company's name and any alternate name adopted under Section 347.8-  
26 805(a) for use in this state;

27 (2) that the company is authorized to transact business in this state;

28 (3) whether all fees, taxes, and penalties due under this act or other law to the  
29 Secretary of State have been paid;

30 (4) whether the company's most recent annual report required by Section 347.2-209  
31 has been filed by the Secretary of State;

32 (5) that the Secretary of State has not revoked the company's certificate of  
33 authority and has not filed a notice of cancellation; and

34           **(6) other facts of record in the office of the Secretary of State which are specified**  
35 **by the person requesting the certificate.**

36           **(c) Subject to any qualification stated in the certificate, a certificate of existence or**  
37 **certificate of authorization issued by the Secretary of State is conclusive evidence that the**  
38 **limited liability company is in existence or the foreign limited liability company is**  
39 **authorized to transact business in this state.**

**347.2-209. ANNUAL REPORT FOR SECRETARY OF STATE.**

2           **(a) Each year, a limited liability company or a foreign limited liability company**  
3 **authorized to transact business in this state shall deliver to the Secretary of State for filing**  
4 **a report that states:**

5           **(1) the name of the company;**

6           **(2) the street and mailing addresses of the company's designated office and the**  
7 **name and street and mailing addresses of its agent for service of process in this state;**

8           **(3) the street and mailing addresses of its principal office; and**

9           **(4) in the case of a foreign limited liability company, the state or other jurisdiction**  
10 **under whose law the company is formed and any alternate name adopted under Section**  
11 **347.8-805(a).**

12           **(b) Information in an annual report under this section must be current as of the**  
13 **date the report is delivered to the Secretary of State for filing.**

14           **(c) The first annual report under this section must be delivered to the Secretary of**  
15 **State between January 1 and April 1 of the year following the calendar year in which a**  
16 **limited liability company was formed or a foreign limited liability company was authorized**  
17 **to transact business. A report must be delivered to the Secretary of State between January**  
18 **1 and April 1 of each subsequent calendar year.**

19           **(d) If an annual report under this section does not contain the information required**  
20 **in subsection (a), the Secretary of State shall promptly notify the reporting limited liability**  
21 **company or foreign limited liability company and return the report to it for correction.**  
22 **If the report is corrected to contain the information required in subsection (a) and**  
23 **delivered to the Secretary of State within 30 days after the effective date of the notice, it is**  
24 **timely delivered.**

25           **(e) If an annual report under this section contains an address of a designated office**  
26 **or the name or address of an agent for service of process which differs from the**  
27 **information shown in the records of the Secretary of State immediately before the annual**  
28 **report becomes effective, the differing information in the annual report is considered a**  
29 **statement of change under Section 347.1-114.**

30

**ARTICLE 3**  
**RELATIONS OF MEMBERS AND MANAGERS**  
**TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY**  
**347.3-301. NO AGENCY POWER OF MEMBER AS MEMBER.**

2           (a) A member is not an agent of a limited liability company solely by reason of  
3 being a member.

4           (b) A person's status as a member does not prevent or restrict law other than this  
5 act from imposing liability on a limited liability company because of the person's conduct.

**347.3-302. STATEMENT OF AUTHORITY.**

2           (a) A limited liability company may deliver to the Secretary of State for filing a  
3 statement of authority. The statement:

4           (1) must include the name of the company and the street and mailing addresses of  
5 its designated office;

6           (2) with respect to any position that exists in or with respect to the company, may  
7 state the authority, or limitations on the authority, of all persons holding the position to:

8           (A) execute an instrument transferring real property held in the name of the  
9 company; or

10           (B) enter into other transactions on behalf of, or otherwise act for or bind, the  
11 company; and

12           (3) may state the authority, or limitations on the authority, of a specific person to:

13           (A) execute an instrument transferring real property held in the name of the  
14 company; or

15           (B) enter into other transactions on behalf of, or otherwise act for or bind, the  
16 company.

17           (b) To amend or cancel a statement of authority filed by the Secretary of State  
18 under Section 347.2-205(a), a limited liability company must deliver to the Secretary of  
19 State for filing an amendment or cancellation stating:

20           (1) the name of the company;

21           (2) the street and mailing addresses of the company's designated office;

22           (3) the caption of the statement being amended or canceled and the date the  
23 statement being affected became effective; and

24           (4) the contents of the amendment or a declaration that the statement being affected  
25 is canceled.

26           (c) A statement of authority affects only the power of a person to bind a limited  
27 liability company to persons that are not members.

28           (d) Subject to subsection (c) and Section 347.1-103(d) and except as otherwise  
29 provided in subsections (f), (g), and (h), a limitation on the authority of a person or a  
30 position contained in an effective statement of authority is not by itself evidence of  
31 knowledge or notice of the limitation by any person.

32           (e) Subject to subsection (c), a grant of authority not pertaining to transfers of real  
33 property and contained in an effective statement of authority is conclusive in favor of a  
34 person that gives value in reliance on the grant, except to the extent that when the person  
35 gives value:

36           (1) the person has knowledge to the contrary;

37           (2) the statement has been canceled or restrictively amended under subsection (b);

38 or

39           (3) a limitation on the grant is contained in another statement of authority that  
40 became effective after the statement containing the grant became effective.

41           (f) Subject to subsection (c), an effective statement of authority that grants  
42 authority to transfer real property held in the name of the limited liability company and  
43 that is recorded by certified copy in the office for recording transfers of the real property  
44 is conclusive in favor of a person that gives value in reliance on the grant without  
45 knowledge to the contrary, except to the extent that when the person gives value:

46           (1) the statement has been canceled or restrictively amended under subsection (b)  
47 and a certified copy of the cancellation or restrictive amendment has been recorded in the  
48 office for recording transfers of the real property; or

49           (2) a limitation on the grant is contained in another statement of authority that  
50 became effective after the statement containing the grant became effective and a certified  
51 copy of the later-effective statement is recorded in the office for recording transfers of the  
52 real property.

53           (g) Subject to subsection (c), if a certified copy of an effective statement containing  
54 a limitation on the authority to transfer real property held in the name of a limited liability  
55 company is recorded in the office for recording transfers of that real property, all persons  
56 are deemed to know of the limitation.

57           (h) Subject to subsection (i), an effective statement of dissolution or termination is  
58 a cancellation of any filed statement of authority for the purposes of subsection (f) and is  
59 a limitation on authority for the purposes of subsection (g).

60           (i) After a statement of dissolution becomes effective, a limited liability company  
61 may deliver to the Secretary of State for filing and, if appropriate, may record a statement  
62 of authority that is designated as a post-dissolution statement of authority. The statement  
63 operates as provided in subsections (f) and (g).

64 (j) Unless earlier canceled, an effective statement of authority is canceled by  
65 operation of law five years after the date on which the statement, or its most recent  
66 amendment, becomes effective. This cancellation operates without need for any recording  
67 under subsection (f) or (g).

68 (k) An effective statement of denial operates as a restrictive amendment under this  
69 section and may be recorded by certified copy for the purposes of subsection (f)(1).

#### **347.3-303. STATEMENT OF DENIAL.**

2 A person named in a filed statement of authority granting that person authority  
3 may deliver to the Secretary of State for filing a statement of denial that:

4 (1) provides the name of the limited liability company and the caption of the  
5 statement of authority to which the statement of denial pertains; and

6 (2) denies the grant of authority.

#### **347.3-304. LIABILITY OF MEMBERS AND MANAGERS.**

2 (a) The debts, obligations, or other liabilities of a limited liability company, whether  
3 arising in contract, tort, or otherwise:

4 (1) are solely the debts, obligations, or other liabilities of the company; and

5 (2) do not become the debts, obligations, or other liabilities of a member or  
6 manager solely by reason of the member acting as a member or manager acting as a  
7 manager.

8 (b) The failure of a limited liability company to observe any particular formalities  
9 relating to the exercise of its powers or management of its activities is not a ground for  
10 imposing liability on the members or managers for the debts, obligations, or other  
11 liabilities of the company.

### **ARTICLE 4**

#### **RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY**

##### **347.4-401. BECOMING MEMBER.**

2 (a) If a limited liability company is to have only one member upon formation, the  
3 person becomes a member as agreed by that person and the organizer of the company.  
4 That person and the organizer may be, but need not be, different persons. If different, the  
5 organizer acts on behalf of the initial member.

6 (b) If a limited liability company is to have more than one member upon formation,  
7 those persons become members as agreed by the persons before the formation of the  
8 company. The organizer acts on behalf of the persons in forming the company and may  
9 be, but need not be, one of the persons.

10 (c) If a filed certificate of organization contains the statement required by Section  
11 347.2-201(b)(3), a person becomes an initial member of the limited liability company with  
12 the consent of a majority of the organizers. The organizers may consent to more than one  
13 person simultaneously becoming the company's initial members.

14 (d) After formation of a limited liability company, a person becomes a member:

15 (1) as provided in the operating agreement;

16 (2) as the result of a transaction effective under Article 10;

17 (3) with the consent of all the members; or

18 (4) if, within 90 consecutive days after the company ceases to have any members:

19 (A) the last person to have been a member, or the legal representative of that  
20 person, designates a person to become a member; and

21 (B) the designated person consents to become a member.

22 (e) A person may become a member without acquiring a transferable interest and  
23 without making or being obligated to make a contribution to the limited liability company.

#### 347.4-402. FORM OF CONTRIBUTION.

2 A contribution may consist of tangible or intangible property or other benefit to a  
3 limited liability company, including money, services performed, promissory notes, other  
4 agreements to contribute money or property, and contracts for services to be performed.

#### 347.4-403. LIABILITY FOR CONTRIBUTIONS.

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

7 (b) A creditor of a limited liability company which extends credit or otherwise acts  
8 in reliance on an obligation described in subsection (a) may enforce the obligation.

#### 2 347.4-404. SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE DISSOLUTION.

3 (a) Any distributions made by a limited liability company before its dissolution and  
4 winding up must be in equal shares among members and dissociated members, except to  
5 the extent necessary to comply with any transfer effective under Section 347.5-502 and any  
6 charging order in effect under Section 347.5-503.

7 (b) A person has a right to a distribution before the dissolution and winding up of  
8 a limited liability company only if the company decides to make an interim distribution.

9 A person's dissociation does not entitle the person to a distribution.

10 (c) A person does not have a right to demand or receive a distribution from a  
11 limited liability company in any form other than money. Except as otherwise provided in  
12 Section 347.7-708(c), a limited liability company may distribute an asset in kind if each  
13 part of the asset is fungible with each other part and each person receives a percentage of  
14 the asset equal in value to the person's share of distributions.

15 (d) If a member or transferee becomes entitled to receive a distribution, the  
16 member or transferee has the status of, and is entitled to all remedies available to, a  
17 creditor of the limited liability company with respect to the distribution.

**347.4-405. LIMITATIONS ON DISTRIBUTION.**

2 (a) A limited liability company may not make a distribution if after the  
3 distribution:

4 (1) the company would not be able to pay its debts as they become due in the  
5 ordinary course of the company's activities; or

6 (2) the company's total assets would be less than the sum of its total liabilities plus  
7 the amount that would be needed, if the company were to be dissolved, wound up, and  
8 terminated at the time of the distribution, to satisfy the preferential rights upon  
9 dissolution, winding up, and termination of members whose preferential rights are  
10 superior to those of persons receiving the distribution.

11 (b) A limited liability company may base a determination that a distribution is not  
12 prohibited under subsection (a) on financial statements prepared on the basis of  
13 accounting practices and principles that are reasonable in the circumstances or on a fair  
14 valuation or other method that is reasonable under the circumstances.

15 (c) Except as otherwise provided in subsection (f), the effect of a distribution under  
16 subsection (a) is measured:

17 (1) in the case of a distribution by purchase, redemption, or other acquisition of a  
18 transferable interest in the company, as of the date money or other property is transferred  
19 or debt incurred by the company; and

20 (2) in all other cases, as of the date:

21 (A) the distribution is authorized, if the payment occurs within 120 days after that  
22 date; or

23 (B) the payment is made, if the payment occurs more than 120 days after the  
24 distribution is authorized.

25 (d) A limited liability company's indebtedness to a member incurred by reason of  
26 a distribution made in accordance with this section is at parity with the company's  
27 indebtedness to its general, unsecured creditors.

28 (e) A limited liability company's indebtedness, including indebtedness issued in  
29 connection with or as part of a distribution, is not a liability for purposes of subsection (a)  
30 if the terms of the indebtedness provide that payment of principal and interest are made  
31 only to the extent that a distribution could be made to members under this section.

32 (f) If indebtedness is issued as a distribution, each payment of principal or interest  
33 on the indebtedness is treated as a distribution, the effect of which is measured on the date  
34 the payment is made.

35 (g) In subsection (a), "distribution" does not include amounts constituting  
36 reasonable compensation for present or past services or reasonable payments made in the  
37 ordinary course of business under a bona fide retirement plan or other benefits program.

#### **347.4-406. LIABILITY FOR IMPROPER DISTRIBUTIONS.**

2 (a) Except as otherwise provided in subsection (b), if a member of a  
3 member-managed limited liability company or manager of a manager-managed limited  
4 liability company consents to a distribution made in violation of Section 347.4-405 and in  
5 consenting to the distribution fails to comply with Section 347.4-409, the member or  
6 manager is personally liable to the company for the amount of the distribution that exceeds  
7 the amount that could have been distributed without the violation of Section 347.4-405.

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

13 (c) A person that receives a distribution knowing that the distribution to that  
14 person was made in violation of Section 405 is personally liable to the limited liability  
15 company but only to the extent that the distribution received by the person exceeded the  
16 amount that could have been properly paid under Section 405.

17 (d) A person against which an action is commenced because the person is liable  
18 under subsection (a) may:

19 (1) implead any other person that is subject to liability under subsection (a) and  
20 seek to compel contribution from the person; and

21 (2) implead any person that received a distribution in violation of subsection (c) and  
22 seek to compel contribution from the person in the amount the person received in violation  
23 of subsection (c).

24 (e) An action under this section is barred if not commenced within two years after  
25 the distribution.

**347.4-407. MANAGEMENT OF LIMITED LIABILITY COMPANY.**

- 2 (a) A limited liability company is a member-managed limited liability company  
3 unless the operating agreement:
- 4 (1) expressly provides that:
- 5 (A) the company is or will be "manager-managed";
- 6 (B) the company is or will be "managed by managers"; or
- 7 (C) management of the company is or will be "vested in managers"; or
- 8 (2) includes words of similar import.
- 9 (b) In a member-managed limited liability company, the following rules apply:
- 10 (1) The management and conduct of the company are vested in the members.
- 11 (2) Each member has equal rights in the management and conduct of the  
12 company's activities.
- 13 (3) A difference arising among members as to a matter in the ordinary course of  
14 the activities of the company may be decided by a majority of the members.
- 15 (4) An act outside the ordinary course of the activities of the company may be  
16 undertaken only with the consent of all members.
- 17 (5) The operating agreement may be amended only with the consent of all members.
- 18 (c) In a manager-managed limited liability company, the following rules apply:
- 19 (1) Except as otherwise expressly provided in this act, any matter relating to the  
20 activities of the company is decided exclusively by the managers.
- 21 (2) Each manager has equal rights in the management and conduct of the activities  
22 of the company.
- 23 (3) A difference arising among managers as to a matter in the ordinary course of  
24 the activities of the company may be decided by a majority of the managers.
- 25 (4) The consent of all members is required to:
- 26 (A) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the  
27 company's property, with or without the good will, outside the ordinary course of the  
28 company's activities;
- 29 (B) approve a merger, conversion, or domestication under Article 10;
- 30 (C) undertake any other act outside the ordinary course of the company's activities;
- 31 and
- 32 (D) amend the operating agreement.
- 33 (5) A manager may be chosen at any time by the consent of a majority of the  
34 members and remains a manager until a successor has been chosen, unless the manager  
35 at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an

36 individual, terminates. A manager may be removed at any time by the consent of a  
37 majority of the members without notice or cause.

38 (6) A person need not be a member to be a manager, but the dissociation of a  
39 member that is also a manager removes the person as a manager. If a person that is both  
40 a manager and a member ceases to be a manager, that cessation does not by itself dissociate  
41 the person as a member.

42 (7) A person's ceasing to be a manager does not discharge any debt, obligation, or  
43 other liability to the limited liability company or members which the person incurred while  
44 a manager.

45 (d) An action requiring the consent of members under this act may be taken  
46 without a meeting, and a member may appoint a proxy or other agent to consent or  
47 otherwise act for the member by signing an appointing record, personally or by the  
48 member's agent.

49 (e) The dissolution of a limited liability company does not affect the applicability  
50 of this section. However, a person that wrongfully causes dissolution of the company loses  
51 the right to participate in management as a member and a manager.

52 (f) This act does not entitle a member to remuneration for services performed for  
53 a member-managed limited liability company, except for reasonable compensation for  
54 services rendered in winding up the activities of the company.

#### 347.4-408. INDEMNIFICATION AND INSURANCE.

2 (a) A limited liability company shall reimburse for any payment made and  
3 indemnify for any debt, obligation, or other liability incurred by a member of a  
4 member-managed company or the manager of a manager-managed company in the course  
5 of the member's or manager's activities on behalf of the company, if, in making the  
6 payment or incurring the debt, obligation, or other liability, the member or manager  
7 complied with the duties stated in Sections 347.4-405 and 347.4-409.

8 (b) A limited liability company may purchase and maintain insurance on behalf of  
9 a member or manager of the company against liability asserted against or incurred by the  
10 member or manager in that capacity or arising from that status even if, under Section  
11 347.1-110(g), the operating agreement could not eliminate or limit the person's liability to  
12 the company for the conduct giving rise to the liability.

#### 347.4-409. STANDARDS OF CONDUCT FOR MEMBERS AND MANAGERS.

2 (a) A member of a member-managed limited liability company owes to the  
3 company and, subject to Section 347.9-901(b), the other members the fiduciary duties of  
4 loyalty and care stated in subsections (b) and (c).

5           **(b) The duty of loyalty of a member in a member-managed limited liability**  
6 **company includes the duties:**

7           **(1) to account to the company and to hold as trustee for it any property, profit, or**  
8 **benefit derived by the member:**

9           **(A) in the conduct or winding up of the company's activities;**

10           **(B) from a use by the member of the company's property; or**

11           **(C) from the appropriation of a limited liability company opportunity;**

12           **(2) to refrain from dealing with the company in the conduct or winding up of the**  
13 **company's activities as or on behalf of a person having an interest adverse to the company;**  
14 **and**

15           **(3) to refrain from competing with the company in the conduct of the company's**  
16 **activities before the dissolution of the company.**

17           **(c) Subject to the business judgment rule, the duty of care of a member of a**  
18 **member-managed limited liability company in the conduct and winding up of the**  
19 **company's activities is to act with the care that a person in a like position would reasonably**  
20 **exercise under similar circumstances and in a manner the member reasonably believes to**  
21 **be in the best interests of the company. In discharging this duty, a member may rely in**  
22 **good faith upon opinions, reports, statements, or other information provided by another**  
23 **person that the member reasonably believes is a competent and reliable source for the**  
24 **information.**

25           **(d) A member in a member-managed limited liability company or a**  
26 **manager-managed limited liability company shall discharge the duties under this act or**  
27 **under the operating agreement and exercise any rights consistently with the contractual**  
28 **obligation of good faith and fair dealing.**

29           **(e) It is a defense to a claim under subsection (b)(2) and any comparable claim in**  
30 **equity or at common law that the transaction was fair to the limited liability company.**

31           **(f) All of the members of a member-managed limited liability company or a**  
32 **manager-managed limited liability company may authorize or ratify, after full disclosure**  
33 **of all material facts, a specific act or transaction that otherwise would violate the duty of**  
34 **loyalty.**

35           **(g) In a manager-managed limited liability company, the following rules apply:**

36           **(1) Subsections (a), (b), (c), and (e) apply to the manager or managers and not the**  
37 **members.**

38           **(2) The duty stated under subsection (b)(3) continues until winding up is completed.**

39           **(3) Subsection (d) applies to the members and managers.**

40           **(4) Subsection (f) applies only to the members.**

41 (5) A member does not have any fiduciary duty to the company or to any other  
42 member solely by reason of being a member.

2 **347.4-410. RIGHT OF MEMBERS, MANAGERS, AND DISSOCIATED MEMBERS TO INFORMATION.**

3 (a) In a member-managed limited liability company, the following rules apply:

4 (1) On reasonable notice, a member may inspect and copy during regular business  
5 hours, at a reasonable location specified by the company, any record maintained by the  
6 company regarding the company's activities, financial condition, and other circumstances,  
7 to the extent the information is material to the member's rights and duties under the  
8 operating agreement or this act.

9 (2) The company shall furnish to each member:

10 (A) without demand, any information concerning the company's activities, financial  
11 condition, and other circumstances which the company knows and is material to the proper  
12 exercise of the member's rights and duties under the operating agreement or this act,  
13 except to the extent the company can establish that it reasonably believes the member  
14 already knows the information; and

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

18 (3) The duty to furnish information under paragraph (2) also applies to each  
19 member to the extent the member knows any of the information described in paragraph  
20 (2).

21 (b) In a manager-managed limited liability company, the following rules apply:

22 (1) The informational rights stated in subsection (a) and the duty stated in  
23 subsection (a)(3) apply to the managers and not the members.

24 (2) During regular business hours and at a reasonable location specified by the  
25 company, a member may obtain from the company and inspect and copy full information  
26 regarding the activities, financial condition, and other circumstances of the company as is  
27 just and reasonable if:

28 (A) the member seeks the information for a purpose material to the member's  
29 interest as a member;

30 (B) the member makes a demand in a record received by the company, describing  
31 with reasonable particularity the information sought and the purpose for seeking the  
32 information; and

33 (C) the information sought is directly connected to the member's purpose.

34           **(3) Within 10 days after receiving a demand pursuant to paragraph (2)(B), the**  
35 **company shall in a record inform the member that made the demand:**

36           **(A) of the information that the company will provide in response to the demand**  
37 **and when and where the company will provide the information; and**

38           **(B) if the company declines to provide any demanded information, the company's**  
39 **reasons for declining.**

40           **(4) Whenever this act or an operating agreement provides for a member to give or**  
41 **withhold consent to a matter, before the consent is given or withheld, the company shall,**  
42 **without demand, provide the member with all information that is known to the company**  
43 **and is material to the member's decision.**

44           **(c) On 10 days' demand made in a record received by a limited liability company,**  
45 **a dissociated member may have access to information to which the person was entitled**  
46 **while a member if the information pertains to the period during which the person was a**  
47 **member, the person seeks the information in good faith, and the person satisfies the**  
48 **requirements imposed on a member by subsection (b)(2). The company shall respond to**  
49 **a demand made pursuant to this subsection in the manner provided in subsection (b)(3).**

50           **(d) A limited liability company may charge a person that makes a demand under**  
51 **this section the reasonable costs of copying, limited to the costs of labor and material.**

52           **(e) A member or dissociated member may exercise rights under this section through**  
53 **an agent or, in the case of an individual under legal disability, a legal representative. Any**  
54 **restriction or condition imposed by the operating agreement or under subsection (g)**  
55 **applies both to the agent or legal representative and the member or dissociated member.**

56           **(f) The rights under this section do not extend to a person as transferee.**

57           **(g) In addition to any restriction or condition stated in its operating agreement, a**  
58 **limited liability company, as a matter within the ordinary course of its activities, may**  
59 **impose reasonable restrictions and conditions on access to and use of information to be**  
60 **furnished under this section, including designating information confidential and imposing**  
61 **nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the**  
62 **reasonableness of a restriction under this subsection, the company has the burden of**  
63 **proving reasonableness.**

## **ARTICLE 5**

### **TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS**

#### **347.5-501. NATURE OF TRANSFERABLE INTEREST.**

2           **A transferable interest is personal property.**

**347.5-502. TRANSFER OF TRANSFERABLE INTEREST.**

2 (a) A transfer, in whole or in part, of a transferable interest:

3 (1) is permissible;

4 (2) does not by itself cause a member's dissociation or a dissolution and winding up  
5 of the limited liability company's activities; and

6 (3) subject to Section 347.5-504, does not entitle the transferee to:

7 (A) participate in the management or conduct of the company's activities; or

8 (B) except as otherwise provided in subsection (c), have access to records or other  
9 information concerning the company's activities.

10 (b) A transferee has the right to receive, in accordance with the transfer,  
11 distributions to which the transferor would otherwise be entitled.

12 (c) In a dissolution and winding up of a limited liability company, a transferee is  
13 entitled to an account of the company's transactions only from the date of dissolution.

14 (d) A transferable interest may be evidenced by a certificate of the interest issued  
15 by the limited liability company in a record, and, subject to this section, the interest  
16 represented by the certificate may be transferred by a transfer of the certificate.

17 (e) A limited liability company need not give effect to a transferee's rights under  
18 this section until the company has notice of the transfer.

19 (f) A transfer of a transferable interest in violation of a restriction on transfer  
20 contained in the operating agreement is ineffective as to a person having notice of the  
21 restriction at the time of transfer.

22 (g) Except as otherwise provided in Section 602(4)(B), when a member transfers  
23 a transferable interest, the transferor retains the rights of a member other than the interest  
24 in distributions transferred and retains all duties and obligations of a member.

25 (h) When a member transfers a transferable interest to a person that becomes a  
26 member with respect to the transferred interest, the transferee is liable for the member's  
27 obligations under Sections 347.4-403 and 347.4-406(c) known to the transferee when the  
28 transferee becomes a member.

**347.5-503. CHARGING ORDER.**

2 (a) On application by a judgment creditor of a member or transferee, a court may  
3 enter a charging order against the transferable interest of the judgment debtor for the  
4 unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment  
5 debtor's transferable interest and requires the limited liability company to pay over to the  
6 person to which the charging order was issued any distribution that would otherwise be  
7 paid to the judgment debtor.

8 (b) To the extent necessary to effectuate the collection of distributions pursuant to  
9 a charging order in effect under subsection (a), the court may:

10 (1) appoint a receiver of the distributions subject to the charging order, with the  
11 power to make all inquiries the judgment debtor might have made; and

12 (2) make all other orders necessary to give effect to the charging order.

13 (c) Upon a showing that distributions under a charging order will not pay the  
14 judgment debt within a reasonable time, the court may foreclose the lien and order the sale  
15 of the transferable interest. The purchaser at the foreclosure sale obtains only the  
16 transferable interest, does not thereby become a member, and is subject to Section 347.5-  
17 502.

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

22 (e) At any time before foreclosure under subsection (c), a limited liability company  
23 or one or more members whose transferable interests are not subject to the charging order  
24 may pay to the judgment creditor the full amount due under the judgment and thereby  
25 succeed to the rights of the judgment creditor, including the charging order.

26 (f) This act does not deprive any member or transferee of the benefit of any  
27 exemption laws applicable to the member's or transferee's transferable interest.

28 (g) This section provides the exclusive remedy by which a person seeking to enforce  
29 a judgment against a member or transferee may, in the capacity of judgment creditor,  
30 satisfy the judgment from the judgment debtor's transferable interest.

**347.5-504. POWER OF PERSONAL REPRESENTATIVE OF DECEASED  
2 MEMBER.**

3 If a member dies, the deceased member's personal representative or other legal  
4 representative may exercise the rights of a transferee provided in Section 347.5-502(c) and,  
5 for the purposes of settling the estate, the rights of a current member under Section 347.4-  
6 410.

**ARTICLE 6**

**MEMBER'S DISSOCIATION**

**347.6-601. MEMBER'S POWER TO DISSOCIATE; WRONGFUL  
2 DISSOCIATION.**

3 (a) A person has the power to dissociate as a member at any time, rightfully or  
4 wrongfully, by withdrawing as a member by express will under Section 347.6-602(1).

5 (b) A person's dissociation from a limited liability company is wrongful only if the  
6 dissociation:

7 (1) is in breach of an express provision of the operating agreement; or

8 (2) occurs before the termination of the company and:

9 (A) the person withdraws as a member by express will;

10 (B) the person is expelled as a member by judicial order under Section 347.6-  
11 602(5);

12 (C) the person is dissociated under Section 347.6-602(7)(A) by becoming a debtor  
13 in bankruptcy; or

14 (D) in the case of a person that is not a trust other than a business trust, an estate,  
15 or an individual, the person is expelled or otherwise dissociated as a member because it  
16 willfully dissolved or terminated.

17 (c) A person that wrongfully dissociates as a member is liable to the limited liability  
18 company and, subject to Section 347.9-901, to the other members for damages caused by  
19 the dissociation. The liability is in addition to any other debt, obligation, or other liability  
20 of the member to the company or the other members.

#### 347.6-602. EVENTS CAUSING DISSOCIATION.

2 A person is dissociated as a member from a limited liability company when:

3 (1) the company has notice of the person's express will to withdraw as a member,  
4 but, if the person specified a withdrawal date later than the date the company had notice,  
5 on that later date;

6 (2) an event stated in the operating agreement as causing the person's dissociation  
7 occurs;

8 (3) the person is expelled as a member pursuant to the operating agreement;

9 (4) the person is expelled as a member by the unanimous consent of the other  
10 members if:

11 (A) it is unlawful to carry on the company's activities with the person as a member;

12 (B) there has been a transfer of all of the person's transferable interest in the  
13 company, other than:

14 (i) a transfer for security purposes; or

15 (ii) a charging order in effect under Section 503 which has not been foreclosed;

16 (C) the person is a corporation and, within 90 days after the company notifies the  
17 person that it will be expelled as a member because the person has filed a certificate of  
18 dissolution or the equivalent, its charter has been revoked, or its right to conduct business  
19 has been suspended by the jurisdiction of its incorporation, the certificate of dissolution

20 has not been revoked or its charter or right to conduct business has not been reinstated;  
21 or

22 (D) the person is a limited liability company or partnership that has been dissolved  
23 and whose business is being wound up;

24 (5) on application by the company, the person is expelled as a member by judicial  
25 order because the person:

26 (A) has engaged, or is engaging, in wrongful conduct that has adversely and  
27 materially affected, or will adversely and materially affect, the company's activities;

28 (B) has willfully or persistently committed, or is willfully and persistently  
29 committing, a material breach of the operating agreement or the person's duties or  
30 obligations under Section 347.4-409; or

31 (C) has engaged in, or is engaging, in conduct relating to the company's activities  
32 which makes it not reasonably practicable to carry on the activities with the person as a  
33 member;

34 (6) in the case of a person who is an individual:

35 (A) the person dies; or

36 (B) in a member-managed limited liability company:

37 (i) a guardian or general conservator for the person is appointed; or

38 (ii) there is a judicial order that the person has otherwise become incapable of  
39 performing the person's duties as a member under this act or the operating agreement;

40 (7) in a member-managed limited liability company, the person:

41 (A) becomes a debtor in bankruptcy;

42 (B) executes an assignment for the benefit of creditors; or

43 (C) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or  
44 liquidator of the person or of all or substantially all of the person's property;

45 (8) in the case of a person that is a trust or is acting as a member by virtue of being  
46 a trustee of a trust, the trust's entire transferable interest in the company is distributed;

47 (9) in the case of a person that is an estate or is acting as a member by virtue of  
48 being a personal representative of an estate, the estate's entire transferable interest in the  
49 company is distributed;

50 (10) in the case of a member that is not an individual, partnership, limited liability  
51 company, corporation, trust, or estate, the termination of the member;

52 (11) the company participates in a merger under Article 10, if:

53 (A) the company is not the surviving entity; or

54 (B) otherwise as a result of the merger, the person ceases to be a member;

55 (12) the company participates in a conversion under Article 10;

56 (13) the company participates in a domestication under Article 10, if, as a result of  
 57 the domestication, the person ceases to be a member; or

58 (14) the company terminates.

**347.6-603. EFFECT OF PERSON'S DISSOCIATION AS MEMBER.**

2 (a) When a person is dissociated as a member of a limited liability company:

3 (1) the person's right to participate as a member in the management and conduct  
 4 of the company's activities terminates;

5 (2) if the company is member-managed, the person's fiduciary duties as a member  
 6 end with regard to matters arising and events occurring after the person's dissociation; and

7 (3) subject to Section 347.5-504 and Article 10, any transferable interest owned by  
 8 the person immediately before dissociation in the person's capacity as a member is owned  
 9 by the person solely as a transferee.

10 (b) A person's dissociation as a member of a limited liability company does not of  
 11 itself discharge the person from any debt, obligation, or other liability to the company or  
 12 the other members which the person incurred while a member.

**ARTICLE 7**

**DISSOLUTION AND WINDING UP**

**347.7-701. EVENTS CAUSING DISSOLUTION.**

2 (a) A limited liability company is dissolved, and its activities must be wound up,  
 3 upon the occurrence of any of the following:

4 (1) an event or circumstance that the operating agreement states causes dissolution;

5 (2) the consent of all the members;

6 (3) the passage of 90 consecutive days during which the company has no members;

7 (4) on application by a member, the entry by appropriate court of an order  
 8 dissolving the company on the grounds that:

9 (A) the conduct of all or substantially all of the company's activities is unlawful;  
 10 or

11 (B) it is not reasonably practicable to carry on the company's activities in  
 12 conformity with the certificate of organization and the operating agreement; or

13 (5) on application by a member, the entry by appropriate court of an order  
 14 dissolving the company on the grounds that the managers or those members in control of  
 15 the company:

16 (A) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

17 (B) have acted or are acting in a manner that is oppressive and was, is, or will be  
 18 directly harmful to the applicant.

19 (b) In a proceeding brought under subsection (a)(5), the court may order a remedy  
20 other than dissolution.

**347.7-702. WINDING UP.**

2 (a) A dissolved limited liability company shall wind up its activities, and the  
3 company continues after dissolution only for the purpose of winding up.

4 (b) In winding up its activities, a limited liability company:

5 (1) shall discharge the company's debts, obligations, or other liabilities, settle and  
6 close the company's activities, and marshal and distribute the assets of the company; and

7 (2) may:

8 (A) deliver to the Secretary of State for filing a statement of dissolution stating the  
9 name of the company and that the company is dissolved;

10 (B) preserve the company activities and property as a going concern for a  
11 reasonable time;

12 (C) prosecute and defend actions and proceedings, whether civil, criminal, or  
13 administrative;

14 (D) transfer the company's property;

15 (E) settle disputes by mediation or arbitration;

16 (F) deliver to the Secretary of State for filing a statement of termination stating the  
17 name of the company and that the company is terminated; and

18 (G) perform other acts necessary or appropriate to the winding up.

19 (c) If a dissolved limited liability company has no members, the legal representative  
20 of the last person to have been a member may wind up the activities of the company. If the  
21 person does so, the person has the powers of a sole manager under Section 347.4-407(c) and  
22 is deemed to be a manager for the purposes of Section 347.3-304(a)(2).

23 (d) If the legal representative under subsection (c) declines or fails to wind up the  
24 company's activities, a person may be appointed to do so by the consent of transferees  
25 owning a majority of the rights to receive distributions as transferees at the time the  
26 consent is to be effective. A person appointed under this subsection:

27 (1) has the powers of a sole manager under Section 347.4-407(c) and is deemed to  
28 be a manager for the purposes of Section 347.3-304(a)(2); and

29 (2) shall promptly deliver to the Secretary of State for filing an amendment to the  
30 company's certificate of organization to:

31 (A) state that the company has no members;

32 (B) state that the person has been appointed pursuant to this subsection to wind up  
33 the company; and

34 (C) provide the street and mailing addresses of the person.

35 (e) The appropriate court may order judicial supervision of the winding up of a  
36 dissolved limited liability company, including the appointment of a person to wind up the  
37 company's activities:

38 (1) on application of a member, if the applicant establishes good cause;

39 (2) on the application of a transferee, if:

40 (A) the company does not have any members;

41 (B) the legal representative of the last person to have been a member declines or  
42 fails to wind up the company's activities; and

43 (C) within a reasonable time following the dissolution a person has not been  
44 appointed pursuant to subsection (D); or

45 (3) in connection with a proceeding under Section 347.7-701(a)(4) or (5).

**347.7-703. KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY  
2 COMPANY.**

3 (a) Except as otherwise provided in subsection (d), a dissolved limited liability  
4 company may give notice of a known claim under subsection (b), which has the effect as  
5 provided in subsection (c).

6 (b) A dissolved limited liability company may in a record notify its known  
7 claimants of the dissolution. The notice must:

8 (1) specify the information required to be included in a claim;

9 (2) provide a mailing address to which the claim is to be sent;

10 (3) state the deadline for receipt of the claim, which may not be less than 120 days  
11 after the date the notice is received by the claimant; and

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

13 (c) A claim against a dissolved limited liability company is barred if the  
14 requirements of subsection (b) are met and:

15 (1) the claim is not received by the specified deadline; or

16 (2) if the claim is timely received but rejected by the company:

17 (A) the company causes the claimant to receive a notice in a record stating that the  
18 claim is rejected and will be barred unless the claimant commences an action against the  
19 company to enforce the claim within 90 days after the claimant receives the notice; and

20 (B) the claimant does not commence the required action within the 90 days.

21 (d) This section does not apply to a claim based on an event occurring after the  
22 effective date of dissolution or a liability that on that date is contingent.

**347.7-704. OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY  
2 COMPANY.**

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

6           (b) The notice authorized by subsection (a) must:

7           (1) be published at least once in a newspaper of general circulation in the county  
8 in this state in which the dissolved limited liability company's principal office is located or,  
9 if it has none in this state, in the county in which the company's designated office is or was  
10 last located;

11           (2) describe the information required to be contained in a claim and provide a  
12 mailing address to which the claim is to be sent; and

13           (3) state that a claim against the company is barred unless an action to enforce the  
14 claim is commenced within five years after publication of the notice.

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

19           (1) a claimant that did not receive notice in a record under Section 347.7-703;

20           (2) a claimant whose claim was timely sent to the company but not acted on; and

21           (3) a claimant whose claim is contingent at, or based on an event occurring after,  
22 the effective date of dissolution.

23           (d) A claim not barred under this section may be enforced:

24           (1) against a dissolved limited liability company, to the extent of its undistributed  
25 assets; and

26           (2) if assets of the company have been distributed after dissolution, against a  
27 member or transferee to the extent of that person's proportionate share of the claim or of  
28 the assets distributed to the member or transferee after dissolution, whichever is less, but  
29 a person's total liability for all claims under this paragraph does not exceed the total  
30 amount of assets distributed to the person after dissolution.

#### **347.7-705. ADMINISTRATIVE DISSOLUTION.**

2           (a) The Secretary of State may dissolve a limited liability company administratively  
3 if the company does not:

4           (1) pay, within 60 days after the due date, any fee, tax, or penalty due to the  
5 Secretary of State under this act or law other than this act; or

6           (2) deliver, within 60 days after the due date, its annual report to the Secretary of  
7 State.

8 (b) If the Secretary of State determines that a ground exists for administratively  
9 dissolving a limited liability company, the Secretary of State shall file a record of the  
10 determination and serve the company with a copy of the filed record.

11 (c) If within 60 days after service of the copy pursuant to subsection (b) a limited  
12 liability company does not correct each ground for dissolution or demonstrate to the  
13 reasonable satisfaction of the Secretary of State that each ground determined by the  
14 Secretary of State does not exist, the Secretary of State shall dissolve the company  
15 administratively by preparing, signing, and filing a declaration of dissolution that states  
16 the grounds for dissolution. The Secretary of State shall serve the company with a copy  
17 of the filed declaration.

18 (d) A limited liability company that has been administratively dissolved continues  
19 in existence but, subject to Section 347.7-706, may carry on only activities necessary to  
20 wind up its activities and liquidate its assets under Sections 347.7-702 and 347.7-708 and  
21 to notify claimants under Sections 347.7-703 and 347.7-704.

22 (e) The administrative dissolution of a limited liability company does not terminate  
23 the authority of its agent for service of process.

**347.7-706. REINSTATEMENT FOLLOWING ADMINISTRATIVE  
2 DISSOLUTION.**

3 (a) A limited liability company that has been administratively dissolved may apply  
4 to the Secretary of State for reinstatement within two years after the effective date of  
5 dissolution. The application must be delivered to the Secretary of State for filing and state:

- 6 (1) the name of the company and the effective date of its dissolution;
- 7 (2) that the grounds for dissolution did not exist or have been eliminated; and
- 8 (3) that the company's name satisfies the requirements of Section 108.

9 (b) If the Secretary of State determines that an application under subsection (a)  
10 contains the required information and that the information is correct, the Secretary of  
11 State shall prepare a declaration of reinstatement that states this determination, sign and  
12 file the original of the declaration of reinstatement, and serve the limited liability company  
13 with a copy.

14 (c) When a reinstatement becomes effective, it relates back to and takes effect as  
15 of the effective date of the administrative dissolution and the limited liability company may  
16 resume its activities as if the dissolution had not occurred.

**347.7-707. APPEAL FROM REJECTION OF REINSTATEMENT.**

2 (a) If the Secretary of State rejects a limited liability company's application for  
3 reinstatement following administrative dissolution, the Secretary of State shall prepare,

4 sign, and file a notice that explains the reason for rejection and serve the company with a  
5 copy of the notice.

6 (b) Within 30 days after service of a notice of rejection of reinstatement under  
7 subsection (a), a limited liability company may appeal from the rejection by petitioning the  
8 appropriate court to set aside the dissolution. The petition must be served on the Secretary  
9 of State and contain a copy of the Secretary of State's declaration of dissolution, the  
10 company's application for reinstatement, and the Secretary of State's notice of rejection.

11 (c) The court may order the Secretary of State to reinstate a dissolved limited  
12 liability company or take other action the court considers appropriate.

### 2 347.7-708. DISTRIBUTION OF ASSETS IN WINDING UP LIMITED LIABILITY COMPANY'S ACTIVITIES.

3 (a) In winding up its activities, a limited liability company must apply its assets to  
4 discharge its obligations to creditors, including members that are creditors.

5 (b) After a limited liability company complies with subsection (a), any surplus must  
6 be distributed in the following order, subject to any charging order in effect under Section  
7 347.5-503:

8 (1) to each person owning a transferable interest that reflects contributions made  
9 by a member and not previously returned, an amount equal to the value of the unreturned  
10 contributions; and

11 (2) in equal shares among members and dissociated members, except to the extent  
12 necessary to comply with any transfer effective under Section 347.5-502.

13 (c) If a limited liability company does not have sufficient surplus to comply with  
14 subsection (b)(1), any surplus must be distributed among the owners of transferable  
15 interests in proportion to the value of their respective unreturned contributions.

16 (d) All distributions made under subsections (b) and (c) must be paid in money.

## ARTICLE 8

### FOREIGN LIMITED LIABILITY COMPANIES

#### 347.8-801. GOVERNING LAW.

2 (a) The law of the state or other jurisdiction under which a foreign limited liability  
3 company is formed governs:

4 (1) the internal affairs of the company; and

5 (2) the liability of a member as member and a manager as manager for the debts,  
6 obligations, or other liabilities of the company.

7 (b) A foreign limited liability company may not be denied a certificate of authority  
8 by reason of any difference between the law of the jurisdiction under which the company  
9 is formed and the law of this state.

10 (c) A certificate of authority does not authorize a foreign limited liability company  
11 to engage in any business or exercise any power that a limited liability company may not  
12 engage in or exercise in this state.

**347.8-802. APPLICATION FOR CERTIFICATE OF AUTHORITY.**

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

5 (1) the name of the company and, if the name does not comply with Section 347.1-  
6 108, an alternate name adopted pursuant to Section 347.8-805(a);

7 (2) the name of the state or other jurisdiction under whose law the company is  
8 formed;

9 (3) the street and mailing addresses of the company's principal office and, if the law  
10 of the jurisdiction under which the company is formed requires the company to maintain  
11 an office in that jurisdiction, the street and mailing addresses of the required office; and

12 (4) the name and street and mailing addresses of the company's initial agent for  
13 service of process in this state.

14 (b) A foreign limited liability company shall deliver with a completed application  
15 under subsection (a) a certificate of existence or a record of similar import signed by the  
16 Secretary of State or other official having custody of the company's publicly filed records  
17 in the state or other jurisdiction under whose law the company is formed.

**347.8-803. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS.**

2 (a) Activities of a foreign limited liability company which do not constitute  
3 transacting business in this state within the meaning of this article include:

4 (1) maintaining, defending, or settling an action or proceeding;

5 (2) carrying on any activity concerning its internal affairs, including holding  
6 meetings of its members or managers;

7 (3) maintaining accounts in financial institutions;

8 (4) maintaining offices or agencies for the transfer, exchange, and registration of  
9 the company's own securities or maintaining trustees or depositories with respect to those  
10 securities;

11 (5) selling through independent contractors;

12 (6) soliciting or obtaining orders, whether by mail or electronic means or through  
13 employees or agents or otherwise, if the orders require acceptance outside this state before  
14 they become contracts;

15 (7) creating or acquiring indebtedness, mortgages, or security interests in real or  
16 personal property;

17 (8) securing or collecting debts or enforcing mortgages or other security interests  
18 in property securing the debts and holding, protecting, or maintaining property so  
19 acquired;

20 (9) conducting an isolated transaction that is completed within 30 days and is not  
21 in the course of similar transactions; and

22 (10) transacting business in interstate commerce.

23 (b) For purposes of this article, the ownership in this state of income-producing real  
24 property or tangible personal property, other than property excluded under subsection (a),  
25 constitutes transacting business in this state.

26 (c) This section does not apply in determining the contacts or activities that may  
27 subject a foreign limited liability company to service of process, taxation, or regulation  
28 under law of this state other than this act.

#### **347.8-804. FILING OF CERTIFICATE OF AUTHORITY.**

2 Unless the Secretary of State determines that an application for a certificate of  
3 authority does not comply with the filing requirements of this act, the Secretary of State,  
4 upon payment of all filing fees, shall file the application of a foreign limited liability  
5 company, prepare, sign, and file a certificate of authority to transact business in this state,  
6 and send a copy of the filed certificate, together with a receipt for the fees, to the company  
7 or its representative.

#### **347.8-805. NONCOMPLYING NAME OF FOREIGN LIMITED LIABILITY 2 COMPANY.**

3 (a) A foreign limited liability company whose name does not comply with Section  
4 347.1-108 may not obtain a certificate of authority until it adopts, for the purpose of  
5 transacting business in this state, an alternate name that complies with Section 347.1-108.  
6 A foreign limited liability company that adopts an alternate name under this subsection  
7 and obtains a certificate of authority with the alternate name need not comply with state  
8 law regarding fictitious or assumed name statute. After obtaining a certificate of authority  
9 with an alternate name, a foreign limited liability company shall transact business in this  
10 state under the alternate name unless the company is authorized under state law regarding  
11 fictitious or assumed name statute to transact business in this state under another name.

12 (b) If a foreign limited liability company authorized to transact business in this  
13 state changes its name to one that does not comply with Section 347.1-108, it may not  
14 thereafter transact business in this state until it complies with subsection (a) and obtains  
15 an amended certificate of authority.

**347.8-806. REVOCATION OF CERTIFICATE OF AUTHORITY.**

2 (a) A certificate of authority of a foreign limited liability company to transact  
3 business in this state may be revoked by the Secretary of State in the manner provided in  
4 subsections (b) and (c) if the company does not:

5 (1) pay, within 60 days after the due date, any fee, tax, or penalty due to the  
6 Secretary of State under this act or law other than this act;

7 (2) deliver, within 60 days after the due date, its annual report required under  
8 Section 347.2-209;

9 (3) appoint and maintain an agent for service of process as required by Section  
10 347.1-113(b); or

11 (4) deliver for filing a statement of a change under Section 347.1-114 within 30 days  
12 after a change has occurred in the name or address of the agent.

13 (b) To revoke a certificate of authority of a foreign limited liability company, the  
14 Secretary of State must prepare, sign, and file a notice of revocation and send a copy to the  
15 company's agent for service of process in this state, or if the company does not appoint and  
16 maintain a proper agent in this state, to the company's designated office. The notice must  
17 state:

18 (1) the revocation's effective date, which must be at least 60 days after the date the  
19 Secretary of State sends the copy; and

20 (2) the grounds for revocation under subsection (a).

21 (c) The authority of a foreign limited liability company to transact business in this  
22 state ceases on the effective date of the notice of revocation unless before that date the  
23 company cures each ground for revocation stated in the notice filed under subsection (b).  
24 If the company cures each ground, the Secretary of State shall file a record so stating.

**347.8-807. CANCELLATION OF CERTIFICATE OF AUTHORITY.**

2 To cancel its certificate of authority to transact business in this state, a foreign  
3 limited liability company must deliver to the Secretary of State for filing a notice of  
4 cancellation stating the name of the company and that the company desires to cancel its  
5 certificate of authority. The certificate is canceled when the notice becomes effective.

**347.8-808. EFFECT OF FAILURE TO HAVE CERTIFICATE OF AUTHORITY.**

2 (a) A foreign limited liability company transacting business in this state may not  
3 maintain an action or proceeding in this state unless it has a certificate of authority to  
4 transact business in this state.

5 (b) The failure of a foreign limited liability company to have a certificate of  
6 authority to transact business in this state does not impair the validity of a contract or act

7 of the company or prevent the company from defending an action or proceeding in this  
8 state.

9 (c) A member or manager of a foreign limited liability company is not liable for the  
10 debts, obligations, or other liabilities of the company solely because the company  
11 transacted business in this state without a certificate of authority.

12 (d) If a foreign limited liability company transacts business in this state without a  
13 certificate of authority or cancels its certificate of authority, it appoints the Secretary of  
14 State as its agent for service of process for rights of action arising out of the transaction of  
15 business in this state.

**347.8-809. ACTION BY ATTORNEY GENERAL.**

2 The Attorney General may maintain an action to enjoin a foreign limited liability  
3 company from transacting business in this state in violation of this article.

**ARTICLE 9**

**ACTIONS BY MEMBERS**

**347.9-901. DIRECT ACTION BY MEMBER.**

2 (a) Subject to subsection (b), a member may maintain a direct action against  
3 another member, a manager, or the limited liability company to enforce the member's  
4 rights and otherwise protect the member's interests, including rights and interests under  
5 the operating agreement or this act or arising independently of the membership  
6 relationship.

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

**347.9-902. DERIVATIVE ACTION.**

2 A member may maintain a derivative action to enforce a right of a limited liability  
3 company if:

4 (1) the member first makes a demand on the other members in a member-managed  
5 limited liability company, or the managers of a manager-managed limited liability  
6 company, requesting that they cause the company to bring an action to enforce the right,  
7 and the managers or other members do not bring the action within a reasonable time; or

8 (2) demand under paragraph (1) would be futile.

**347.9-903. PROPER PLAINTIFF.**

2 (a) Except as otherwise provided in subsection (b), a derivative action under  
3 Section 347.9-902 may be maintained only by a person that is a member at the time the  
4 action is commenced and remains a member while the action continues.

5 (b) If the sole plaintiff in a derivative action dies while the action is pending, the  
6 court may permit another member of the limited liability company to be substituted as  
7 plaintiff.

**347.9-904. PLEADING.**

2 In a derivative action under Section 347.9-902, the complaint must state with  
3 particularity:

4 (1) the date and content of the plaintiff's demand and the response to the demand  
5 by the managers or other members; or

6 (2) if a demand has not been made, the reasons a demand under Section 347.9-  
7 902(1) would be futile.

**347.9-905. SPECIAL LITIGATION COMMITTEE.**

2 (a) If a limited liability company is named as or made a party in a derivative  
3 proceeding, the company may appoint a special litigation committee to investigate the  
4 claims asserted in the proceeding and determine whether pursuing the action is in the best  
5 interests of the company. If the company appoints a special litigation committee, on motion  
6 by the committee made in the name of the company, except for good cause shown, the court  
7 shall stay discovery for the time reasonably necessary to permit the committee to make its  
8 investigation. This subsection does not prevent the court from enforcing a person's right  
9 to information under Section 347.4-410 or, for good cause shown, granting extraordinary  
10 relief in the form of a temporary restraining order or preliminary injunction.

11 (b) A special litigation committee may be composed of one or more disinterested  
12 and independent individuals, who may be members.

13 (c) A special litigation committee may be appointed:

14 (1) in a member-managed limited liability company:

15 (A) by the consent of a majority of the members not named as defendants or  
16 plaintiffs in the proceeding; and

17 (B) if all members are named as defendants or plaintiffs in the proceeding, by a  
18 majority of the members named as defendants; or

19 (2) in a manager-managed limited liability company:

20 (A) by a majority of the managers not named as defendants or plaintiffs in the  
21 proceeding; and

22 (B) if all managers are named as defendants or plaintiffs in the proceeding, by a  
23 majority of the managers named as defendants.

24 (d) After appropriate investigation, a special litigation committee may determine  
25 that it is in the best interests of the limited liability company that the proceeding:

26 (1) continue under the control of the plaintiff;

- 27 (2) continue under the control of the committee;  
28 (3) be settled on terms approved by the committee; or  
29 (4) be dismissed.

30 (e) After making a determination under subsection (d), a special litigation  
31 committee shall file with the court a statement of its determination and its report  
32 supporting its determination, giving notice to the plaintiff. The court shall determine  
33 whether the members of the committee were disinterested and independent and whether  
34 the committee conducted its investigation and made its recommendation in good faith,  
35 independently, and with reasonable care, with the committee having the burden of proof.  
36 If the court finds that the members of the committee were disinterested and independent  
37 and that the committee acted in good faith, independently, and with reasonable care, the  
38 court shall enforce the determination of the committee. Otherwise, the court shall dissolve  
39 the stay of discovery entered under subsection (a) and allow the action to proceed under  
40 the direction of the plaintiff.

**347.9-906. PROCEEDS AND EXPENSES.**

- 2 (a) Except as otherwise provided in subsection (b):  
3 (1) any proceeds or other benefits of a derivative action under Section 347.9-902,  
4 whether by judgment, compromise, or settlement, belong to the limited liability company  
5 and not to the plaintiff; and  
6 (2) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately  
7 to the company.  
8 (b) If a derivative action under Section 902 is successful in whole or in part, the  
9 court may award the plaintiff reasonable expenses, including reasonable attorney's fees  
10 and costs, from the recovery of the limited liability company.

**ARTICLE 10**

**MERGER, CONVERSION, AND DOMESTICATION**

**347.10-1001. DEFINITIONS.**

2 In this article:

- 3 (1) "Constituent limited liability company" means a constituent organization that  
4 is a limited liability company.  
5 (2) "Constituent organization" means an organization that is party to a merger.  
6 (3) "Converted organization" means the organization into which a converting  
7 organization converts pursuant to Sections 347.10-1006 through 347.10-1009.  
8 (4) "Converting limited liability company" means a converting organization that  
9 is a limited liability company.

10           (5) "Converting organization" means an organization that converts into another  
11 organization pursuant to Section 1006.

12           (6) "Domesticated company" means the company that exists after a domesticating  
13 foreign limited liability company or limited liability company effects a domestication  
14 pursuant to Sections 347.10-1010 through 347.10-1013.

15           (7) "Domesticating company" means the company that effects a domestication  
16 pursuant to Sections 347.10-1010 through 347.10-1013.

17           (8) "Governing statute" means the statute that governs an organization's internal  
18 affairs.

19           (9) "Organization" means a general partnership, including a limited liability  
20 partnership, limited partnership, including a limited liability limited partnership, limited  
21 liability company, business trust, corporation, or any other person having a governing  
22 statute. The term includes a domestic or foreign organization regardless of whether  
23 organized for profit.

24           (10) "Organizational documents" means:

25           (A) for a domestic or foreign general partnership, its partnership agreement;

26           (B) for a limited partnership or foreign limited partnership, its certificate of limited  
27 partnership and partnership agreement;

28           (C) for a domestic or foreign limited liability company, its certificate or articles of  
29 organization and operating agreement, or comparable records as provided in its governing  
30 statute;

31           (D) for a business trust, its agreement of trust and declaration of trust;

32           (E) for a domestic or foreign corporation for profit, its articles of incorporation,  
33 bylaws, and other agreements among its shareholders which are authorized by its  
34 governing statute, or comparable records as provided in its governing statute; and

35           (F) for any other organization, the basic records that create the organization and  
36 determine its internal governance and the relations among the persons that own it, have  
37 an interest in it, or are members of it.

38           (11) "Personal liability" means liability for a debt, obligation, or other liability of  
39 an organization which is imposed on a person that co-owns, has an interest in, or is a  
40 member of the organization:

41           (A) by the governing statute solely by reason of the person co-owning, having an  
42 interest in, or being a member of the organization; or

43           (B) by the organization's organizational documents under a provision of the  
44 governing statute authorizing those documents to make one or more specified persons  
45 liable for all or specified debts, obligations, or other liabilities of the organization solely by

46 reason of the person or persons co-owning, having an interest in, or being a member of the  
47 organization.

48 (12) "Surviving organization" means an organization into which one or more other  
49 organizations are merged whether the organization preexisted the merger or was created  
50 by the merger.

**347.10-1002. MERGER.**

2 (a) A limited liability company may merge with one or more other constituent  
3 organizations pursuant to this section, Sections 347.10-1003 through 347.10-1005, and a  
4 plan of merger, if:

5 (1) the governing statute of each of the other organizations authorizes the merger;

6 (2) the merger is not prohibited by the law of a jurisdiction that enacted any of the  
7 governing statutes; and

8 (3) each of the other organizations complies with its governing statute in effecting  
9 the merger.

10 (b) A plan of merger must be in a record and must include:

11 (1) the name and form of each constituent organization;

12 (2) the name and form of the surviving organization and, if the surviving  
13 organization is to be created by the merger, a statement to that effect;

14 (3) the terms and conditions of the merger, including the manner and basis for  
15 converting the interests in each constituent organization into any combination of money,  
16 interests in the surviving organization, and other consideration;

17 (4) if the surviving organization is to be created by the merger, the surviving  
18 organization's organizational documents that are proposed to be in a record; and

19 (5) if the surviving organization is not to be created by the merger, any  
20 amendments to be made by the merger to the surviving organization's organizational  
21 documents that are, or are proposed to be, in a record.

**347.10-1003. ACTION ON PLAN OF MERGER BY CONSTITUENT LIMITED  
2 LIABILITY COMPANY.**

3 (a) Subject to Section 347.10-1014, a plan of merger must be consented to by all the  
4 members of a constituent limited liability company.

5 (b) Subject to Section 347.10-1014 and any contractual rights, after a merger is  
6 approved, and at any time before articles of merger are delivered to the Secretary of State  
7 for filing under Section 347.10-1004, a constituent limited liability company may amend  
8 the plan or abandon the merger:

9 (1) as provided in the plan; or

10 (2) except as otherwise prohibited in the plan, with the same consent as was  
11 required to approve the plan.

**347.10-1004. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.**

2 (a) After each constituent organization has approved a merger, articles of merger  
3 must be signed on behalf of:

4 (1) each constituent limited liability company, as provided in Section 347.2-203(a);  
5 and

6 (2) each other constituent organization, as provided in its governing statute.

7 (b) Articles of merger under this section must include:

8 (1) the name and form of each constituent organization and the jurisdiction of its  
9 governing statute;

10 (2) the name and form of the surviving organization, the jurisdiction of its  
11 governing statute, a

12 nd, if the surviving organization is created by the merger, a statement to that effect;

13 (3) the date the merger is effective under the governing statute of the surviving  
14 organization;

15 (4) if the surviving organization is to be created by the merger:

16 (A) if it will be a limited liability company, the company's certificate of  
17 organization; or

18 (B) if it will be an organization other than a limited liability company, the  
19 organizational document that creates the organization that is in a public record;

20 (5) if the surviving organization preexists the merger, any amendments provided  
21 for in the plan of merger for the organizational document that created the organization  
22 that are in a public record;

23 (6) a statement as to each constituent organization that the merger was approved  
24 as required by the organization's governing statute;

25 (7) if the surviving organization is a foreign organization not authorized to transact  
26 business in this state, the street and mailing addresses of an office that the Secretary of  
27 State may use for the purposes of Section 347.10-1005(b); and

28 (8) any additional information required by the governing statute of any constituent  
29 organization.

30 (c) Each constituent limited liability company shall deliver the articles of merger  
31 for filing in the office of the Secretary of State.

32 (d) A merger becomes effective under this article:

33 (1) if the surviving organization is a limited liability company, upon the later of:

34 (A) compliance with subsection (c); or

35 (B) subject to Section 347.2-205(c), as specified in the articles of merger; or  
36 (2) if the surviving organization is not a limited liability company, as provided by  
37 the governing statute of the surviving organization.

**347.10-1005. EFFECT OF MERGER.**

2 (a) When a merger becomes effective:

3 (1) the surviving organization continues or comes into existence;

4 (2) each constituent organization that merges into the surviving organization ceases  
5 to exist as a separate entity;

6 (3) all property owned by each constituent organization that ceases to exist vests  
7 in the surviving organization;

8 (4) all debts, obligations, or other liabilities of each constituent organization that  
9 ceases to exist continue as debts, obligations, or other liabilities of the surviving  
10 organization;

11 (5) an action or proceeding pending by or against any constituent organization that  
12 ceases to exist may be continued as if the merger had not occurred;

13 (6) except as prohibited by other law, all of the rights, privileges, immunities,  
14 powers, and purposes of each constituent organization that ceases to exist vest in the  
15 surviving organization;

16 (7) except as otherwise provided in the plan of merger, the terms and conditions of  
17 the plan of merger take effect; and

18 (8) except as otherwise agreed, if a constituent limited liability company ceases to  
19 exist, the merger does not dissolve the limited liability company for the purposes of Article  
20 7;

21 (9) if the surviving organization is created by the merger:

22 (A) if it is a limited liability company, the certificate of organization becomes  
23 effective; or

24 (B) if it is an organization other than a limited liability company, the organizational  
25 document that creates the organization becomes effective; and

26 (10) if the surviving organization preexisted the merger, any amendments provided  
27 for in the articles of merger for the organizational document that created the organization  
28 become effective.

29 (b) A surviving organization that is a foreign organization consents to the  
30 jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed  
31 by a constituent organization, if before the merger the constituent organization was subject  
32 to suit in this state on the debt, obligation, or other liability. A surviving organization that  
33 is a foreign organization and not authorized to transact business in this state appoints the

34 Secretary of State as its agent for service of process for the purposes of enforcing a debt,  
35 obligation, or other liability under this subsection. Service on the Secretary of State under  
36 this subsection must be made in the same manner and has the same consequences as in  
37 Section 347.1-116(c) and (d).

**347.10-1006. CONVERSION.**

2 (a) An organization other than a limited liability company or a foreign limited  
3 liability company may convert to a limited liability company, and a limited liability  
4 company may convert to an organization other than a foreign limited liability company  
5 pursuant to this section, Sections 347.10-1007 through 347.10-1009, and a plan of  
6 conversion, if:

7 (1) the other organization's governing statute authorizes the conversion;

8 (2) the conversion is not prohibited by the law of the jurisdiction that enacted the  
9 other organization's governing statute; and

10 (3) the other organization complies with its governing statute in effecting the  
11 conversion.

12 (b) A plan of conversion must be in a record and must include:

13 (1) the name and form of the organization before conversion;

14 (2) the name and form of the organization after conversion;

15 (3) the terms and conditions of the conversion, including the manner and basis for  
16 converting interests in the converting organization into any combination of money,  
17 interests in the converted organization, and other consideration; and

18 (4) the organizational documents of the converted organization that are, or are  
19 proposed to be, in a record.

**347.10-1007. ACTION ON PLAN OF CONVERSION BY CONVERTING  
2 LIMITED LIABILITY COMPANY.**

3 (a) Subject to Section 347.10-1014, a plan of conversion must be consented to by all  
4 the members of a converting limited liability company.

5 (b) Subject to Section 347.10-1014 and any contractual rights, after a conversion  
6 is approved, and at any time before articles of conversion are delivered to the Secretary of  
7 State for filing under Section 347.10-1008, a converting limited liability company may  
8 amend the plan or abandon the conversion:

9 (1) as provided in the plan; or

10 (2) except as otherwise prohibited in the plan, by the same consent as was required  
11 to approve the plan.

**347.10-1008. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.**

2 (a) After a plan of conversion is approved:

3           **(1) a converting limited liability company shall deliver to the Secretary of State for**  
4 **filing articles of conversion, which must be signed as provided in Section 347.2-203(a) and**  
5 **must include:**

6           **(A) a statement that the limited liability company has been converted into another**  
7 **organization;**

8           **(B) the name and form of the organization and the jurisdiction of its governing**  
9 **statute;**

10          **(C) the date the conversion is effective under the governing statute of the converted**  
11 **organization;**

12          **(D) a statement that the conversion was approved as required by this act;**

13          **(E) a statement that the conversion was approved as required by the governing**  
14 **statute of the converted organization; and**

15          **(F) if the converted organization is a foreign organization not authorized to**  
16 **transact business in this state, the street and mailing addresses of an office which the**  
17 **Secretary of State may use for the purposes of Section 347.10-1009(c); and**

18          **(2) if the converting organization is not a converting limited liability company, the**  
19 **converting organization shall deliver to the Secretary of State for filing a certificate of**  
20 **organization, which must include, in addition to the information required by Section 347.2-**  
21 **201(b):**

22          **(A) a statement that the converted organization was converted from another**  
23 **organization;**

24          **(B) the name and form of that converting organization and the jurisdiction of its**  
25 **governing statute; and**

26          **(C) a statement that the conversion was approved in a manner that complied with**  
27 **the converting organization's governing statute.**

28          **(b) A conversion becomes effective:**

29           **(1) if the converted organization is a limited liability company, when the certificate**  
30 **of organization takes effect; and**

31           **(2) if the converted organization is not a limited liability company, as provided by**  
32 **the governing statute of the converted organization.**

**347.10-1009. EFFECT OF CONVERSION.**

2          **(a) An organization that has been converted pursuant to this article is for all**  
3 **purposes the same entity that existed before the conversion.**

4          **(b) When a conversion takes effect:**

5           **(1) all property owned by the converting organization remains vested in the**  
6 **converted organization;**

7 (2) all debts, obligations, or other liabilities of the converting organization continue  
8 as debts, obligations, or other liabilities of the converted organization;

9 (3) an action or proceeding pending by or against the converting organization may  
10 be continued as if the conversion had not occurred;

11 (4) except as prohibited by law other than this act, all of the rights, privileges,  
12 immunities, powers, and purposes of the converting organization remain vested in the  
13 converted organization;

14 (5) except as otherwise provided in the plan of conversion, the terms and conditions  
15 of the plan of conversion take effect; and

16 (6) except as otherwise agreed, the conversion does not dissolve a converting limited  
17 liability company for the purposes of Article 7.

18 (c) A converted organization that is a foreign organization consents to the  
19 jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for  
20 which the converting limited liability company is liable if, before the conversion, the  
21 converting limited liability company was subject to suit in this state on the debt, obligation,  
22 or other liability. A converted organization that is a foreign organization and not  
23 authorized to transact business in this state appoints the Secretary of State as its agent for  
24 service of process for purposes of enforcing a debt, obligation, or other liability under this  
25 subsection. Service on the Secretary of State under this subsection must be made in the  
26 same manner and has the same consequences as in Section 347.1-116(c) and (d).

#### 347.10-1010. DOMESTICATION.

2 (a) A foreign limited liability company may become a limited liability company  
3 pursuant to this section, Sections 347.10-1011 through 347.10-1013, and a plan of  
4 domestication, if:

5 (1) the foreign limited liability company's governing statute authorizes the  
6 domestication;

7 (2) the domestication is not prohibited by the law of the jurisdiction that enacted  
8 the governing statute; and

9 (3) the foreign limited liability company complies with its governing statute in  
10 effecting the domestication.

11 (b) A limited liability company may become a foreign limited liability company  
12 pursuant to this section, Sections 347.10-1011 through 347.10-1013, and a plan of  
13 domestication, if:

14 (1) the foreign limited liability company's governing statute authorizes the  
15 domestication;

16 (2) the domestication is not prohibited by the law of the jurisdiction that enacted  
17 the governing statute; and

18 (3) the foreign limited liability company complies with its governing statute in  
19 effecting the domestication.

20 (c) A plan of domestication must be in a record and must include:

21 (1) the name of the domesticating company before domestication and the  
22 jurisdiction of its governing statute;

23 (2) the name of the domesticated company after domestication and the jurisdiction  
24 of its governing statute;

25 (3) the terms and conditions of the domestication, including the manner and basis  
26 for converting interests in the domesticating company into any combination of money,  
27 interests in the domesticated company, and other consideration; and

28 (4) the organizational documents of the domesticated company that are, or are  
29 proposed to be, in a record.

**347.10-1011. ACTION ON PLAN OF DOMESTICATION BY DOMESTICATING  
2 LIMITED LIABILITY COMPANY.**

3 (a) A plan of domestication must be consented to:

4 (1) by all the members, subject to Section 347.10-1014, if the domesticating  
5 company is a limited liability company; and

6 (2) as provided in the domesticating company's governing statute, if the company  
7 is a foreign limited liability company.

8 (b) Subject to any contractual rights, after a domestication is approved, and at any  
9 time before articles of domestication are delivered to the Secretary of State for filing under  
10 Section 347.10-1012, a domesticating limited liability company may amend the plan or  
11 abandon the domestication:

12 (1) as provided in the plan; or

13 (2) except as otherwise prohibited in the plan, by the same consent as was required  
14 to approve the plan.

**347.10-1012. FILINGS REQUIRED FOR DOMESTICATION; EFFECTIVE  
2 DATE.**

3 (a) After a plan of domestication is approved, a domesticating company shall  
4 deliver to the Secretary of State for filing articles of domestication, which must include:

5 (1) a statement, as the case may be, that the company has been domesticated from  
6 or into another jurisdiction;

7 (2) the name of the domesticating company and the jurisdiction of its governing  
8 statute;

9           (3) the name of the domesticated company and the jurisdiction of its governing  
10 statute;

11           (4) the date the domestication is effective under the governing statute of the  
12 domesticated company;

13           (5) if the domesticating company was a limited liability company, a statement that  
14 the domestication was approved as required by this act;

15           (6) if the domesticating company was a foreign limited liability company, a  
16 statement that the domestication was approved as required by the governing statute of the  
17 other jurisdiction; and

18           (7) if the domesticated company was a foreign limited liability company not  
19 authorized to transact business in this state, the street and mailing addresses of an office  
20 that the Secretary of State may use for the purposes of Section 1013(b).

21           (b) A domestication becomes effective:

22           (1) when the certificate of organization takes effect, if the domesticated company  
23 is a limited liability company; and

24           (2) according to the governing statute of the domesticated company, if the  
25 domesticated organization is a foreign limited liability company.

#### **347.10-1013. EFFECT OF DOMESTICATION.**

2           (a) When a domestication takes effect:

3           (1) the domesticated company is for all purposes the company that existed before  
4 the domestication;

5           (2) all property owned by the domesticating company remains vested in the  
6 domesticated company;

7           (3) all debts, obligations, or other liabilities of the domesticating company continue  
8 as debts, obligations, or other liabilities of the domesticated company;

9           (4) an action or proceeding pending by or against a domesticating company may  
10 be continued as if the domestication had not occurred;

11           (5) except as prohibited by other law, all of the rights, privileges, immunities,  
12 powers, and purposes of the domesticating company remain vested in the domesticated  
13 company;

14           (6) except as otherwise provided in the plan of domestication, the terms and  
15 conditions of the plan of domestication take effect; and

16           (7) except as otherwise agreed, the domestication does not dissolve a domesticating  
17 limited liability company for the purposes of Article 7.

18           (b) A domesticated company that is a foreign limited liability company consents to  
19 the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability

20 owed by the domesticating company, if, before the domestication, the domesticating  
 21 company was subject to suit in this state on the debt, obligation, or other liability. A  
 22 domesticated company that is a foreign limited liability company and not authorized to  
 23 transact business in this state appoints the Secretary of State as its agent for service of  
 24 process for purposes of enforcing a debt, obligation, or other liability under this subsection.  
 25 Service on the Secretary of State under this subsection must be made in the same manner  
 26 and has the same consequences as in Section 347.1-116(c) and (d).

27 (c) If a limited liability company has adopted and approved a plan of domestication  
 28 under Section 347.10-1010 providing for the company to be domesticated in a foreign  
 29 jurisdiction, a statement surrendering the company's certificate of organization must be  
 30 delivered to the Secretary of State for filing setting forth:

- 31 (1) the name of the company;
- 32 (2) a statement that the certificate of organization is being surrendered in  
 33 connection with the domestication of the company in a foreign jurisdiction;
- 34 (3) a statement the domestication was approved as required by this act; and
- 35 (4) the jurisdiction of formation of the domesticated foreign limited liability  
 36 company.

**347.10-1014. RESTRICTIONS ON APPROVAL OF MERGERS, CONVERSIONS,  
 2 AND DOMESTICATIONS.**

3 (a) If a member of a constituent, converting, or domesticating limited liability  
 4 company will have personal liability with respect to a surviving, converted, or domesticated  
 5 organization, approval or amendment of a plan of merger, conversion, or domestication  
 6 is ineffective without the consent of the member, unless:

- 7 (1) the company's operating agreement provides for approval of a merger,  
 8 conversion, or domestication with the consent of fewer than all the members; and
- 9 (2) the member has consented to the provision of the operating agreement.

10 (b) A member does not give the consent required by subsection (a) merely by  
 11 consenting to a provision of the operating agreement that permits the operating agreement  
 12 to be amended with the consent of fewer than all the members.

**347.10-1015. ARTICLE NOT EXCLUSIVE.**

2 This article does not preclude an entity from being merged, converted, or  
 3 domesticated under law other than this act.

**ARTICLE 11**

**MISCELLANEOUS PROVISIONS**

**347.11-1101. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

2           **In applying and construing this uniform act, consideration must be given to the**  
3 **need to promote uniformity of the law with respect to its subject matter among states that**  
4 **enact it.**

2           **347.11-1102. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**  
3 **NATIONAL COMMERCE ACT.**

3           **This act modifies, limits, and supersedes the federal Electronic Signatures in Global**  
4 **and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or**  
5 **supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic**  
6 **delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section**  
7 **7003(b).**

2           **347.11-1103. SAVINGS CLAUSE.**

2           **This act does not affect an action commenced, proceeding brought, or right accrued**  
3 **before this act takes effect.**

2           **347.11-1104. APPLICATION TO EXISTING RELATIONSHIPS.**

2           **(a) This act governs only:**

3           **(1) a limited liability company formed on or after the effective date of this act; and**

4           **(2) except as otherwise provided in subsection (c), a limited liability company**  
5 **formed before the effective date of this act which elects, in the manner provided in its**  
6 **operating agreement or by law for amending the operating agreement, to be subject to this**  
7 **act.**

8           **(b) Except as otherwise provided in subsection (c), on and after the effective date**  
9 **this act governs all limited liability companies.**

10          **(c) For the purposes applying this act to a limited liability company formed before**  
11 **the effective date of this act:**

12          **(1) the company's articles of organization are deemed to be the company's**  
13 **certificate of organization; and**

14          **(2) for the purposes of applying Section 102(10) and subject to Section 112(d),**  
15 **language in the company's articles of organization designating the company's management**  
16 **structure operates as if that language were in the operating agreement.**

17 **Legislative Note: It is recommended that the "all-inclusive" date should be at least one**  
18 **year after the date of enactment but no longer than two years.**

          356.071. The name of a professional corporation or of a foreign professional corporation  
2 authorized to transact business in this state shall:

3           (1) Contain the words "Professional Corporation" or the abbreviation "P.C." and the  
4 corporation shall identify itself with such designation in the course of rendering any professional  
5 service;

6 (2) Not contain any word or phrase that indicates or implies that it is organized for any  
7 purpose other than the purposes contained in its articles of incorporation;

8 (3) Be distinguishable from (as the preceding standards may be defined at the time of  
9 incorporation or qualification in or under the general and business corporation law of Missouri,  
10 chapter 351) the name of any domestic corporation existing under the laws of this state or any  
11 foreign corporation authorized to transact business in this state, or a name the exclusive right to  
12 which is, at such time, reserved in the manner provided in the general and business corporation  
13 law of Missouri, chapter 351, the not-for-profit corporation law, chapter 355, the uniform limited  
14 partnership law, chapter 359, the uniform partnership law relating to registered limited liability  
15 partnerships and limited liability limited partnerships, chapter 358, or the **uniform** limited  
16 liability company act, chapter 347, or the name of an entity that has in effect a registration of its  
17 corporate name under either chapter 347, 351, 355, 358, or 359, or any other business entity  
18 organized, reserved, or registered under the laws of this state; except that, this provision shall not  
19 apply if:

20 (a) Such similarity results from the use in the corporate name of the professional  
21 corporation or foreign professional corporation personal names of its shareholders or former  
22 shareholders; or

23 (b) The applicant files with the secretary of state either of the following:

24 a. If the name is the same, a change whereby a word is added to make such name  
25 distinguishable from the name of such other corporation, limited partnership or limited liability  
26 company; or

27 b. A certified copy of a final decree of a court of competent jurisdiction establishing the  
28 prior right of the applicant to the use of such name in this state; and

29 (4) Otherwise conform to any rule promulgated by any licensing authority having  
30 jurisdiction over a professional service described in the articles of incorporation of such  
31 corporation.

2 [347.010. Sections 347.010 to 347.187 shall be known and may be cited  
3 as the "Missouri Limited Liability Company Act".]

2 [347.015. As used in sections 347.010 to 347.187, the following terms  
3 mean:

4 (1) "Articles of organization", the articles referred to in section 347.039,  
5 filed with the secretary for the purpose of forming a limited liability company, as  
6 the same may be amended or restated from time to time as provided in sections  
7 347.010 to 347.187;

8 (2) "Authorized person", manager, or member, if management of the  
limited liability company is vested in the members;

- 9 (3) "Bankruptcy", the entry of an order for relief by the court in a  
10 proceeding under the United States Bankruptcy Code, Title 11, U.S.C., as  
11 amended, or its equivalent under a state insolvency act or a similar law of other  
12 jurisdictions;
- 13 (4) "Business" includes every trade, occupation or profession;
- 14 (5) "Contribution", cash, other property, the use of property, services  
15 rendered, a promissory note or other binding obligation to contribute cash or  
16 property or perform services or any other valuable consideration transferred by  
17 a person to the limited liability company as a prerequisite for membership in the  
18 limited liability company and any subsequent transfer to the limited liability  
19 company by a person in his capacity as a member;
- 20 (6) "Court" includes every court and judge having jurisdiction in the case;
- 21 (7) "Domestic limited liability company" or "limited liability company",  
22 a limited liability company organized and existing under sections 347.010 to  
23 347.187;
- 24 (8) "Event of withdrawal", an event that causes a person to cease to be  
25 a member as provided in section 347.123;
- 26 (9) "Foreign limited liability company", a limited liability company  
27 formed under the laws of any jurisdiction other than the state of Missouri;
- 28 (10) "Manager", with respect to a limited liability company whose  
29 articles of organization state that management of the limited liability company is  
30 vested in one or more managers, the person or persons designated, appointed or  
31 elected as such in the manner provided in subsection 2 of section 347.079;
- 32 (11) "Member", any person that signs in person or by an attorney in fact,  
33 or otherwise is a party to the operating agreement at the time the limited liability  
34 company is formed and is identified as a member in that operating agreement and  
35 any person who is subsequently admitted as a member in a limited liability  
36 company in accordance with sections 347.010 to 347.187 and the operating  
37 agreement, until such time as an event of withdrawal occurs with respect to such  
38 person;
- 39 (12) "Member's interest", a member's share of the profits and losses of  
40 a limited liability company and the right to receive distributions of limited  
41 liability company assets;
- 42 (13) "Operating agreement", any valid agreement or agreements, written  
43 or oral, among all members, or written declaration by the sole member  
44 concerning the conduct of the business and affairs of the limited liability  
45 company and the relative rights, duties and obligations of the members and  
46 managers, if any;
- 47 (14) "Organizer", any of the signers of the articles of organization;
- 48 (15) "Person" includes individuals, partnerships, domestic or foreign  
49 limited partnerships, domestic or foreign limited liability companies, domestic  
50 or foreign corporations, trusts, business trusts, employee stock ownership trusts,

51 real estate investment trusts, estates, associations, and other business or  
52 not-for-profit entities;

53 (16) "Real property" includes land, any interest, leasehold or estate in  
54 land and any improvements thereon;

55 (17) "Secretary", the secretary of state for the state of Missouri and its  
56 delegates responsible for the administration of sections 347.010 to 347.187;

57 (18) "Surviving entity", the surviving or resulting person pursuant to a  
58 merger or consolidation in which one or more domestic limited liability  
59 companies are parties.]  
60

2 [347.017. No limited liability company formed before the effective date  
3 of this act, shall be deemed not in compliance with this chapter for the reason that  
4 such limited liability company was formed with, had or has only one member.]

2 [347.020. The name of each limited liability company as set forth in its  
3 articles of organization:

3 (1) Shall contain the words "limited company" or "limited liability  
4 company" or the abbreviation "LC", "LLC", "L.C." or "L.L.C." and shall be the  
5 name under which the limited liability company transacts business in this state  
6 unless the limited liability company registers another name under which it  
7 transacts business as provided under chapter 417 or conspicuously discloses its  
8 name as set forth in its articles of organization;

9 (2) May not contain the word "corporation", "incorporated", "limited  
10 partnership", "limited liability partnership", "limited liability limited partnership",  
11 or "Ltd." or any abbreviation of one of such words or any word or phrase which  
12 indicates or implies that it is organized for any purpose not stated in its articles  
13 of organization or that it is a governmental agency; and

14 (3) Must be distinguishable upon the records of the secretary from the  
15 name of any corporation, limited liability company, limited partnership, limited  
16 liability partnership, or limited liability limited partnership which is licensed,  
17 organized, reserved, or registered under the laws of this state as a domestic or  
18 foreign entity, unless:

19 (a) Such other holder of a reserved or registered name consents to such  
20 use in writing and files appropriate documentation to the secretary to change its  
21 name to a name that is distinguishable upon the records of the secretary from the  
22 name of the applying limited liability company; or

23 (b) A certified copy of a final decree of a court of competent jurisdiction  
24 establishing the prior right of the applicant to the use of such name in this state  
25 is filed with the secretary.]  
26

2 [347.025. 1. The exclusive right to the use of a name may be reserved  
by:

- 3 (1) Any person intending to organize a limited liability company under
- 4 sections 347.010 to 347.187 and to adopt that name;
- 5 (2) Any domestic limited liability company intending to adopt that name;
- 6 (3) Any foreign limited liability company registered in this state
- 7 intending to adopt that name or intending to register in this state and to adopt that
- 8 name; or
- 9 (4) Any person intending to organize a foreign limited liability company
- 10 and intending to have it registered in this state and to adopt that name.

11 2. The reservation shall be made by filing with the secretary in a format  
 12 prescribed by the secretary, executed by the applicant, to reserve a specified  
 13 name. If the secretary finds that the name is not registered with the secretary as  
 14 a corporation, limited liability company, limited partnership, limited liability  
 15 partnership, or limited liability limited partnership, and is otherwise available for  
 16 use, it shall reserve the name for the exclusive use of the applicant for a period  
 17 of sixty days from and after the date the application is filed with the state. A  
 18 name reservation shall not exceed a period of one hundred eighty days from the  
 19 date of the first name reservation application. Upon the one hundred eighty-first  
 20 day the name shall cease reserve status and may not be placed back in such  
 21 status.]

22 [347.030. 1. Each limited liability company shall have and continuously  
 2 maintain in this state:

- 3 (1) A registered office which may be, but need not be, the same as a place
- 4 of its business in this state;
- 5 (2) A registered agent for service of any process, notice or demand
- 6 required or permitted by law to be served upon the limited liability company,
- 7 which agent may be either an individual, resident of this state, whose business
- 8 office is identical with such registered office, or a domestic or foreign corporation
- 9 authorized to do business in this state, and whose business office is identical with
- 10 such registered office. Except as provided in this section and subdivision (5) of
- 11 section 347.153, the secretary shall not be appointed as the resident agent for any
- 12 limited liability company.

13 2. A limited liability company may, from time to time, change its  
 14 registered agent or the address of its registered office. A limited liability  
 15 company shall change its registered agent if the office of its registered agent shall  
 16 become vacant for any reason, if its registered agent becomes disqualified or  
 17 incapacitated to act, or if the limited liability company revokes the appointment  
 18 of its registered agent. A limited liability company may change its registered  
 19 agent or the address of its registered office, or both, by a filing with the secretary,  
 20 a statement setting forth:

- 21 (1) The name of the limited liability company;
- 22 (2) The address, including street and number, if any, of its then registered
- 23 office;

24 (3) If the address of its registered office is to be changed, the address,  
25 including street and number, if any, to which the registered office is to be  
26 changed;

27 (4) The name of its then registered agent;

28 (5) If its registered agent is to be changed, the name of its successor  
29 registered agent and the successor registered agent's written consent to the  
30 appointment either on the statement or attached thereto;

31 (6) That the address of its registered office and the address of the  
32 business office of its registered agent, as changed, will be identical; and

33 (7) That such change was authorized by the limited liability company.

34 3. The change of address of the registered office, or the change of the  
35 registered agent, or both, as the case may be, shall become effective upon the  
36 filing of such statement by the secretary.

37 4. If a registered agent changes the street address of his business office,  
38 he may change the street address of the registered office of any limited liability  
39 company for which he is the registered agent by notifying the limited liability  
40 company in writing of the change and signing, either manually or in facsimile,  
41 and delivering to the secretary of state for filing a statement of change that  
42 complies with the requirements of subdivisions (1) to (6) of subsection 2 of this  
43 section and recites that the limited liability company has been notified of the  
44 change.

45 5. The change of an address of the registered office shall become  
46 effective upon the filing of the statement by the secretary.

47 6. Any registered agent of a limited liability company may resign as such  
48 agent by the filing with the secretary duplicate originals of a statement, on a form  
49 approved by the secretary, setting forth:

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

51 (2) The address, including street and number, if any, of its then registered  
52 office;

53 (3) The name of such registered agent; and

54 (4) A representation that such registered agent has given written notice  
55 of such agent's resignation and a copy of such statement to the limited liability  
56 company. Such resignation shall become effective upon expiration of thirty days  
57 after receipt of such statement by the secretary, or on the appointment of a new  
58 registered agent, whichever occurs earlier.]

59

2 [347.033. 1. The registered agent so appointed by a limited liability  
3 company shall be an agent of such limited liability company upon whom any  
4 process, notice or demand required or permitted by law to be served upon the  
5 limited liability company may be served, and which, when so served, shall be  
6 lawful personal service on the limited liability company.

7 2. In lieu of service upon the registered agent, process, notice or demand  
may be served upon an authorized person or in the event neither the registered

8 agent nor an authorized person can be located in the exercise of due diligence,  
9 process, notice or demand may be served upon an organizer.

10 3. In the event that a limited liability company shall fail to appoint or  
11 maintain a registered agent in this state or in the event neither the registered  
12 agent, an authorized person, nor an organizer for the limited liability company  
13 can be located in the exercise of due diligence, then the secretary, as long as such  
14 default exists, shall be automatically appointed as an agent of such limited  
15 liability company upon whom any process, notice, or demand required or  
16 permitted by law to be served upon the limited liability company may be served.  
17 Service on the secretary of any process, notice or demand against a limited  
18 liability company shall be made by delivering to and leaving with the secretary,  
19 or with any clerk having charge of the limited liability company department of  
20 the secretary, a copy of such process, notice or demand. In the event that any  
21 process, notice or demand is served on the secretary, the secretary shall  
22 immediately cause a copy thereof to be forwarded by registered mail, to the  
23 address for any organizer as set forth in the articles of organization. The  
24 secretary shall keep copies of any process, notice or demand served upon the  
25 secretary pursuant to sections 347.010 to 347.187 for a period of five years.  
26 Nothing contained in this section shall limit or affect the right to serve any  
27 process, notice or demand required or permitted by law to be served upon a  
28 limited liability company in any other manner now or hereafter permitted by law.]  
29

2 [347.035. A limited liability company may be organized under sections  
3 347.010 to 347.187 and may conduct or promote any lawful businesses or  
4 purposes within this state or any other jurisdiction.]

2 [347.037. 1. Any person, whether or not a member or manager, may  
3 form a limited liability company by signing and filing articles of organization for  
4 such limited liability company with the secretary.

5 2. A limited liability company is formed when the articles of organization  
6 are filed with the secretary or on a later date set forth in the articles of  
7 organization, not to exceed ninety days from the filing date. If the articles of  
8 organization, as delivered to the secretary, do not substantially conform to the  
9 filing provisions of sections 347.010 to 347.187, the secretary shall return the  
10 articles of organization to the person so filing the articles of organization with a  
11 statement setting forth the nonconformity.

12 3. Each copy of the articles of organization stamped "filed" and marked  
13 with the filing date is conclusive evidence that all conditions precedent required  
14 to be performed by the organizers have been complied with and that the limited  
15 liability company has been legally organized and formed under sections 347.010  
16 to 347.187 and is notice for all purposes of all other facts required to be set forth  
therein.

17                   4. A limited liability company may not transact business or incur  
 18 indebtedness, except that which is incidental to its organization or to obtaining  
 19 subscriptions for or payment of contributions, until the articles of organization  
 20 have been filed with the secretary or until the formation date specified in the  
 21 articles of organization. Persons engaged in prefiling activities other than those  
 22 described in the preceding sentence shall be jointly and severally liable except as  
 23 provided in this section for any debts or liabilities incurred in the course of those  
 24 activities. This section shall not be interpreted to invalidate any debts, contracts,  
 25 or liabilities of the limited liability company incurred solely on behalf of a limited  
 26 liability company to be formed, nor shall it be interpreted to impose personal  
 27 liability on the persons incurring such debts, contracts or liabilities solely on  
 28 behalf of the limited liability company to the extent so disclosed or to the extent  
 29 such debts, contracts or liabilities provide otherwise.]  
 30

[347.039. 1. The articles of organization shall set forth:

- 2                   (1) The name of the limited liability company;
- 3                   (2) The purpose or purposes for which the limited liability company is  
 4 organized, which may be stated to be, or to include, the transaction of any or all  
 5 lawful business for which a limited liability company may be organized under  
 6 sections 347.010 to 347.187;
- 7                   (3) The address, including street and number, if any, of the registered  
 8 office and the name of the registered agent at such office;
- 9                   (4) A statement as to whether management of the limited liability  
 10 company is vested in managers or in members;
- 11                  (5) The events by which the limited liability company is to dissolve or  
 12 the number of years the limited liability company is to exist, which may be any  
 13 number or perpetual; and
- 14                  (6) The name and physical business or residence address of each  
 15 organizer.

16                   2. The articles of organization may set forth any other provision, not  
 17 inconsistent with law or sections 347.010 to 347.187, which are in the operating  
 18 agreement of the limited liability company.]  
 19

[347.041. 1. A limited liability company's articles of organization is  
 amended by filing with the secretary articles of amendment, which shall set forth:

- 2                   (1) The name of the limited liability company;
- 3                   (2) The date the articles of amendment are filed, and, if the articles of  
 4 amendment provide that they are not to become effective until a specified date  
 5 after their filing date, the date that they are to become effective which may not  
 6 be more than ninety days after their filing date;
- 7                   (3) If the amendment is required to be filed as a result of the occurrence  
 8 of any event specified in subdivision (2) of subsection 2 of this section, the nature  
 9 of the event and the date such event occurred or is to occur;
- 10

- 11 (4) The amendment to the articles of organization; and
- 12 (5) A statement that the amendment is authorized under the operating
- 13 agreement or is otherwise required to be filed under the provisions of sections
- 14 347.010 to 347.187.
- 15 2. A limited liability company's articles of organization shall be amended
- 16 promptly, but in no event more than sixty days after the occurrence of any of the
- 17 following events:
- 18 (1) To reflect any change in management of the limited liability company
- 19 that was previously vested whether in managers or members;
- 20 (2) To reflect a change in the name of the limited liability company; or
- 21 (3) To reflect a change in the time set forth in the articles of organization
- 22 for the limited liability company to dissolve.
- 23 3. Except as otherwise provided in the operating agreement, a limited
- 24 liability company's articles of organization may be amended from time to time in
- 25 any and as many respects as may be desired so long as its articles of organization
- 26 contain only such provisions as are contained in the operating agreement at the
- 27 time of making such amendment.]
- 28

2 [347.043. 1. A limited liability company may integrate into a single  
 3 instrument all of the provisions of its articles of organization and amendments  
 4 thereto, and it may at the same time also further amend or supplement its articles  
 5 of organization by adopting restated articles of organization as follows:

- 6 (1) If the restated articles of organization merely restate and integrate but
- 7 do not further amend the initial articles of organization, as previously amended
- 8 or supplemented by any articles, notices or documents that were executed and
- 9 filed pursuant to sections 347.010 to 347.187, it shall be specifically designated
- 10 in its heading as "Restated Articles of Organization", together with a statement
- 11 that it only restates and integrates and does not further amend the provisions of
- 12 the articles of organization as previously amended or supplemented and there is
- 13 no discrepancy between those provisions and the provisions of the restated
- 14 articles, and shall be executed and filed with the secretary; or
- 15 (2) If the restated articles restate and integrate and also further amend in
- 16 any respect the articles of organization, as previously amended or supplemented,
- 17 it shall be specifically designated in its heading as "Amended and Restated
- 18 Articles of Organization", and shall be executed and filed with the secretary.
- 19 2. Restated articles of organization shall state, either in their heading or
- 20 in an introductory paragraph, the limited liability company's present name, and,
- 21 if it has been changed, the name under which it was originally filed and the date
- 22 of filing of its initial articles of organization.
- 23 3. Upon the filing of the restated articles of organization with the
- 24 secretary, the initial articles, as previously amended or supplemented, shall be
- superseded. Thereafter, the restated articles of organization, including any further

25 amendment or changes made by the restated articles, shall be the articles of  
26 organization, but the original effective date of formation shall remain unchanged.

27 4. Any amendment or change made in connection with the restatement  
28 of the articles of organization shall be subject to any other provision of sections  
29 347.010 to 347.187, not inconsistent with this section, that would apply if  
30 separate articles of amendment were filed to make the amendment or change.]  
31

[347.045. When all of the remaining property and assets of a limited  
2 liability company have been applied and distributed as provided in section  
3 347.139 or when a domestic limited liability company is not the surviving entity,  
4 the articles of organization shall be canceled by filing articles of termination with  
5 the secretary setting forth:

6 (1) The name of the limited liability company;  
7 (2) The date of filing of its articles of organization;  
8 (3) The reason for filing the articles of termination;  
9 (4) The date the articles of termination are filed, and, if such articles of  
10 termination provide that they are not to become effective until a specified date  
11 after their filing date, the effective date of such articles of termination, which  
12 shall be in no event more than ninety days after their filing date;

13 (5) That a notice of merger or consolidation or a notice of winding up  
14 disclosing the dissolution has been filed with the secretary as provided in section  
15 347.129 or 347.137, as the case may be, and the date on which such notice was  
16 filed; and

17 (6) Any other matters which the members shall determine.]  
18

[347.047. 1. Unless otherwise provided in sections 347.010 to 347.187,  
2 articles, notices or documents permitted or required by sections 347.010 to  
3 347.187 to be filed with the secretary shall be executed in the following manner:

4 (1) The initial articles of organization shall be executed by the organizer  
5 or organizers;

6 (2) An amended or restated articles of organization, statement of change  
7 of registered agent or registered office, notice of merger or consolidation, notice  
8 of winding up, articles of termination or other document required or permitted to  
9 be filed under sections 347.010 to 347.187 shall be executed by an authorized  
10 person or any other person duly authorized under the operating agreement; and

11 (3) All articles, notices and documents required by sections 347.010 to  
12 347.187 to be filed by a limited liability company which is in the hands of a  
13 receiver, trustee, or other court-appointed fiduciary, shall be executed by such  
14 fiduciary.

15 2. The original, amended or restated articles of organization, notice of  
16 winding up, notice of merger or consolidation, articles of termination or other  
17 document required or permitted to be filed under sections 347.010 to 347.187  
18 may be executed by a person duly authorized under a power of attorney.

19                   3. The execution of any document required by sections 347.010 to  
20 347.187 constitutes an affirmation under the penalties as set out in section  
21 575.040 that the facts stated therein are true and that such person or persons are  
22 duly authorized to execute such document or are otherwise required to file such  
23 document under sections 347.010 to 347.187.]  
24

2                   [347.048. Any limited liability company that owns and rents or leases  
3 real property, or owns unoccupied real property, located within any home rule  
4 city with a population of more than four hundred thousand inhabitants which is  
5 located in more than one county, shall file with that city's clerk an affidavit listing  
6 the name and address of at least one person who has management control and  
7 responsibility for the real property owned and leased or rented by the limited  
8 liability company, or owned by the limited liability company and unoccupied.]  
8

2                   [347.049. If a person required by section 347.047 to execute articles,  
3 notices or documents required to be filed pursuant to sections 347.010 to 347.187  
4 fails or refuses to do so, any other person who is adversely affected by the failure  
5 or refusal may petition the circuit court in the county where the principal place  
6 of business or the registered office of the limited liability company is located to  
7 direct the execution and filing of such document. If the court finds that it is  
8 proper for such document to be executed and filed and that there has been failure  
9 or refusal to execute and file such document, it shall order the secretary to file the  
10 appropriate document.]

2                   [347.051. 1. The original copy of the articles of organization, an  
3 amendment or restatement of such articles, articles of termination, statement of  
4 change of registered agent or registered office, or any other statement, document  
5 or notice required or permitted to be filed pursuant to sections 347.010 to  
6 347.187, or of any judicial decree requiring the filing of such document under  
7 sections 347.010 to 347.187, in a format as prescribed by the secretary of state,  
8 shall be delivered to the secretary of state. A person who executes articles or  
9 other documents to be filed under sections 347.010 to 347.187 as an agent or  
10 fiduciary need not evidence his authority as a prerequisite to filing. If the  
11 secretary determines that the documents substantially conform to the filing  
12 provisions of sections 347.010 to 347.187, it shall, when all required filing fees  
13 have been paid:

13                   (1) Endorse on the accepted signed original the word "Filed", and the  
14 date of its acceptance for filing;

15                   (2) The accepted original filing and certificate shall be retained by the  
16 secretary of state as a state record and a copy of both shall be returned to the  
17 person who submitted said document or the person's representative.

18                   2. Upon the return by the secretary of any articles, notices, documents or  
19 judicial decree of amendment marked "Filed", the person or persons executing

20 such documents shall promptly deliver or mail a copy thereof to each member  
21 unless the operating agreement provides otherwise.]  
22

2 [347.053. 1. If articles of organization, articles of amendment, a notice  
3 of winding up, or a notice of merger or consolidation filed pursuant to sections  
4 347.010 to 347.187 contains a false statement, one who suffers loss by good faith  
5 reliance on such statement may recover damages for the loss from the limited  
6 liability company and from the person or persons who executed such document,  
7 or caused another to execute it on his behalf, knowing the statement to be false  
8 at the time such document was executed.

9 2. If the person or persons required under section 347.047 to execute the  
10 articles of amendment fail to file the articles of amendment within the time  
11 period prescribed in subsection 2 of section 347.041, the limited liability  
12 company and such person or persons shall be assessed by the secretary a civil  
13 penalty in the aggregate amount of ten dollars a day for each day the amendment  
14 has not been delivered to the secretary, but not to exceed one thousand dollars;  
15 except that the secretary may waive the penalty upon showing of reasonable  
16 cause for the failure to amend in a timely manner, and in no event shall a penalty  
17 be imposed under this section if a proceeding under section 347.049 has been  
18 commenced within such time period. Failure to file articles of amendment, a  
19 notice of winding up or articles of termination shall not be grounds for imposing  
20 liability on any person for the debts and obligations of the limited liability  
21 company.]

2 [347.055. 1. A domestic or foreign limited liability company may file a  
3 statement of correction in a format prescribed by the secretary of state, if the filed  
4 document contains an incorrect statement as of the date such document was filed.

5 2. The statement of correction shall:  
6 (1) State the name of the limited liability company;  
7 (2) State the type of document being corrected;  
8 (3) State the name of the jurisdiction under the law of organization;  
9 (4) Describe the incorrect statement and the reason for the correction;  
10 (5) If the correction is for a foreign liability company with regard to an  
11 incorrect name, provide a certificate of existence or document of similar import  
12 duly authenticated by the secretary of state or other official having custody of the  
13 records in the state or country under whose laws it is registered.

14 3. Articles of correction are effective on the effective date of the  
15 document they correct except as to persons relying on the uncorrected document  
16 and adversely affected by the correction. As to those persons, articles of  
17 correction are effective when filed.

18 4. The secretary of state shall collect a filing fee of five dollars upon  
filing the statement of correction.

19                   5. The statement of correction shall be signed by an authorized person of  
 20 the limited liability company.]  
 21

2                   [347.057. A person who is a member, manager, or both, of a limited  
 3 liability company is not liable, solely by reason of being a member or manager,  
 4 or both, under a judgment, decree or order of a court, or in any other manner, for  
 5 a debt, obligation or liability of the limited liability company, whether arising in  
 6 contract, tort or otherwise or for the acts or omissions of any other member,  
 7 manager, agent or employee of the limited liability company.]

2                   [347.059. All persons who assume to act as a limited liability company  
 3 without authority to do so and without a good faith belief that they have such  
 4 authority shall be jointly and severally liable for all debts and liabilities incurred  
 5 by such persons so acting.]

2                   [347.061. 1. Property transferred to or otherwise acquired by a limited  
 3 liability company becomes property of the limited liability company. A member  
 4 has no interest in specific limited liability company property.

5                   2. Property may be acquired, held and conveyed in the name of a limited  
 6 liability company. Any estate in real property may be acquired in the name of the  
 7 limited liability company and title to any estate so acquired shall vest in the  
 8 limited liability company itself rather than in the members individually.

9                   3. Subject to subsection 4 of this section:

10                   (1) Property is presumed to be owned by the limited liability company if  
 11 it is acquired in the name of the limited liability company;

12                   (2) Property is presumed to be owned by the limited liability company if  
 13 it is purchased with funds of the limited liability company even if it is acquired  
 14 in the name of a member or other person; and

15                   (3) Property is presumed to be separate property of one or more members  
 16 or other persons if it is acquired in the name or names of such person or persons  
 17 without use of funds of the limited liability company even though the property  
 18 was used for purposes of the business of the limited liability company.

19                   4. Real property and other property held of public record otherwise than  
 20 in the name of the limited liability company, the ownership of which is  
 21 customarily publicly recorded, shall not be deemed to be owned by the limited  
 22 liability company to the prejudice of a person who is not a member and who did  
 23 not have actual knowledge to the contrary.]

2                   [347.063. 1. Title to property of the limited liability company that is held  
 3 in the name of the limited liability company may be transferred by an instrument  
 4 of transfer executed by any authorized person in the name of the limited liability  
 company.]

5           2. Title to property of the limited liability company that is held in the  
6 name of one or more members or managers with an indication in the instrument  
7 transferring title to the property to them of their capacity as members or managers  
8 of a limited liability company or of the existence of a limited liability company,  
9 even if the name of the limited liability company is not indicated, may be  
10 transferred by an instrument of transfer executed by the persons in whose name  
11 title is held.

12           3. Property transferred under subsections 1 and 2 of this section may be  
13 recovered by the limited liability company if it proves that the act of the person  
14 executing the instrument of transfer did not bind the limited liability company  
15 under section 347.065, unless the property has been transferred by the initial  
16 transferee or a person claiming through the initial transferee to a subsequent  
17 transferee who gives value without having notice that the person who executed  
18 the instrument of initial transfer lacked authority to bind the limited liability  
19 company.

20           4. Title to property of the limited liability company that is held in the  
21 name of one or more persons other than the limited liability company without an  
22 indication in the instrument transferring title to the property to them of their  
23 capacity as members or managers of a limited liability company or of the  
24 existence of a limited liability company, may be transferred free of any claims of  
25 the limited liability company or the members by the persons in whose name title  
26 is held to a transferee who gives value without having notice that it is property  
27 of a limited liability company.]  
28

[347.065. 1. Except as provided in subsection 2 of this section, every  
2 member is an agent of the limited liability company for the purpose of its  
3 business and affairs, and the act of any member, including, but not limited to, the  
4 execution of any instrument, for apparently carrying on in the usual way of the  
5 business or affairs of the limited liability company of which he is a member binds  
6 the limited liability company, unless the member so acting has in fact no  
7 authority to act for the limited liability company in the particular matter, and the  
8 person with whom he is dealing has knowledge of the fact that the member has  
9 no such authority.

10           2. If the articles of organization provide that management of the limited  
11 liability company is vested in one or more managers: (1) No member, acting  
12 solely in his capacity as a member, is an agent of the limited liability company;  
13 and

14           (2) Every manager is an agent of the limited liability company for the  
15 purpose of its business and affairs, and the act of any manager for apparently  
16 carrying on in the usual way of the business or affairs of the limited liability  
17 company of which he is a manager binds the limited liability company, unless the  
18 manager so acting has, in fact, no authority to act for the limited liability

19 company in the particular matter, and the person with whom he is dealing has  
 20 knowledge of the fact that the manager has no such authority.

21 3. An act of a member or manager which is not apparently for the  
 22 carrying on the usual way of the business or affairs of the limited liability  
 23 company does not bind the limited liability company unless authorized in  
 24 accordance with the terms of the operating agreement, at the time of the  
 25 transaction or at any other time.

26 4. No act of a member, manager or other agent of a limited liability  
 27 company in contravention of a restriction on authority shall bind the limited  
 28 liability company to persons having knowledge of the restriction.]  
 29

2 [347.067. 1. After dissolution, an authorized person can bind the limited  
 liability company, except as provided in subsection 2 of this section, as follows:

3 (1) By any act appropriate for winding up the affairs of the limited  
 4 liability company or completing transactions unfinished at dissolution; and

5 (2) By any transaction which, although not authorized, would bind the  
 6 limited liability company if dissolution had not taken place, if the other party to  
 7 the transaction:

8 (a) Had extended credit to the limited liability company within two years  
 9 prior to the event causing the dissolution and had no knowledge or notice of the  
 10 dissolution; or

11 (b) Though such party had not so extended credit, had nevertheless  
 12 known of the limited liability company prior to dissolution, had no knowledge  
 13 or notice of dissolution, the fact of dissolution had not been disclosed by a notice  
 14 of winding up filed pursuant to section 347.137 or a notice of merger or  
 15 consolidation filed pursuant to section 347.129.

16 2. The limited liability company is not bound by any unauthorized act of  
 17 an authorized person after dissolution:

18 (1) Where the limited liability company is dissolved because it is  
 19 unlawful to carry on the business, unless the act is appropriate for winding up  
 20 limited liability company affairs;

21 (2) Where such authorized person is the subject of a bankruptcy and there  
 22 is at least one remaining authorized person who is not the subject of a  
 23 bankruptcy; or

24 (3) Where the person so dealing with such authorized person has  
 25 knowledge that such act is not authorized.]  
 26

2 [347.069. 1. A member, manager, employee, or agent of a limited  
 liability company is not a proper party to proceedings by or against a limited  
 3 liability company, except where the object is to enforce such person's right  
 4 against or duty or liability to the limited liability company. Notwithstanding any  
 5 provision of sections 347.010 to 347.187 to the contrary, any person, including  
 6 a member, manager, employee or agent of a limited liability company, against

7 whom a claim exists may be joined as a proper party to proceedings by or against  
8 a limited liability company to the extent the claim arises out of the transaction or  
9 occurrence that is the subject matter of the claim against the limited liability  
10 company.

11 2. Proceedings against a limited liability company shall be commenced  
12 either in the county where the cause of action accrued or in any county where  
13 such limited liability company shall have or usually keep an office or agent for  
14 the transaction of its usual and customary business, or in the county in which the  
15 office of the registered agent of the limited liability company is maintained.]  
16

2 [347.071. An admission or representation made by any authorized person  
3 concerning limited liability company business or affairs within the scope of his  
4 authority as conferred by sections 347.010 to 347.187 is evidence against the  
5 limited liability company.]

2 [347.073. Notice to any authorized person of any matter relating to the  
3 business or affairs of the limited liability company, and the knowledge of the  
4 authorized person acting in the particular matter, acquired while an authorized  
5 person or then present to his mind, and the knowledge of any other authorized  
6 person who reasonably could and should have communicated it to the acting  
7 authorized person, operate as notice to or knowledge of the limited liability  
8 company, except in the case of a fraud on the limited liability company  
9 committed by or with the consent of that authorized person.]

2 [347.075. Where, by any wrongful act or omission or other actionable  
3 conduct of any authorized person, acting in the ordinary course of the business  
4 of the limited liability company, or otherwise with authority, loss or injury is  
5 caused to any person, not being a member in the limited liability company, the  
6 limited liability company is liable for all damages permitted by law as a  
7 consequence of such actionable conduct.]

2 [347.077. 1. If an authorized person, acting within the scope of his  
3 apparent authority, receives money or property of a person who is not a member  
4 or manager of the limited liability company and misapplies it, the limited liability  
5 company is liable for all damages permitted by law as a consequence of such  
6 actionable conduct.

7 2. If the limited liability company, in the course of its business, receives  
8 money or property of a third person and the money or property so received is  
9 misapplied by any member or manager while it is in the custody of the limited  
10 liability company, the limited liability company is liable for all damages  
11 permitted by law as a consequence of such actionable conduct.]

2 [347.079. 1. The articles of organization shall provide how management  
3 of the limited liability company will be vested and who shall have the right and  
4 authority to manage the affairs of the limited liability company and make all  
5 decisions with respect thereto, subject to any provisions in the operating  
6 agreement or sections 347.010 to 347.187 restricting or enlarging the  
7 management rights or responsibilities of one or more persons or classes of  
8 persons.

9 2. If the articles of organization provide that management of the limited  
10 liability company shall be vested in one or more managers, then management of  
11 the limited liability company shall be vested in such manager or managers who  
12 shall have the right and authority to manage the affairs of the limited liability  
13 company and make decisions with respect thereto to the extent provided in the  
14 operating agreement, including any provisions therein restricting or enlarging the  
15 management rights or responsibilities of one or more persons or classes of  
16 persons. The managers of a limited liability company shall be designated in the  
17 operating agreement, or designated, appointed or elected by the members in the  
18 manner prescribed by the operating agreement, and may be removed or replaced  
19 in the manner provided in the operating agreement. Managers need not be  
20 members of the limited liability company or individuals unless otherwise  
21 required by the operating agreement. If the operating agreement does not provide  
22 a manner for designating, appointing, electing, removing or replacing managers,  
23 then, the managers of a limited liability company shall be designated, appointed,  
24 elected, removed or replaced by the vote of a majority by number of the members  
25 and unless earlier removed or resigned, managers shall hold office until their  
26 successors have been designated, appointed or elected and qualified.

27 3. Except as provided in the operating agreement, the affirmative vote,  
28 approval or consent of all members shall be required to:

- 29 (1) Amend a written operating agreement;
- 30 (2) Issue an interest in the limited liability company to any person and  
31 admit such person as a member;
- 32 (3) Approve a merger or consolidation with another person;
- 33 (4) Change the status of the limited liability company from one in which  
34 management is vested in the members to one in which management is vested in  
35 one or more managers, or vice versa;
- 36 (5) Authorize any transaction, agreement or action on behalf of the  
37 limited liability company that is unrelated to its purpose as set forth in the articles  
38 of organization, that otherwise contravenes the operating agreement or that is not  
39 within the usual course of the business of the limited liability company; or
- 40 (6) Determine, modify, compromise or release the amount and character  
41 of the contributions which a member shall make, or shall promise to make, as the  
42 consideration for the issuance of an interest in the limited liability company.

43 4. Except as provided in the operating agreement, and subject to  
subsection 3 of this section, the affirmative vote, approval or consent of more

44 than one-half by number of the authorized persons shall be required to decide any  
45 matter connected with the business or affairs of the limited liability company.]  
46

[347.081. 1. The member or members of a limited liability company  
2 shall adopt an operating agreement containing such provisions as such member  
3 or members may deem appropriate, subject only to the provisions of sections  
4 347.010 to 347.187 and other law. The operating agreement may contain any  
5 provision, not inconsistent with law, relating to the conduct of the business and  
6 affairs of the limited liability company, its rights and powers, and the rights,  
7 powers and duties of its members, managers, agents or employees, including:

8 (1) Whether the management of the limited liability company shall be  
9 vested in one or more members, managers or other persons, and, if so, the powers  
10 and authority to be exercised by such persons;

11 (2) Providing for classes or groups of members having various rights,  
12 powers and duties, and providing for the future creation of additional classes or  
13 groups of members having relative rights, powers and duties superior or equal to  
14 existing classes and groups of members;

15 (3) The exercise or division of management or voting rights among  
16 different classes or groups of members, managers or other persons on a per capita  
17 or other basis;

18 (4) With respect to any matter requiring a vote, approval or consent of  
19 members or managers, provisions relating to notice of the time, place or purpose  
20 of any meeting at which any matter is to be voted on, waiver of notice, action by  
21 consent without a meeting, quorum requirements, authorizations by proxy, or any  
22 other matter with respect to the exercise of any voting or approval rights;

23 (5) Authorizing all or certain persons to execute articles, notices or  
24 documents permitted or required by sections 347.010 to 347.187;

25 (6) Restrictions on the transfer of members' interests in the limited  
26 liability company, and options or rights to acquire or sell members' interests in  
27 the limited liability company;

28 (7) The manner in which income, gain, deduction, loss, credit and items  
29 thereof are to be allocated to the members; and

30 (8) Provisions relating to any tax elections to be made by the limited  
31 liability company and the authorization of persons to make such elections.

32 2. It is the policy of sections 347.010 to 347.187 to give the maximum  
33 effect to the principle of freedom of contract and to the enforceability of  
34 operating agreements.

35 3. The operating agreement shall be enforceable at law or in equity by  
36 any member to the extent provided in applicable law.

37 4. This section shall not affect any otherwise valid agreement among  
38 members of a limited liability company.]  
39

2 [347.083. Unless otherwise provided in the operating agreement, any  
3 action or vote which must be taken at a meeting of the members or managers, as  
4 the case may be, may be taken without a meeting if a consent in writing, setting  
5 forth the action so taken, is signed by all of the persons entitled to act or vote  
6 with respect to such matter. Such consent shall have the same effect as an act or  
7 vote of such persons.]

2 [347.085. 1. When, under the provisions of sections 347.010 to 347.187  
3 or under the provisions of the operating agreement of a limited liability company,  
4 notice is required to be given to any person, a waiver in writing signed by that  
5 person, whether before or after the time stated in it, is equivalent to the giving of  
6 notice.

6 2. A person's attendance at a meeting:

7 (1) Waives objection to lack of notice or defective notice of the meeting,  
8 unless such person at the beginning of the meeting objects to holding the meeting  
9 or transacting business at the meeting; and

10 (2) Waives objection to consideration of a particular matter at the  
11 meeting that is not within the purpose or purposes described in the meeting  
12 notice, unless such person objects to considering the matter when it is presented.]  
13

2 [347.088. 1. Except as otherwise provided in the operating agreement  
3 an authorized person shall discharge his or her duty under sections 347.010 to  
4 347.187 and the operating agreement in good faith, with the care a corporate  
5 officer of like position would exercise under similar circumstances, in the manner  
6 a reasonable person would believe to be in the best interest of the limited liability  
7 company, and shall not be liable for any such action so taken or any failure to  
8 take such action, if he or she performs such duties in compliance with this  
9 subsection.

9 2. To the extent that, at law or equity, a member or manager or other  
10 person has duties, including fiduciary duties, and liabilities relating to those  
11 duties to the limited liability company or to another member, manager, or other  
12 person that is party to or otherwise bound by an operating agreement:

13 (1) Any such member, manager, or other person acting under the  
14 operating agreement shall not be liable to the limited liability company or to any  
15 such other member, manager, or other person for the member's, manager's, or  
16 other person's good faith reliance on the provisions of the operating agreement;  
17 and

18 (2) The member's, manager's or other person's duties and liabilities may  
19 be expanded or restricted by provision in the operating agreement.

20 3. Except as otherwise provided in the operating agreement, every  
21 member or manager, if any, shall account to the limited liability company and  
22 hold as trustee for it any profit or benefit derived by such person without the  
23 informed consent of more than one-half by number of disinterested managers or

24 members from any transaction connected with the conduct of the business and  
25 affairs or the winding up of the limited liability company, or from any personal  
26 use by such person of the property of the limited liability company, including  
27 confidential or proprietary information of the limited liability company or other  
28 matters entrusted to him as a result of his status as manager or member.

29 4. Except as provided in subsection 2 of this section or the operating  
30 agreement, one who is a member of a limited liability company in which  
31 management is vested in one or more managers and who is not a manager shall  
32 have no duties to the limited liability company or to the other members solely by  
33 reason of acting in his capacity as a member.]  
34

2 [347.090. 1. Unless he has knowledge concerning the matter in question  
3 that makes such reliance unwarranted, in discharging his duties under the  
4 operating agreement, an authorized person is entitled to rely on information,  
5 opinions, reports or statements, including financial statements and other financial  
6 data, if prepared or presented by:

7 (1) One or more employees of the limited liability company whom such  
8 authorized person reasonably believes to be reliable and competent in the matters  
9 presented;

10 (2) Legal counsel, accountants, or other persons as to matters such  
11 authorized person reasonably believes are within such person's professional or  
12 expert competence; or

13 (3) A committee of managers or members of which he is not a  
14 constituent, if such authorized person reasonably believes that the committee  
15 merits confidence.

16 2. An authorized person is not liable for any action taken with respect to  
17 his duties under the operating agreement, or any failure to take such action, if he  
18 performs such duties in compliance with this section.]

2 [347.091. 1. The limited liability company shall keep at its principal  
3 place of business, the following:

4 (1) A current and a past list, setting forth the full name and last known  
5 mailing address of each member and manager, if any, set forth in alphabetical  
6 order;

7 (2) A copy of the articles of organization and all articles of amendment  
8 thereto, together with executed copies of any powers of attorney pursuant to  
9 which any articles have been executed;

10 (3) Copies of the limited liability company's federal, state and local  
11 income tax returns and reports, if any, for the three most recent years or, if such  
12 returns and reports were not prepared for any reason, copies of the information  
13 and records provided to, or which should have been provided to, the members to  
enable them to prepare their federal, state and local tax returns for such period;

14 (4) Copies of any effective written operating agreements, and all  
15 amendments thereto, and copies of any written operating agreements no longer  
16 in effect;

17 (5) Copies of any financial statements of the limited liability company for  
18 the three most recent years;

19 (6) Unless contained in a written operating agreement, a writing setting  
20 out:

21 (a) The amount of cash and a statement of the agreed value of other  
22 property or services contributed by each member and the times at which or events  
23 upon the happening of which any additional contributions agreed to be made by  
24 each member are to be made;

25 (b) Information that would enable a member to determine the relative  
26 voting rights of the members on a particular matter if such voting rights are other  
27 than on a per capita basis; and

28 (c) Any events upon the happening of which the limited liability  
29 company is to be dissolved and its affairs wound up;

30 (7) Copies of any written promise by a member to make a contribution  
31 to the limited liability company;

32 (8) Copies of any written consents by the members to the admission of  
33 any person as a member of the limited liability company;

34 (9) Copies of any written consents by the members to continue the  
35 limited liability company upon an event of withdrawal of any member;

36 (10) Copies of any other instruments or documents reflecting matters  
37 required to be in writing pursuant to the operating agreement.

38 2. Each member may:

39 (1) Inspect and copy during ordinary business hours, at the reasonable  
40 request and at the expense of such member, any of the limited liability company  
41 records required to be kept by subsection 1 of this section;

42 (2) From time to time upon reasonable demand, obtain true and full  
43 information regarding the state of the business and financial condition of the  
44 limited liability company;

45 (3) Have an accounting of the affairs of the limited liability company  
46 whenever circumstances render it just and reasonable.

47 3. The secretary may request in writing that the limited liability company  
48 forward to him a complete copy of the current, past, or both, limited liability  
49 company lists kept pursuant to subdivision (1) of subsection 1 of this section  
50 without cost to the secretary. Any authorized person who has possession or  
51 control of such list and who fails to deliver the list to the secretary within twenty  
52 days after receiving written demand therefor may be individually subject to a civil  
53 penalty in the amount of fifty dollars per day for each day the list has not been  
54 delivered to the secretary, but not to exceed ten thousand dollars, such penalty to  
55 be assessed and collected by the secretary, and prosecuted criminally with any  
56 resulting conviction being a class A misdemeanor.

57 4. Failure of the limited liability company to keep any of the records or  
 58 information required pursuant to this section shall not be grounds for imposing  
 59 liability on any person for the debts and obligations of the limited liability  
 60 company.]  
 61

2 [347.093. Except as provided in the operating agreement, a member or  
 3 manager may lend money to and transact business with the limited liability  
 4 company and, subject to other applicable law, has the same rights and obligations  
 5 with respect thereto as a person who is not a member or manager.]

2 [347.095. Nothing contained in sections 347.079 to 347.090 shall have  
 3 any application to claims among members, managers, or the limited liability  
 4 company on the one hand, and persons who assert claims against a member,  
 5 manager or a limited liability company which do not arise from the claimant's  
 6 status as a member or manager of that limited liability company.]

2 [347.097. An interest in a limited liability company may be issued for the  
 3 consideration of a contribution or an enforceable promise to make a contribution  
 4 in the future, or both.]

2 [347.099. 1. No promise by a member to make a contribution to the  
 3 limited liability company is enforceable unless set out in a writing signed by the  
 4 member.

5 2. Except as provided in the operating agreement, a member or, in the  
 6 case of a deceased member, that member's personal representative, is obligated  
 7 to the limited liability company to perform any promise to make a contribution,  
 8 including a promise to render services, even if the member is unable to perform  
 9 because of death, disability or any other reason. If a member does not make the  
 10 required contribution, the member is obligated, at the option of the limited  
 11 liability company, to contribute cash equal to the value, as stated in the operating  
 12 agreement or the records required to be kept pursuant to section 347.091, of that  
 13 portion of the promised contribution that has not been made. The foregoing  
 14 option shall be in addition to, and not in lieu of, any other rights, including the  
 15 right to specific performance, that the limited liability company or other members  
 16 may have against such member under the operating agreement or applicable law.

17 3. A member's obligation to make a contribution shall not be enforceable  
 18 by a third-party creditor of the limited liability company or any other member  
 19 unless the member so obligated to make such contribution has specifically agreed  
 20 or consented to such enforcement or the limited liability company has assigned  
 21 such member's obligation to the creditor or creditors seeking to enforce the  
 22 obligation.

23 4. Upon the failure of a member to make a promised contribution when  
 due, the limited liability company may enforce such member's obligation by

24 appropriate legal action for damages for breach of contract or for specific  
25 performance, and the limited liability company and other members may exercise  
26 and enforce such additional rights and remedies as may be provided under the  
27 operating agreement in the event of any such failure, subject to the applicable law  
28 regarding the enforcement of contracts.]  
29

[347.101. 1. Except as provided in section 347.109, a limited liability  
2 company shall make distributions of cash or other property to its members before  
3 the dissolution and winding up of the limited liability company at the times or  
4 upon the happening of the events specified in the operating agreement or, if the  
5 operating agreement does not so specify, then at such times as may be approved  
6 by a majority of the authorized persons.

7 2. Distributions of cash or other property to members by a limited  
8 liability company before the dissolution and winding up of a limited liability  
9 company shall be shared among the members, and among classes of members,  
10 in the manner and in the relative priorities provided in the operating agreement.  
11 If the operating agreement does not so provide, distributions shall be shared  
12 among the members in the following manner:

13 (1) First, distributions shall be shared among the members in proportion  
14 to the amount of cash contributions and the value of other contributions, as stated  
15 in the operating agreement or the records required to be kept pursuant to section  
16 347.091, made by them, respectively, until each member has been returned his  
17 contributions; and

18 (2) Second, distributions shall be shared by the members equally.]  
19

[347.103. 1. If a limited liability company dissolves and winds up its  
2 business and affairs as a result of an event of withdrawal of a member, then,  
3 except as otherwise provided in the operating agreement, such member and his  
4 personal representatives, successors and assigns shall have the rights of an  
5 assignee of the withdrawn member's interest in the limited liability company to  
6 receive distributions with respect to such interest during and upon completion of  
7 winding up, but the limited liability company may, in addition to any remedies  
8 otherwise available under applicable law, reduce the amounts distributable with  
9 respect to such interest by any damages recoverable against the withdrawn  
10 member if such event of withdrawal violated the operating agreement.

11 2. If the business of a limited liability company is continued following  
12 an event of withdrawal of a member, then, except as otherwise provided in the  
13 operating agreement, such member shall have the rights of an assignee of the  
14 withdrawn member's interest in the limited liability company. The withdrawn  
15 member shall be entitled to receive any distributions to which he is entitled upon  
16 such event of withdrawal under the provisions of the operating agreement. If the  
17 operating agreement does not provide for the amount of or a method for  
18 determining the distribution, if any, to which a withdrawn member is entitled, the

19 withdrawn member shall be entitled, except in the case of an event of withdrawal  
20 pursuant to subsection 2 of section 347.123, to receive from the limited liability  
21 company, upon demand for such distribution made by or on behalf of such  
22 withdrawn member within one hundred eighty days after such event of  
23 withdrawal and subject to the limitation set forth in section 347.109, the fair  
24 value of such withdrawn member's interest in the limited liability company as of  
25 the date of withdrawal based upon such withdrawn member's right to share in  
26 distributions from the limited liability company as an ongoing operation. If such  
27 demand is not made on a timely basis, the limited liability company may, except  
28 as provided in the operating agreement, purchase the withdrawn member's  
29 interest in the limited liability company, for the fair value of such withdrawn  
30 member's interest in the limited liability company determined as of the date of  
31 withdrawal based upon such withdrawn member's right to share in distributions  
32 from the limited liability company as an ongoing operation, at any time, upon  
33 thirty days' written notice from the limited liability company to the withdrawn  
34 member, such withdrawn member's personal representatives, successors or  
35 assigns. In any event, if such event of withdrawal violated the operating  
36 agreement:

37 (1) The goodwill of the limited liability company's business shall be  
38 excluded in determining the fair value of the withdrawn member's interest;

39 (2) In addition to any remedies otherwise available under applicable law,  
40 the amount payable to the withdrawn member shall be reduced by any damages  
41 suffered by the limited liability company or its members as a result of the  
42 withdrawn member's breach of the operating agreement; and

43 (3) The limited liability company may defer payment of the amount the  
44 withdrawn member is entitled to receive for such period, and shall secure the  
45 same by such collateral, as may be approved by a court, in order to prevent  
46 unreasonable hardship to the limited liability company.

47 3. The provisions of this section apply to all limited liability companies  
48 in existence on the effective date of this section, unless such limited liability  
49 company elects otherwise by the written agreement of all its members.]  
50

2 [347.105. Except as otherwise provided in the operating agreement, a  
3 member, regardless of the nature of his contribution, has no right to demand and  
4 receive any distribution from a limited liability company in any form other than  
5 cash. Except as provided in the operating agreement, a member may not be  
6 compelled to accept a distribution of any property other than cash from the  
7 limited liability company unless the members receive undivided ownership  
8 interests therein that are in the same proportions as they would have shared in a  
9 cash distribution equal to the value of such property at the time of distribution.]

2 [347.107. At the time a member becomes entitled to receive a  
distribution in accordance with sections 347.010 to 347.187 and the operating

3 agreement, that member has the status of, and is entitled to, all remedies available  
4 to a creditor of the limited liability company with respect to the distribution.]  
5

[347.109. 1. A limited liability company shall not make any distribution  
2 to one or more members with respect to their interests in the limited liability  
3 company, and no member shall be entitled to receive any such distribution, to the  
4 extent that, after giving effect to the distribution:

5 (1) The limited liability company would not be able to pay its debts as  
6 they became due in the usual course of business; or

7 (2) The limited liability company's total assets would be less than the  
8 sum of its total liabilities to which such assets are subject plus, unless the  
9 operating agreement provides otherwise, the amount that would be needed, if the  
10 limited liability company were to be dissolved at the time of the distribution, to  
11 satisfy the preferential rights upon dissolution of members whose rights to  
12 receive distributions are superior under the operating agreement to the rights of  
13 the members receiving the distribution, except that, for purposes of making such  
14 determination, liabilities to members or former members in their status as such  
15 shall be excluded.

16 2. The limited liability company may base a determination that its  
17 distribution is not prohibited under subsection 1 of this section on:

18 (1) Financial statements prepared on the basis of generally accepted  
19 accounting principles and practices that are reasonable under the circumstances;  
20 or

21 (2) A fair valuation or other method that is reasonable under the  
22 circumstances.

23 3. The effective distribution under subsection 1 of this section is  
24 measured as of:

25 (1) The date the distribution is authorized, if the distribution in fact  
26 occurs within one hundred twenty days after the date of authorization; or

27 (2) The date the payment is made, if it occurs more than one hundred  
28 twenty days after the date of authorization.

29 4. If a member shall receive any distribution with respect to his interest  
30 in a limited liability company in violation of this section or the operating  
31 agreement, such member and the person or persons who are vested with authority  
32 under the operating agreement to make distributions to the members and who  
33 knowingly authorized or permitted such distribution to the member shall be  
34 liable, for a period of three years following the date of the distribution, to the  
35 limited liability company for the value of the wrongful distribution, but only to  
36 the extent necessary to discharge the limited liability company's liabilities  
37 incurred prior to the date of such distribution. If more than one such person who  
38 authorized or permitted such wrongful distribution is held liable therefor pursuant  
39 to this subsection, each such person shall be entitled to contribution from the  
40 other persons who are held so liable therefor pursuant to this subsection.]

2 [347.111. The profits or losses of a limited liability company shall be  
3 allocated among the members, and among classes of members, in the manner  
4 provided in the operating agreement. If the operating agreement does not so  
5 provide, profits shall be allocated among the members in the amount and manner  
6 of any losses previously allocated to the members to the extent not previously  
7 offset by allocations of profit and then according to the manner in which they  
8 share in distributions which exceed the repayment of their contributions, and  
9 losses shall be allocated among the members according to the respective  
10 contributions which they have made and promised to make in the future.]

2 [347.113. 1. A person is a member at the time the limited liability  
3 company is formed if such person is identified as a member in and signs, in  
4 person or by an attorney in fact, or otherwise becomes a party to the operating  
5 agreement.

6 2. A person may be admitted as an additional member by signing, in  
7 person or by an attorney in fact, or otherwise becoming a party to the operating  
8 agreement and by complying with the applicable terms and conditions of the  
9 operating agreement or, if the operating agreement does not so provide, upon the  
10 written consent of all members; or in the case of an assignee of the interest of a  
11 member who has the power, as provided in the operating agreement, to grant the  
12 assignee the right to become a member, upon the exercise of that power in  
13 compliance with any conditions limiting the exercise thereof.]

2 [347.115. 1. The interest of a member in a limited liability company is  
3 personal property and, except as provided in the operating agreement, may be  
4 assigned in whole or in part. An assignment of an interest does not entitle the  
5 assignee to participate in the management of the business and affairs of the  
6 limited liability company or to become or to exercise the rights of a member,  
7 except as provided in section 347.113. An assignee that has not become a  
8 member shall only be entitled to receive, to the extent assigned, the share of  
9 distributions and profits, including distributions representing the return of  
10 contributions, to which the assignor would otherwise be entitled with respect to  
11 the assigned interest. Unless otherwise provided in the operating agreement, a  
12 member shall not cease to be a member as a result of the pledge, encumbrancing  
13 or the granting of a security interest in the interest of such member in the limited  
14 liability company.

15 2. An assignee who has become a member has, to the extent assigned, the  
16 rights and powers, and is subject to the restrictions and liabilities, of a member  
17 under the articles of organization, the operating agreement and sections 347.010  
18 to 347.187. An assignee who becomes a member is liable for any obligations of  
19 his assignor to make contributions.

20 3. Unless otherwise provided in the operating agreement, if an assignee  
of an interest in a limited liability company becomes a member, the assignor is

21 not released from his liability to the limited liability company under section  
 22 347.099 or section 347.109 without the written consent of all members.]

23

2 [347.117. 1. Unless otherwise provided in the operating agreement, if a  
 3 member who is an individual dies or a court of competent jurisdiction judges the  
 4 member to be incompetent to manage his or her person or property, the member's  
 5 executor, administrator, guardian, conservator, or other legal representative shall  
 6 have any power the member had to give his assignee the right to become a  
 7 member and all of the rights of an assignee of the member's interest.

8 2. If a member is a corporation, partnership, limited liability company,  
 9 trust or other entity and is dissolved or terminated, its legal representative or  
 10 successor shall have any power the member had to give his assignee the right to  
 11 become a member and all of the rights of an assignee of the member's interest.]

11

2 [347.119. On application to a court of competent jurisdiction by any  
 3 judgment creditor of a member, the court may charge the member's interest in the  
 4 limited liability company with payment of the unsatisfied amount of the judgment  
 5 with interest. To the extent so charged, the judgment creditor has only the rights  
 6 of an assignee of the member's interest. Sections 347.010 to 347.187 do not  
 7 deprive any member of the benefit of any exemption laws applicable to his  
 8 interest in the limited liability company.]

8

2 [347.121. 1. A member may withdraw from a limited liability company  
 3 at the time or upon the events specified in writing in the operating agreement, or  
 4 at any time upon giving ninety days' prior written notice of withdrawal to the  
 5 other members but, if the withdrawal violates a written provision in the operating  
 6 agreement, the limited liability company may recover from the withdrawing  
 7 member damages for breach of the operating agreement and offset the damages  
 8 against the amount otherwise distributable to the withdrawing member in  
 9 accordance with section 347.103.

10 2. Except as otherwise provided in the operating agreement, upon the  
 11 occurrence of an event of withdrawal of a member, the withdrawn member shall  
 12 have no further duty to the limited liability company except for the duty to  
 13 account to the limited liability company for any profit or benefit derived by such  
 14 person without the informed consent of more than one-half by number of  
 15 disinterested managers or members from any transaction connected with the  
 16 conduct of the business and affairs of the limited liability company prior to the  
 17 event of withdrawal, or from any personal use by such person of the property of  
 18 the limited liability company, including confidential or proprietary information  
 19 of the limited liability company or other matters entrusted to such person as a  
 20 result of such member's status as a manager or member.

21 3. Except as otherwise provided in the operating agreement, upon the  
 withdrawal of a member, the withdrawn member shall have no further right to

22 participate in the management and affairs of the limited liability company and  
23 shall have only the rights of an assignee of the withdrawn member's interest in  
24 the limited liability company.]  
25

[347.123. A person ceases to be a member of a limited liability company  
upon the happening of any of the following events of withdrawal:

2 (1) The member withdraws from the limited liability company as  
3 provided in section 347.121;  
4

5 (2) Unless otherwise provided in the operating agreement or by the  
6 specific written consent of all members at the time, the member assigns all of his  
7 interest in the limited liability company;

8 (3) The member is expelled as a member in accordance with the  
9 operating agreement;

10 (4) Unless otherwise provided in the operating agreement or by the  
11 specific written consent of all members at the time, the member:

12 (a) Makes an assignment for the benefit of creditors;

13 (b) Is the subject of a bankruptcy;

14 (c) Files a petition or answer seeking for himself any reorganization,  
15 arrangement, composition, readjustment, liquidation, or similar relief under any  
16 statute, law or regulation or files an answer or other pleading admitting or failing  
17 to contest the material allegations of a petition filed against him in a proceeding  
18 of such nature; or

19 (d) Seeks, consents to or acquiesces in the appointment of a trustee,  
20 receiver or liquidator of the member or of all or any substantial part of his  
21 property;

22 (5) Unless otherwise provided in the operating agreement or by the  
23 specific written consent of all members at the time, one hundred twenty days after  
24 the commencement of any proceeding against the member seeking  
25 reorganization, arrangement, composition, readjustment, liquidation, dissolution  
26 or similar relief under any statute, law or regulation, the proceeding has not been  
27 dismissed, or if within ninety days after the appointment without his consent or  
28 acquiescence of a trustee, receiver or liquidator of the member or of all or any  
29 substantial part of his property, the appointment is not vacated or stayed, or  
30 within ninety days after the expiration of any such stay, the appointment is not  
31 vacated;

32 (6) In the case of a member who is a natural person:

33 (a) His death; or

34 (b) The entry by a court of competent jurisdiction adjudicating him  
35 incompetent to manage his person or his estate;

36 (7) In the case of a member that is a trust, the termination of the trust or  
37 a distribution of its entire interest in the limited liability company but not merely  
38 the substitution of a new trustee;

39 (8) In the case of a member that is a general or limited partnership, the  
 40 dissolution and commencement of winding up of the partnership or a distribution  
 41 of its entire interest in the limited liability company;

42 (9) In the case of a member that is a corporation, the filing of articles of  
 43 dissolution, or their equivalent, for the corporation or revocation of its charter or  
 44 a distribution of its entire interest in the limited liability company;

45 (10) In the case of a member that is an estate, the distribution by the  
 46 fiduciary of the estate's entire interest in the limited liability company; or

47 (11) In the case of a member that is a limited liability company, the filing  
 48 of articles of dissolution or termination, or their equivalent, for the limited  
 49 liability company or a distribution of its entire interest in the limited liability  
 50 company.]

51

2 [347.125. 1. A general or limited partnership formed under the laws of  
 3 this state may convert to a limited liability company by filing articles of  
 4 organization that meet the requirements of section 347.039 and include the  
 5 following:

6 (1) The name of the former general partnership or limited partnership;

7 (2) In the case of a limited partnership, the date and place of filing of the  
 8 initial certificate of limited partnership of the former limited partnership and any  
 9 application for registration as a limited liability limited partnership; and

10 (3) In the case of a general partnership, the date of filing of any fictitious  
 11 name registration of the former general partnership or any application for  
 12 registration as a limited liability partnership.

13 2. Nothing in this section shall be construed to require, or deemed to  
 14 constitute, a dissolution of the general partnership or limited partnership prior to  
 15 its conversion to a limited liability company as permitted in this section.

16 3. When a general partnership or limited partnership is converted to a  
 17 limited liability company pursuant to this section, the title to any real or personal  
 18 property or any interest therein and all rights, privileges, powers, debts, causes  
 19 of action vested in the former partnership shall be deemed to be transferred to and  
 20 vested in such limited liability company without further act or deed.  
 21 Confirmatory deeds, assignments or similar instruments to evidence the transfer  
 22 may be executed and delivered at any time in the name of the partnership to the  
 23 limited liability company.

24 4. When a general partnership or limited partnership is converted to a  
 25 limited liability company pursuant to this section, all duties, debts, liens,  
 26 liabilities and rights of creditors as against the former partnership and its partners  
 27 shall continue without impairment and shall attach to the limited liability  
 28 company. Any existing claim, action or proceeding pending by or against the  
 29 partnership or its partners may be prosecuted to judgment as if the conversion had  
 30 not taken place, or against the limited liability company to the same extent as if  
 such duties, debts, liens and liabilities had been incurred or contracted by it. A

31 judgment against the partnership constitutes a lien against the limited liability  
32 company and may be enforced against the limited liability company.

33 5. In the case of a conversion of a general or limited partnership to a  
34 limited liability company pursuant to this section, the fictitious name registration,  
35 certificate of limited partnership of the general or limited partnership and any  
36 application for registration as a limited liability partnership or limited liability  
37 limited partnership shall be deemed canceled by the filing of the articles of  
38 organization by the secretary of state pursuant to this section.]  
39

2 [347.127. 1. A domestic limited liability company may merge or  
3 consolidate with or into one or more limited liability companies formed under the  
4 laws of this state or any other jurisdiction, and such domestic limited liability  
5 company or foreign limited liability company by agreement between the parties  
6 to the merger or consolidation, shall provide for the surviving entity, as provided  
7 in sections 347.127 to 347.135.

8 2. A domestic limited liability company may merge or consolidate with  
9 one or more general partnerships or domestic or foreign limited partnerships,  
10 limited liability companies, trusts, business trusts, corporations, real estate  
11 investment trusts and other associations or business entities at least one of which  
12 is not a limited liability, as provided in sections 347.700 to 347.735.]

2 [347.128. Each limited liability company party to a merger or  
3 consolidation as described in subsection 1 of section 347.121 shall enter into a  
4 written agreement of merger or consolidation. The agreement of merger or  
5 consolidation shall set forth:

6 (1) The name and state or country of organization of each of the limited  
7 liability companies party to the merger or consolidation and the name of the  
8 surviving limited liability company into which each other limited liability  
9 company proposes to merge or the new limited liability company into which each  
10 of the limited liability companies propose to consolidate;

11 (2) The terms and conditions of the merger or consolidation;

12 (3) The manner and basis of converting the interests in each limited  
13 liability company party to the merger or consolidation into interests of the  
14 surviving or new limited liability company or of any other person, or, in whole  
15 or in part, into cash or other property;

16 (4) In the case of a merger, such amendments to the organizational  
17 documents of the surviving limited liability company, as are desired to be  
18 effected by the merger, or a statement that no such amendments are desired;

19 (5) In the case of a consolidation, all statements required to be set forth  
20 in the articles of organization of the new limited liability company; and

21 (6) Such other provisions relating to the proposed merger or  
22 consolidation as are deemed necessary or desirable by the parties to the merger  
or consolidation.]

2 [347.129. 1. The surviving limited liability company in the merger or the  
3 new limited liability company in the consolidation shall file a notice of the  
4 merger or consolidation with the secretary which shall set forth:

5 (1) The name of each party to the merger or consolidation;

6 (2) The effective date of the merger or consolidation which may not  
7 exceed ninety days after the filing of the notice of merger or consolidation;

8 (3) The name of the surviving limited liability company in the merger or  
9 the new limited liability company in the consolidation and the state of its  
10 formation;

11 (4) A statement that the merger or consolidation was authorized and  
12 approved by the members of each party to the merger or consolidation in  
13 accordance with the laws of the jurisdiction where it was organized;

14 (5) If applicable, the address of the registered office and the name of the  
15 registered agent at such office for the surviving or new limited liability company;

16 (6) In the case of a merger in which a domestic limited liability company  
17 is the surviving limited liability company, such amendments to the articles of  
18 organization of the surviving limited liability company as are desired to be  
19 effected by the merger, or, if no such amendments or changes are desired, a  
20 statement that the articles of organization of the surviving limited liability  
21 company shall not be amended as a result of the merger;

22 (7) In the case of a consolidation in which a domestic limited liability  
23 company is the continuing limited liability company, the articles of organization  
24 of the new domestic limited liability company shall be set forth in an attachment  
25 to the notice of consolidation;

26 (8) A statement that the executed agreement of merger or consolidation  
27 is on file at the principal place of business of the surviving or new limited  
28 liability company, stating the address of the principal place of business; and

29 (9) A statement that a copy of the agreement of merger or consolidation  
30 will be furnished by the surviving or new entity, on request and without cost, to  
31 any member of any entity that is a party to the merger or consolidation.

32 2. The notice of the merger or consolidation shall be executed by at least  
33 one authorized person of the domestic limited liability company and one  
34 authorized agent, or its equivalent, for the other party to the merger or  
35 consolidation who is duly authorized to execute such notice.

36 3. In the event the merger or consolidation is not consummated for any  
37 reason, the domestic limited liability company shall promptly file a notice of the  
38 abandonment of the merger or consolidation with the secretary which shall set  
39 forth:

40 (1) The name of each party to the merger or consolidation;

41 (2) The date the notice of merger or consolidation was filed with the  
42 secretary; and

43 (3) A statement that the merger or consolidation was not consummated  
and has been abandoned.

44 4. If the surviving or new limited liability company is a foreign limited  
45 liability company, the effective date of such merger or consolidation shall be the  
46 date on which the same becomes effective in the state of domicile of such  
47 surviving or new limited liability company; provided a document from the state  
48 of domicile of the surviving limited liability company in the case of merger or the  
49 case of consolidation certifying that the merger or consolidation has become  
50 effective in such state shall be a requirement for the merger or consolidation  
51 becoming effective in this state.]  
52

[347.131. A merger or consolidation with a domestic survivor or new  
2 domestic limited liability company is effective as of the later of:

3 (1) The date the secretary files the notice of merger or consolidation for  
4 record; or

5 (2) The date set forth in the notice of merger or consolidation, not to  
6 exceed ninety days after the notice of merger or consolidation is accepted for  
7 filing.]  
8

[347.133. Consummation of a merger or consolidation shall have the  
2 following effects:

3 (1) The separate existence of each party to the merger or consolidation,  
4 except the surviving entity, ceases;

5 (2) The assets of each party to the merger or consolidation, including any  
6 legacies that it would have been capable of taking, transfer to, vest in and devolve  
7 on the surviving entity without further act or deed. Confirmatory deeds,  
8 assignments or similar instruments to evidence the transfer may be executed and  
9 delivered at any time in the name of the transferring party to the agreement of  
10 merger or consolidation by its last acting members or managers, authorized  
11 officers or other authorized agents or by the appropriate members, managers,  
12 authorized officers or other authorized agents of the surviving entity;

13 (3) The surviving entity is liable for all the debts and obligations of each  
14 nonsurviving party to the merger or consolidation. Any existing claim, action or  
15 proceeding pending by or against any nonsurviving party to the merger or  
16 consolidation may be prosecuted to judgment as if the merger or consolidation  
17 had not taken place, or, on motion of the surviving entity or any party, the  
18 surviving entity may be substituted as a party to the claim, action or proceeding.  
19 A judgment against the nonsurviving party to the merger or consolidation  
20 constitutes a lien on the surviving entity;

21 (4) A merger or consolidation does not impair the rights of creditors or  
22 any liens on the property of any foreign or domestic person party to the merger  
23 or consolidation;

24 (5) In the case of a merger, the articles of organization of any surviving  
25 domestic limited liability company shall be amended to the extent provided in the  
26 notice of merger and the articles of organization of each other domestic limited

27 liability company shall be deemed canceled by the filing of the notice of merger  
28 by the secretary of state;

29 (6) In the case of a consolidation, the statements set forth in the  
30 agreement or articles of consolidation and which are required or permitted to be  
31 set forth in the organizational documents of the new entity shall be deemed to be  
32 the original organizational documents of the new entity and the organizational  
33 documents of each other domestic constituent entity shall be deemed canceled by  
34 the filing of the notice of consolidation by the secretary of state; and

35 (7) The interests in each limited liability company party to the merger or  
36 consolidation that are to be converted or exchanged into interests, cash,  
37 obligations or other property pursuant to the terms of the agreement of merger or  
38 consolidation shall be so converted or exchanged. The former holders of such  
39 interests, cash, obligations or other property shall be entitled only to the rights  
40 provided in the agreement of merger or consolidation or the rights otherwise  
41 provided by law.]  
42

2 [347.135. If, following a merger or consolidation involving one or more  
3 domestic limited liability companies, the surviving entity is a person, who is not  
4 organized under the laws of this state, there shall be included in the notice of  
5 merger or consolidation filed pursuant to section 347.129 a statement that the  
6 surviving entity agrees that it may be served with process in the state of Missouri  
7 in any action, suit, or proceeding for the enforcement of any obligation of the  
8 domestic limited liability company or companies that arose before the merger or  
9 consolidation, irrevocably appointing the secretary as its agent to accept service  
10 of process in any such action, suit or proceeding and specifying the address to  
11 which a copy of the process shall be mailed to it by the secretary.]

2 [347.137. 1. A domestic limited liability company shall be dissolved  
3 upon the occurrence of any of the following:

3 (1) Upon the happening of the events specified in the operating  
4 agreement or in the articles of organization;

5 (2) Upon the written consent of all members;

6 (3) Except as otherwise provided in the operating agreement, an event of  
7 withdrawal of a member, if a majority, by number, of the remaining members  
8 agree within ninety days after the occurrence of the event of withdrawal to  
9 dissolve the limited liability company;

10 (4) At any time there are no members; provided, that the limited liability  
11 company is not dissolved and is not required to be wound up if:

12 (a) Unless otherwise provided in the operating agreement, within ninety  
13 days or such other period as is provided for in the operating agreement after the  
14 occurrence of the event that terminated the continued membership of the last  
15 remaining member, the personal representative, statutory or otherwise, of the last  
16 remaining member agrees in writing to continue the limited liability company and

17 to the admission of such personal representative of such member or its nominee  
18 or designee to the limited liability company as a member, effective as of the  
19 occurrence of the event that terminated the continued membership of the last  
20 remaining member; provided, that the operating agreement may provide that the  
21 personal representative, statutory or otherwise, of the last remaining member  
22 shall be obligated to agree in writing to continue the limited liability company  
23 and to the admission of such personal representative of such member or its  
24 nominee or designee to the limited liability company as a member, effective as  
25 of the occurrence of the event that terminated the continued membership of the  
26 last remaining member; or

27 (b) A member is admitted to the limited liability company in the manner  
28 provided for in the operating agreement, effective as of the occurrence of the  
29 event that terminated the continued membership of the last remaining member,  
30 within ninety days or such other period as is provided for in the limited liability  
31 company agreement after the occurrence of the event that terminated the  
32 continued membership of the last remaining member, under a provision of the  
33 operating agreement that specifically provides for the admission of a member to  
34 the limited liability company after there is no longer a remaining member of the  
35 limited liability company;

36 (5) Entry of a decree of dissolution under section 347.143; or

37 (6) When the limited liability company is not the surviving entity in a  
38 merger or consolidation.

39 2. As soon as possible following the occurrence of any of the events  
40 specified in subdivisions (1) to (5) of subsection 1 of this section effecting the  
41 dissolution of the limited liability company, the limited liability company shall  
42 file a notice of winding up with the secretary which discloses the dissolution of  
43 the limited liability company and the commencement of winding up of its  
44 business and affairs.]  
45

[347.139. 1. Upon the dissolution of a limited liability company, the  
2 limited liability company shall cease to carry on its business, except insofar as  
3 may be necessary or appropriate for the winding up of its business, but its  
4 separate existence shall continue until articles of termination have been filed with  
5 the secretary or until a decree terminating the limited liability company has been  
6 entered by a court of competent jurisdiction.

7 2. After its dissolution, the limited liability company shall do all other  
8 acts required to liquidate its business and affairs; proceed to collect its assets;  
9 pay, satisfy, or discharge its liabilities and obligations or make adequate  
10 provisions for the payment or discharge thereof; convey and dispose of such of  
11 its properties which are not to be distributed in kind to its members; and its assets  
12 shall be applied and distributed in the following order:

13 (1) If there are sufficient assets therefor, to creditors, including members  
14 who are creditors, to the extent permitted by law, in satisfaction of liabilities of

15 the limited liability company other than liabilities for distributions to members  
 16 under section 347.101 or 347.103. If there are insufficient assets, such claims  
 17 and obligations shall be paid or provided for according to their priority and,  
 18 among claims and obligations of equal priority, ratably to the extent of assets  
 19 available therefor;

20 (2) Except as provided in the operating agreement, to members and  
 21 former members in satisfaction of liabilities for distributions under section  
 22 347.101 or 347.103; and

23 (3) Except as provided in the operating agreement, to the members in the  
 24 manner provided in section 347.101.

25 3. Upon the filing of the articles of termination as provided in section  
 26 347.045, the existence of the limited liability company shall cease, except for the  
 27 purpose of suits, other proceedings and appropriate action as provided in sections  
 28 347.010 to 347.187. The authorized person or authorized persons at the time of  
 29 termination, or the survivors of them or, if none, the members at the time of  
 30 termination shall thereafter be trustees for the members and creditors of the  
 31 terminated limited liability company and as such shall have authority to distribute  
 32 or convey any of the limited liability company's assets or its property discovered  
 33 after termination, and to take such other action as may be necessary on behalf of  
 34 and in the name of such terminated limited liability company. Except as  
 35 provided in section 347.141, actions by or against the dissolved limited liability  
 36 company brought for the purpose of collecting or settling assets or liabilities or  
 37 claims discovered after termination may be brought or instituted in the name of  
 38 the limited liability company.]

39 [347.141. 1. A dissolved limited liability company may dispose of the  
 2 known claims against it in accordance with subsections 1 and 2 of this section.  
 3 The dissolved limited liability company shall notify its known claimants in  
 4 writing of the dissolution at any time after its effective date.

5 The written notice must do all of the following:  
 6 (1) Describe information that must be included in a claim;  
 7 (2) Provide a mailing address where a claim may be sent;  
 8 (3) State the deadline, which may not be fewer than ninety days from the  
 9 effective date of the written notice, by which the dissolved limited liability  
 10 company must receive the claim; and  
 11 (4) State that the claim will be barred if not received by the deadline.

12 2. Notwithstanding other provisions of law, including laws regarding  
 13 permissibility of third-party claims, to the contrary, a claim against a limited  
 14 liability company dissolved without fraudulent intent is barred if either of the  
 15 following occurs:

16 (1) A claimant who was given written notice under subsection 1 of this  
 17 section does not deliver the claim to the dissolved limited liability company by  
 18 the deadline; or

19 (2) A claimant whose claim was rejected by the dissolved limited liability  
20 company does not commence a proceeding to enforce the claim within one  
21 hundred and twenty days from the effective date of the rejection notice. For  
22 purposes of this subsection, "claim" does not include a contingent liability or a  
23 claim based on an event occurring after the effective date of dissolution.

24 3. A dissolved limited liability company may dispose of the unknown  
25 claims against it by filing a notice of winding up in accordance with subsections  
26 3 and 4 of this section. The notice of winding up shall meet all of the following  
27 requirements:

28 (1) Be published one time in a newspaper of general circulation in the  
29 county where the dissolved limited liability company's principal office, or if not  
30 in this state, its registered office, is or was located;

31 (2) Be published one time in a publication of statewide circulation whose  
32 audience is primarily persons engaged in the practice of law in this state and  
33 which is published not less than four times per year;

34 (3) Be published one time in the Missouri Register;

35 (4) Contain a request that persons with claims against the limited liability  
36 company present them in accordance with the notice of winding up;

37 (5) Describe the information that must be included in a claim and provide  
38 a mailing address where the claim may be sent; and

39 (6) State that a claim against the limited liability company will be barred  
40 unless a proceeding to enforce the claim is commenced within three years after  
41 the publication of the notice.

42 4. Notwithstanding other provisions of law, including laws regarding  
43 permissibility of third-party claims, to the contrary, if a limited liability company  
44 dissolved without fraudulent intent files a notice of winding up in accordance  
45 with subsection 2 of section 347.137 and publishes such notice in accordance  
46 with subsection 3 of this section, the claim of each of the following claimants is  
47 barred unless the claimant commences a proceeding to enforce the claim against  
48 the dissolved limited liability company within three years after the date the notice  
49 of winding up is filed or published, whichever occurs later:

50 (1) A claimant who did not receive written notice under subsection 1 of  
51 this section;

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

54 (3) A claimant whose claim is contingent or based on an event occurring  
55 after the effective date of dissolution.

56 5. A claim may be enforced under this section in either of the following  
57 ways:

58 (1) Against the dissolved limited liability company, to the extent of its  
59 undistributed assets; or

60 (2) If the assets have been distributed in liquidation, against a member  
61 of the dissolved limited liability company to the extent of the member's pro rata

62 share of the claim or the limited liability company assets distributed to the  
 63 member in liquidation, whichever is less, but a member's total liability for all  
 64 claims under this section shall not exceed the total amount of assets distributed  
 65 to the member in liquidation.

66 6. For purposes of this section, "fraudulent intent" shall be established if  
 67 it is shown that the sole or primary purpose of the dissolution was to defraud  
 68 members, creditors or others.

69 7. Notwithstanding any other provision of this chapter to the contrary,  
 70 except as provided in subsection 8 of this section, a claim against a limited  
 71 liability company dissolved pursuant to this chapter for which claim the limited  
 72 liability company has a contract of insurance which will indemnify the limited  
 73 liability company for any adverse result from such claim:

74 (1) Is not subject to the provisions of subsections 1 to 6 of this section  
 75 and may not be barred by compliance with subsections 1 to 6 of this section;

76 (2) May be asserted at any time within the statutory period otherwise  
 77 provided by law for such claims;

78 (3) May be asserted against, and service of process had upon, the  
 79 dissolved limited liability company for whom the court, at the request of the party  
 80 bringing the suit, shall appoint a defendant ad litem.

81 8. Judgments obtained in suits filed and prosecuted pursuant to  
 82 subsection 7 of this section shall only be enforceable against one or more  
 83 contracts of insurance issued to the limited liability company, its officers,  
 84 directors, agents, servants or employees, indemnifying them, or any of them,  
 85 against such claims.]

86 [347.143. 1. A limited liability company may be dissolved involuntarily  
 2 by a decree of the circuit court for the county in which the registered office of the  
 3 limited liability company is situated in an action filed by the attorney general  
 4 when it is established that the limited liability company:

5 (1) Has procured its articles of organization through fraud;

6 (2) Has exceeded or abused the authority conferred upon it by law;

7 (3) Has carried on, conducted, or transacted its business in a fraudulent  
 8 or illegal manner; or

9 (4) By the abuse of its powers contrary to the public policy of the state,  
 10 has become liable to be dissolved.

11 2. On application by or for a member, the circuit court for the county in  
 12 which the registered office of the limited liability company is located may decree  
 13 dissolution of a limited liability company whenever it is not reasonably  
 14 practicable to carry on the business in conformity with the operating agreement.]

15 [347.145. 1. Every action for the involuntary dissolution of a limited  
 2 liability company brought by the attorney general shall be commenced either in  
 3 the circuit court of the county in which the registered office of the limited liability

4 company is located or, if no such address is on file with the secretary, in the  
 5 circuit court of Cole County. Summons shall issue and be served as in other civil  
 6 actions.

7 2. If process is returned "not found", the attorney general shall cause  
 8 publication to be made as in other civil cases in a newspaper of general  
 9 circulation in the county where the registered office of the limited liability  
 10 company is located, containing a notice of the pendency of the action, the title of  
 11 the court, the title of the action, and the date on or after which default may be  
 12 entered. The attorney general may include in one notice the names of any  
 13 number of limited liability companies against which actions are then pending in  
 14 the same court. The attorney general shall cause a copy of such notice to be  
 15 mailed to the registered agent of the limited liability company as shown on the  
 16 records of the secretary within ten days after the first publication thereof.

17 3. The certificate of the attorney general of the mailing of the notice shall  
 18 be prima facie evidence of such notice. Such notice shall be published at least  
 19 once a week for two successive weeks, and the first publication may begin at any  
 20 time after the summons has been returned. Unless a limited liability company  
 21 has been served with summons, no default shall be taken against it earlier than  
 22 thirty days after the first publication of the notice.]  
 23

2 [347.147. Unless otherwise provided in the operating agreement, upon  
 3 the dissolution of the limited liability company, the member or members who  
 4 have not wrongfully dissolved the limited liability company or the legal  
 5 representative of the last surviving member, not bankrupt, have, if management  
 6 is vested in the members, the right to wind up the limited liability company  
 7 affairs or, if management is vested in one or more managers, the right to  
 8 authorize such manager or managers to undertake any act appropriate for winding  
 9 up the affairs of the limited liability company or completing transactions  
 10 unfinished at dissolution, except that any member, his legal representative or his  
 11 assignee, upon cause shown, may obtain winding up by the court.]

2 [347.149. The court shall have full power to liquidate the assets and  
 3 business of a limited liability company:

4 (1) In an action by a creditor, after dissolution of the limited liability  
 5 company, when the claim of the creditor has been reduced to judgment and an  
 6 execution thereon returned unsatisfied and it is established that the limited  
 7 liability company is insolvent;

8 (2) Upon application by a limited liability company, or for cause shown,  
 9 by a member, after dissolution, to have its liquidation continued under the  
 10 supervision of the court;

11 (3) In an action filed by the attorney general after the issuance of a decree  
 12 of dissolution for any of the causes provided in subsection 1 of section 347.143;  
 or

13 (4) In an action filed by any member after the issuance of a decree of  
 14 dissolution as provided in subsection 2 of section 347.143.]  
 15

[347.151. Subject to the constitution of this state:

2 (1) The laws of the state or other jurisdiction under which a foreign  
 3 limited liability company is organized govern its organization and internal affairs  
 4 and the liability of its members; and

5 (2) A foreign limited liability company may not be denied registration by  
 6 reason of any difference between those laws and the laws of this state.]  
 7

[347.153. Before transacting business in this state, a foreign limited  
 2 liability company shall register in a format prescribed by the secretary unless  
 3 otherwise exempt under subdivision (5) of subsection 5 of section 347.163. In  
 4 order to register, a foreign limited liability company shall pay the required filing  
 5 fee and shall submit to the secretary an application for registration as a foreign  
 6 limited liability company signed on its behalf by a manager, member or other  
 7 authorized agent and setting forth:

8 (1) The name of the foreign limited liability company and, if different,  
 9 the name under which it proposes to register and transact business in this state;

10 (2) The jurisdiction in which it was formed and date of its formation;

11 (3) The purpose of the foreign limited liability company or the general  
 12 character of the business it proposes to transact in this state;

13 (4) The name and physical address of its registered agent and registered  
 14 office in this state, which office and agent shall be subject to the same rights and  
 15 limitations as provided in sections 347.030 and 347.033;

16 (5) A statement that the secretary is appointed the agent of the foreign  
 17 limited liability company for service of process if the limited liability company  
 18 fails to maintain a registered agent in this state or if the agent cannot be found or  
 19 served with the exercise of reasonable diligence;

20 (6) The address of the office required to be maintained in the jurisdiction  
 21 of its organization by the laws of that jurisdiction or, if not so required, of the  
 22 principal office of the foreign limited liability company;

23 (7) A certificate of existence or a document of similar import duly  
 24 authenticated by the secretary of state or other official having custody of the  
 25 records in the state or country under whose laws it is registered; and

26 (8) A current certificate of good standing/existence from the secretary of  
 27 state's office in the state of domicile, such document should be dated within sixty  
 28 calendar days from filing.]  
 29

[347.155. If the secretary finds that an application for registration  
 2 conforms to law and all requisite fees have been paid:

3 (1) The secretary shall endorse on the accepted application the word  
 4 "Filed", and the month, day and year of the filing thereof; and

5 (2) The accepted filing shall be retained in the secretary of state's records  
6 and a copy of the accepted filing and certificate of registration shall be returned  
7 to the person who submitted the document or that person's representative.]  
8

2 [347.157. A foreign limited liability company may register with the  
3 secretary under any name, whether or not it is the name under which it is  
4 registered in its jurisdiction of organization, that could be registered by a  
5 domestic limited liability company.]

2 [347.160. 1. A foreign limited liability company authorized to transact  
3 business in the state shall obtain an amended certificate of registration from the  
4 secretary of state if it changes:

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

5 (2) The state or country of its registration.

6 2. The amendment shall include a certificate of existence or document  
7 of similar import duly authenticated by the secretary of state or other official  
8 having custody of the records in the state or country under whose laws it is  
9 registered, such document should be dated within sixty calendar days from filing  
10 for acceptance.

11 3. The fee for filing an amended certificate of registration shall be twenty  
12 dollars.]  
13

2 [347.161. A foreign limited liability company may cancel its registration  
3 by filing with the secretary articles of cancellation signed on its behalf by a  
4 manager, member or other authorized agent. A cancellation does not terminate  
5 the authority of the secretary to accept service of process on the foreign limited  
6 liability company with respect to causes of action arising out of the transactions  
7 of business in this state.]

2 [347.163. 1. Every foreign limited liability company now transacting  
3 business in or which may hereafter transact business in this state which shall  
4 neglect or fail to comply with the provisions of section 347.153 shall be subject  
5 to a fine of not less than one thousand dollars. If the secretary is advised that a  
6 foreign limited liability company is transacting business within this state in  
7 contravention of sections 347.010 to 347.187, the secretary shall report the fact  
8 to the prosecuting attorney of any county in which the limited liability company  
9 is transacting business, and the prosecuting attorney shall, as soon thereafter as  
10 is practical, institute proceedings to recover the fine prescribed in this section.  
11 In addition to such penalty, no foreign limited liability company failing to comply  
12 with sections 347.010 to 347.187 may maintain any suit or action, either legal or  
13 equitable, in any of the courts of this state, upon any demand, whether arising out  
14 of contract or tort, while the requirements of sections 347.010 to 347.187 have  
not been met.

15                   2. The failure of a foreign limited liability company to register in this state  
16 does not impair the validity of any contract or act of the foreign limited liability  
17 company or prevent the foreign limited liability company from defending any  
18 action, suit or proceeding in any court of this state.

19                   3. A member of a foreign limited liability company is not liable for any  
20 debts, obligations or liabilities of the foreign limited liability company solely by  
21 reason of having transacted business in this state without registration.

22                   4. A foreign limited liability company, by transacting business in this  
23 state without registration, shall be subject to the provisions of sections 506.500  
24 to 506.520 with respect to causes of actions arising out of the transaction of  
25 business in this state.

26                   5. Without excluding other activities which may not constitute  
27 transacting business in this state, a foreign limited liability company shall not be  
28 considered to be transacting business in this state, for purposes of sections  
29 347.010 to 347.187, by reason of carrying on in this state any one or more of the  
30 following activities:

31                   (1) Maintaining or defending any action or suit or any administrative or  
32 arbitration proceeding, or effecting the settlement thereof or the settlement of  
33 claims or disputes;

34                   (2) Holding meetings of its members or carrying on other activities  
35 concerning its internal affairs;

36                   (3) Maintaining bank accounts;

37                   (4) Borrowing money or creating evidence of debt, mortgage or lien on  
38 or other security interest in real or personal property;

39                   (5) Securing or collecting debts or enforcing any rights in properties  
40 securing the same;

41                   (6) Transacting any business in interstate commerce; or

42                   (7) Conducting an isolated transaction completed within a period of thirty  
43 days and not in the course of a number of repeated transactions of a like nature.

44                   6. A foreign corporation, as defined in section 351.015 or section  
45 355.066, shall not be deemed to be transacting business in this state for the  
46 purposes of section 351.572 solely for the reason that it is a member of a limited  
47 liability company.

48                   7. A foreign limited partnership or foreign registered limited liability  
49 limited partnership, as defined in section 359.011, shall not be deemed to be  
50 transacting business in this state for the purposes of section 359.551 solely for the  
51 reason that it is a member of a limited liability company.

52                   8. A foreign limited liability company as defined in sections 347.010 to  
53 347.187 shall not be deemed to be transacting business in this state for the  
54 purposes of this section, solely for the reason that it is a member of a limited  
55 liability company.

56                   9. A foreign registered limited liability partnership, as defined in section  
57 358.020, shall not be deemed to be transacting business in this state for the

58 purposes of section 351.572 solely for the reason that it is a member of a limited  
59 liability company.

60 10. The provisions of this section do not apply in determining the context  
61 or activities which may subject a foreign limited liability company to service of  
62 process, suit, taxation or regulation under any other statute of this state.]  
63

2 [347.165. The secretary may bring an action to restrain a foreign limited  
3 liability company from transacting business in this state in violation of sections  
4 347.010 to 347.187.]

2 [347.167. Service on a foreign limited liability company shall be as  
3 provided in section 347.033. Venue of actions against foreign limited liability  
4 companies shall be as provided in section 347.069.]

2 [347.169. Execution of an application or a certificate by a foreign limited  
3 liability company constitutes an affirmation by the person who signed it under the  
4 penalties set out in section 575.040 that the facts stated therein are true and that  
5 the person so signing has the authority to execute such application or certificate.]

2 [347.171. A member may bring an action in the right of the limited  
3 liability company to recover a judgment in its favor if all of the following  
4 conditions are met:

5 (1) The plaintiff does not have the authority under the provisions of the  
6 operating agreement to cause the limited liability company to sue in its own right;

7 (2) The plaintiff has made demand on the authorized person or persons  
8 having the authority to cause the limited liability company to institute such action  
9 requesting that such persons cause the limited liability company to sue in its own  
10 right;

11 (3) The persons with such authority have refused to bring the action or,  
12 after adequate time to consider the demand, have failed to respond to such  
13 demand; and

14 (4) The plaintiff is a member of the limited liability company at the time  
15 of bringing the action, and was a member of the limited liability company at the  
16 time of the transaction of which he complains, or his status as a member of the  
17 limited liability company thereafter devolved upon him by operation of law or  
18 pursuant to the terms of the operating agreement from a person who was a  
19 member at such time.]

2 [347.173. In a derivative action, the complaint shall set forth with  
3 particularity the effort of the plaintiff to secure initiation of the action by the  
4 persons who would otherwise have the authority to cause the limited liability  
5 company to sue in its own right.]

2 [347.175. If a derivative action is successful, in whole or in part, or if  
3 anything is received by the plaintiff as a result of a judgment, compromise or  
4 settlement of an action or claim, the court may award the plaintiff reasonable  
5 expenses, including reasonable attorney's fees, and shall direct him to remit to the  
6 limited liability company the remainder of those proceeds received by him.]

2 [347.177. 1. Sections 347.010 to 347.187 shall be so applied and  
3 construed to effectuate its general purpose to make uniform the law with respect  
4 to the subject of sections 347.010 to 347.187 among the states enacting it.

4 2. The rule that statutes in derogation of the common law are to be  
5 strictly construed shall have no application to sections 347.010 to 347.187.

6 3. The law of estoppel shall apply to sections 347.010 to 347.187.

7 4. The law of agency shall apply under sections 347.010 to 347.187.

8 5. In any case not provided for in sections 347.010 to 347.187, the rules  
9 of law and equity shall govern.

10 6. Sections 347.010 to 347.187 shall not be construed so as to impair the  
11 obligations of any contract existing on August 28, 1993, nor to affect any action  
12 or proceedings begun or right accrued prior to August 28, 1993.]  
13

[347.179. The secretary shall charge and collect:

2 (1) For filing the original articles of organization, a fee of one hundred  
3 dollars;

4 (2) For filing the original articles of organization online, in an electronic  
5 format prescribed by the secretary of state, a fee of forty-five dollars;

6 (3) Applications for registration of foreign limited liability companies  
7 and issuance of a certificate of registration to transact business in this state, a fee  
8 of one hundred dollars;

9 (4) Amendments to and restatements of articles of limited liability  
10 companies to application for registration of a foreign limited liability company  
11 or any other filing otherwise provided for, a fee of twenty dollars;

12 (5) Articles of termination of limited liability companies or cancellation  
13 of registration of foreign limited liability companies, a fee of twenty dollars;

14 (6) For filing notice of merger or consolidation, a fee of twenty dollars;

15 (7) For filing a notice of winding up, a fee of twenty dollars;

16 (8) For issuing a certificate of good standing, a fee of five dollars;

17 (9) For a notice of the abandonment of merger or consolidation, a fee of  
18 twenty dollars;

19 (10) For furnishing a copy of any document or instrument, a fee of fifty  
20 cents per page;

21 (11) For accepting an application for reservation of a name, or for filing  
22 a notice of the transfer or cancellation of any name reservation, a fee of twenty  
23 dollars;

24 (12) For filing a statement of change of address of registered office or  
25 registered agent, or both, a fee of five dollars;

26 (13) For any service of notice, demand, or process upon the secretary as  
27 resident agent of a limited liability company, a fee of twenty dollars, which  
28 amount may be recovered as taxable costs by the party instituting such suit,  
29 action, or proceeding causing such service to be made if such party prevails  
30 therein;

31 (14) For filing an amended certificate of registration a fee of twenty  
32 dollars; and

33 (15) For filing a statement of correction a fee of five dollars.]  
34

2 [347.181. To the fullest extent permitted by law, the provisions of  
3 sections 347.010 to 347.187 shall apply to commerce with foreign nations and  
4 among the several states for all purposes including the determination of the  
5 nature and extent of the rights and obligations of a limited liability company  
6 organized hereunder and the liability of its members and managers.]

2 [347.183. In addition to the other powers of the secretary established in  
3 sections 347.010 to 347.187, the secretary shall, as is reasonably necessary to  
4 enable the secretary to administer sections 347.010 to 347.187 efficiently and to  
5 perform the secretary's duties, have the following powers including, but not  
6 limited to:

6 (1) The power to examine the books and records of any limited liability  
7 company to which sections 347.010 to 347.187 apply, and it shall be the duty of  
8 any manager, member or agent of such limited liability company having  
9 possession or control of such books and records to produce such books and  
10 records for examination on demand of the secretary or his designated employee;  
11 except that no person shall be subject to any criminal prosecution on account of  
12 any matter or thing which may be disclosed by examination of any limited  
13 liability company books and records, which they may produce or exhibit for  
14 examination; or on account of any other matter or thing concerning which they  
15 may make any voluntary and truthful statement in writing to the secretary or his  
16 designated employee. All facts obtained in the examination of the books and  
17 records of any limited liability company, or through the voluntary sworn  
18 statement of any manager, member, agent or employee of any limited liability  
19 company, shall be treated as confidential, except insofar as official duty may  
20 require the disclosure of same, or when such facts are material to any issue in any  
21 legal proceeding in which the secretary or his designated employee may be a  
22 party or called as witness, and, if the secretary or his designated employee shall,  
23 except as provided in this subdivision, disclose any information relative to the  
24 private accounts, affairs, and transactions of any such limited liability company,  
25 he shall be guilty of a class C misdemeanor. If any manager, member or  
26 registered agent in possession or control of such books and records of any such

27 limited liability company shall refuse a demand of the secretary or his designated  
28 employee, to exhibit the books and records of such limited liability company for  
29 examination, such person shall be guilty of a class B misdemeanor;

30 (2) The power to cancel or disapprove any articles of organization or  
31 other filing required under sections 347.010 to 347.187, if the limited liability  
32 company fails to comply with the provisions of sections 347.010 to 347.187 by  
33 failing to file required documents under sections 347.010 to 347.187, by failing  
34 to maintain a registered agent, by failing to pay the required filing fees, by using  
35 fraud or deception in effecting any filing, by filing a required document  
36 containing a false statement, or by violating any section or sections of the  
37 criminal laws of Missouri, the federal government or any other state of the United  
38 States. Thirty days before such cancellation shall take effect, the secretary shall  
39 notify the limited liability company with written notice, either personally or by  
40 certified mail, deposited in the United States mail in a sealed envelope addressed  
41 to such limited liability company's last registered agent in office, or to one of the  
42 limited liability company's members or managers. Written notice of the  
43 secretary's proposed cancellation to the limited liability company, domestic or  
44 foreign, shall specify the reasons for such action. The limited liability company  
45 may appeal this notice of proposed cancellation to the circuit court of the county  
46 in which the registered office of such limited liability company is or is proposed  
47 to be situated by filing with the clerk of such court a petition setting forth a copy  
48 of the articles of organization or other relevant documents and a copy of the  
49 proposed written cancellation thereof by the secretary, such petition to be filed  
50 within thirty days after notice of such cancellation shall have been given, and the  
51 matter shall be tried by the court, and the court shall either sustain the action of  
52 the secretary or direct him to take such action as the court may deem proper. An  
53 appeal from the circuit court in such a case shall be allowed as in civil action.  
54 The limited liability company may provide information to the secretary that  
55 would allow the secretary to withdraw the notice of proposed cancellation. This  
56 information may consist of, but need not be limited to, corrected statements and  
57 documents, new filings, affidavits and certified copies of other filed documents;

58 (3) The power to rescind cancellation provided for in subdivision (2) of  
59 this section upon compliance with either of the following:

60 (a) The affected limited liability company provides the necessary  
61 documents and affidavits indicating the limited liability company has corrected  
62 the conditions causing the proposed cancellation or the cancellation; or

63 (b) The limited liability company provides the correct statements or  
64 documentation that the limited liability company is not in violation of any section  
65 of the criminal code; and

66 (4) The power to charge late filing fees for any filing fee required under  
67 sections 347.010 to 347.187 and the power to impose civil penalties as provided  
68 in section 347.053. Late filing fees shall be assessed at a rate of ten dollars for  
69 each thirty-day period of delinquency;

70 (5) (a) The power to administratively cancel an articles of organization  
71 if the limited liability company's period of duration stated in articles of  
72 organization expires.

73 (b) Not less than thirty days before such administrative cancellation shall  
74 take effect, the secretary shall notify the limited liability company with written  
75 notice, either personally or by mail. If mailed, the notice shall be deemed  
76 delivered five days after it is deposited in the United States mail in a sealed  
77 envelope addressed to such limited liability company's last registered agent and  
78 office or to one of the limited liability company's managers or members.

79 (c) If the limited liability company does not timely file an articles of  
80 amendment in accordance with section 347.041 to extend the duration of the  
81 limited liability company, which may be any number of years or perpetual, or  
82 demonstrate to the reasonable satisfaction of the secretary that the period of  
83 duration determined by the secretary is incorrect, within sixty days after service  
84 of the notice is perfected by posting with the United States Postal Service, then  
85 the secretary shall cancel the articles of organization by signing an administrative  
86 cancellation that recites the grounds for cancellation and its effective date. The  
87 secretary shall file the original of the administrative cancellation and serve a copy  
88 on the limited liability company as provided in section 347.051.

89 (d) A limited liability company whose articles of organization has been  
90 administratively cancelled continues its existence but may not carry on any  
91 business except that necessary to wind up and liquidate its business and affairs  
92 under section 347.147 and notify claimants under section 347.141.

93 (e) The administrative cancellation of an articles of organization does not  
94 terminate the authority of its registered agent.

95 (6) (a) The power to rescind an administrative cancellation and reinstate  
96 the articles of organization.

97 (b) Except as otherwise provided in the operating agreement, a limited  
98 liability company whose articles of organization has been administratively  
99 cancelled under subdivision (5) of this section may file an articles of amendment  
100 in accordance with section 347.041 to extend the duration of the limited liability  
101 company, which may be any number or perpetual.

102 (c) A limited liability company whose articles of organization has been  
103 administratively cancelled under subdivision (5) of this section may apply to the  
104 secretary for reinstatement. The applicant shall:

105 a. Recite the name of the limited liability company and the effective date  
106 of its administrative cancellation;

107 b. State that the grounds for cancellation either did not exist or have been  
108 eliminated, as applicable, and be accompanied by documentation satisfactory to  
109 the secretary evidencing the same;

110 c. State that the limited liability company's name satisfies the  
111 requirements of section 347.020;

112 d. Be accompanied by a reinstatement fee in the amount of one hundred  
 113 dollars, or such greater amount as required by state regulation, plus any  
 114 delinquent fees, penalties, and other charges as determined by the secretary to  
 115 then be due.

116 (d) If the secretary determines that the application contains the  
 117 information and is accompanied by the fees required in paragraph (c) of this  
 118 subdivision and that the information and fees are correct, the secretary shall  
 119 rescind the cancellation and prepare a certificate of reinstatement that recites his  
 120 or her determination and the effective date of reinstatement, file the original  
 121 articles of organization, and serve a copy on the limited liability company as  
 122 provided in section 347.051.

123 (e) When the reinstatement is effective, it shall relate back to and take  
 124 effect as of the effective date of the administrative cancellation of the articles of  
 125 organization and the limited liability company may continue carrying on its  
 126 business as if the administrative cancellation had never occurred.

127 (f) In the event the name of the limited liability company was reissued by  
 128 the secretary to another entity prior to the time application for reinstatement was  
 129 filed, the limited liability company applying for reinstatement may elect to  
 130 reinstate using a new name that complies with the requirements of section  
 131 347.020 and that has been approved by appropriate action of the limited liability  
 132 company for changing the name thereof.

133 (g) If the secretary denies a limited liability company's application for  
 134 reinstatement following administrative cancellation of the articles of  
 135 organization, he or she shall serve the limited liability company as provided in  
 136 section 347.051 with a written notice that explains the reason or reasons for  
 137 denial.

138 (h) The limited liability company may appeal a denial of reinstatement  
 139 as provided for in subdivision (2) of this section.

140 (7) Subdivision (6) of this section shall apply to any limited liability  
 141 company whose articles of organization was cancelled because such limited  
 142 liability company's period of duration stated in the articles of organization  
 143 expired on or after August 28, 2003.]

144

2 [347.185. It shall be rebuttably presumed that a member's interest in a  
 3 limited liability company in which management is not vested in one or more  
 4 managers is not a security for purposes of any and all laws of this state regulating  
 5 the sale or exchange of securities.]

2 [347.187. 1. A limited liability company created pursuant to sections  
 3 347.010 to 347.187 or entering the state pursuant to sections 347.010 to 347.187  
 4 and its authorized persons, or their equivalent, shall have the duty to withhold  
 5 and pay such taxes as are imposed by the laws of this state or any political  
 subdivision thereof on a basis consistent with such limited liability company's

6 classification pursuant to Section 7701 of the Internal Revenue Code of 1986, as  
7 amended.

8 2. Solely for the purposes of chapter 143, chapter 144, and chapter 288,  
9 a limited liability company and its members shall be classified and treated on a  
10 basis consistent with the limited liability company's classification for federal  
11 income tax purposes.]

12

2 [347.189. Any limited liability company that owns and rents or leases  
3 real property, or owns unoccupied real property, located within any home rule  
4 city with a population of more than four hundred thousand inhabitants which is  
5 located in more than one county, shall file with that city's clerk an affidavit listing  
6 the name and address of at least one person, who has management control and  
7 responsibility for the real property owned and leased or rented by the limited  
liability company, or owned by the limited liability company and unoccupied.]

T