

BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO BUSINESS; REPEALING THE LIMITED LIABILITY COMPANY  
ACT; ENACTING THE REVISED UNIFORM LIMITED LIABILITY COMPANY  
ACT; REPEALING AND REENACTING A PROVISION OF LAW PERTAINING TO  
RESTATED ARTICLES OF INCORPORATION; MAKING TECHNICAL AND  
CONFORMING CHANGES TO THE BUSINESS CORPORATION ACT; PROVIDING  
PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. [NEW MATERIAL] SHORT TITLE.--Sections 101  
through 1103 of this act may be cited as the "Revised Uniform  
Limited Liability Company Act".

SECTION 102. [NEW MATERIAL] DEFINITIONS.--As used in the  
Revised Uniform Limited Liability Company Act:

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underscored material = new  
[bracketed material] = delete

1           A. "certificate of organization" means the  
2 certificate required by Section 201 of the Revised Uniform  
3 Limited Liability Company Act and includes the certificate as  
4 amended or restated;

5           B. "contribution", except when used in the phrase  
6 "right of contribution", means property or a benefit described  
7 in Section 402 of the Revised Uniform Limited Liability Company  
8 Act that is provided by a person to a limited liability company  
9 to become a member or in the person's capacity as a member;

10          C. "debtor in bankruptcy" means a person that is  
11 the subject of:

12               (1) an order for relief under Title 11 of the  
13 United States Code or a comparable order under a successor  
14 statute of general application; or

15               (2) a comparable order under federal, state or  
16 foreign law governing insolvency;

17          D. "distribution":

18               (1) means a transfer of money or other  
19 property from a limited liability company to a person on  
20 account of a transferable interest or in the person's capacity  
21 as a member; and

22               (2) includes:

23                       (a) a redemption or other purchase by a  
24 limited liability company of a transferable interest; and

25                       (b) a transfer to a member in return for

1 the member's relinquishment of a right to participate as a  
2 member in the management or conduct of the company's activities  
3 and affairs or to have access to records or other information  
4 concerning the company's activities and affairs; but

5 (3) excludes:

6 (a) reasonable compensation for present  
7 or past services; or

8 (b) payments made in the ordinary course  
9 of business under a bona fide retirement plan or other bona  
10 fide benefits program;

11 E. "foreign limited liability company" means an  
12 unincorporated entity that is formed under the law of a  
13 jurisdiction other than New Mexico and that would be a limited  
14 liability company if formed under the law of New Mexico;

15 F. "jurisdiction", when used to refer to a  
16 political entity, means the United States, a state, a foreign  
17 country or a political subdivision of a foreign country;

18 G. "jurisdiction of formation" means the  
19 jurisdiction whose law governs the internal affairs of an  
20 entity;

21 H. "limited liability company", except when used in  
22 the phrase "foreign limited liability company" or when used in  
23 Article 10 of the Revised Uniform Limited Liability Company  
24 Act, means an entity formed under that act or an entity that  
25 becomes subject to that act under Article 10 or Section 110 of

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1     that act;

2             I. "manager" means a person that, under the  
3     operating agreement of a manager-managed limited liability  
4     company, is responsible, alone or in concert with others, for  
5     performing the management functions stated in Subsection C of  
6     Section 407 of the Revised Uniform Limited Liability Company  
7     Act;

8             J. "manager-managed limited liability company"  
9     means a limited liability company that qualifies under  
10    Subsection A of Section 407 of the Revised Uniform Limited  
11    Liability Company Act;

12            K. "member" means a person that has become a member  
13    of a limited liability company under Section 401 of the Revised  
14    Uniform Limited Liability Company Act and that has not  
15    dissociated under Section 602 of that act;

16            L. "member-managed limited liability company" means  
17    a limited liability company that is not a manager-managed  
18    limited liability company;

19            M. "operating agreement" means the agreement,  
20    regardless of whether it is referred to as an operating  
21    agreement, and regardless of whether it is oral, in a record,  
22    implied or in any combination thereof, of all the members of a  
23    limited liability company, including a sole member, concerning  
24    the matters described in Subsection A of Section 110 of the  
25    Revised Uniform Limited Liability Company Act; "operating

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1 agreement" includes the agreement as amended or restated;

2 N. "organizer" means a person that acts under  
3 Section 201 of the Revised Uniform Limited Liability Company  
4 Act to form a limited liability company and that need not be  
5 nor become a member or manager of the company formed;

6 O. "person" means an individual, a business  
7 corporation, a nonprofit corporation, a partnership, a limited  
8 partnership, a limited liability company, a general cooperative  
9 association, an unincorporated nonprofit association, a  
10 statutory trust, a business trust, a common-law business trust,  
11 an estate, a trust, an association, a joint venture, a public  
12 corporation, a government, a governmental subdivision, agency  
13 or instrumentality or any other legal or commercial entity;

14 P. "principal office" means the principal executive  
15 office of a limited liability company or foreign limited  
16 liability company, regardless of whether the office is located  
17 in New Mexico;

18 Q. "property" means all property, whether real,  
19 personal, a combination of real and personal, tangible or  
20 intangible, or any right or interest therein;

21 R. "record", when used as a noun, means information  
22 that is inscribed on a tangible medium or that is stored in an  
23 electronic or other medium and is retrievable in a perceivable  
24 form;

25 S. "registered agent" means an agent of a limited

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1 liability company or foreign limited liability company that is  
2 authorized to receive service of any process, notice or demand  
3 required or permitted by law to be served on the company;

4 T. "registered foreign limited liability company"  
5 means a foreign limited liability company that is registered to  
6 do business in New Mexico under a statement of registration  
7 filed by the secretary of state;

8 U. "sign" means, with the present intent to  
9 authenticate or adopt a record, to:

10 (1) execute or adopt a tangible symbol; or  
11 (2) attach to or logically associate with the  
12 record an electronic symbol, sound or process;

13 V. "state" means a state of the United States, the  
14 District of Columbia, Puerto Rico, the United States Virgin  
15 Islands or a territory or insular possession subject to the  
16 jurisdiction of the United States;

17 W. "transfer" includes an assignment, a conveyance,  
18 a sale, a lease, an encumbrance, including a mortgage and a  
19 security interest, a gift and a transfer by operation of law;

20 X. "transferable interest" means the right, as  
21 initially owned by a person in the person's capacity as a  
22 member, to receive distributions from a limited liability  
23 company, regardless of whether the person remains a member or  
24 continues to own any part of the right; "transferable interest"  
25 applies to any fraction of the interest, regardless of who owns

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1 it; and

2 Y. "transferee" means a person to which all or part  
3 of a transferable interest has been transferred, regardless of  
4 whether the transferor is a member, and includes a person that  
5 owns a transferable interest under Paragraph (3) of Subsection  
6 A of Section 603 of the Revised Uniform Limited Liability  
7 Company Act.

8 SECTION 103. [NEW MATERIAL] KNOWLEDGE--NOTICE.--

9 A. A person knows a fact when the person:

10 (1) has actual knowledge of it; or

11 (2) is deemed to know it under Paragraph (1)  
12 of Subsection D of this section or law other than the Revised  
13 Uniform Limited Liability Company Act.

14 B. A person has notice of a fact when the person:

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

17 (2) is deemed to have notice of the fact under  
18 Paragraph (2) of Subsection D of this section.

19 C. Subject to Subsection F of Section 210 of the  
20 Revised Uniform Limited Liability Company Act, a person  
21 notifies another person of a fact by taking steps reasonably  
22 required to inform the other person in ordinary course,  
23 regardless of whether those steps cause the other person to  
24 know the fact.

25 D. A person that is not a member is deemed:

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1 (1) to know of a limitation on authority to  
2 transfer real property as provided in Subsection G of Section  
3 302 of the Revised Uniform Limited Liability Company Act; and

4 (2) to have notice of a limited liability  
5 company's:

6 (a) dissolution ninety days after a  
7 statement of dissolution under Subparagraph (a) of Paragraph  
8 (2) of Subsection B of Section 702 of that act becomes  
9 effective;

10 (b) termination ninety days after a  
11 statement of termination under Subparagraph (f) of Paragraph  
12 (2) of Subsection B of Section 702 of that act becomes  
13 effective; and

14 (c) participation in a merger, an  
15 interest exchange, a conversion or a domestication, ninety days  
16 after articles of merger, interest, exchange, conversion or  
17 domestication under Article 10 of that act become effective.

18 **SECTION 104.** [NEW MATERIAL] GOVERNING LAW.--The law of  
19 New Mexico governs:

20 A. the internal affairs of a limited liability  
21 company; and

22 B. the liability of a member as member and a  
23 manager as manager for a debt, obligation or other liability of  
24 a limited liability company.

25 **SECTION 105.** [NEW MATERIAL] OPERATING AGREEMENT--SCOPE,

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1 FUNCTION AND LIMITATIONS.--

2 A. Except as otherwise provided in Subsections C  
3 and D of this section, the operating agreement governs:

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

6 (2) the rights and duties under the Revised  
7 Uniform Limited Liability Company Act of a person in the  
8 capacity of manager;

9 (3) the activities and affairs of the company  
10 and the conduct of those activities and affairs; and

11 (4) the means and conditions for amending the  
12 operating agreement.

13 B. To the extent that the operating agreement does  
14 not provide for a matter described in Subsection A of this  
15 section, the Revised Uniform Limited Liability Company Act  
16 governs the matter.

17 C. An operating agreement shall not:

18 (1) vary the law applicable under Section 104  
19 of the Revised Uniform Limited Liability Company Act;

20 (2) vary a limited liability company's  
21 capacity under Section 109 of that act to sue and be sued in  
22 its own name;

23 (3) vary any requirement, procedure or other  
24 provision of that act pertaining to:

25 (a) registered agents; or

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1 (b) the secretary of state, including  
2 provisions pertaining to records authorized or required to be  
3 delivered to the secretary of state for filing under that act;

4 (4) vary the provisions of Section 204 of that  
5 act;

6 (5) alter or eliminate the duty of loyalty or  
7 the duty of care, except as otherwise provided in Subsection D  
8 of this section;

9 (6) eliminate the contractual obligation of  
10 good faith and fair dealing under Subsection D of Section 409  
11 of that act, except that the operating agreement may prescribe  
12 the standards, if not manifestly unreasonable, by which the  
13 performance of the obligation is to be measured;

14 (7) relieve or exonerate a person from  
15 liability for conduct involving bad faith, willful or  
16 intentional misconduct or a knowing violation of law;

17 (8) unreasonably restrict the duties and  
18 rights under Section 410 of that act, except that the operating  
19 agreement may impose reasonable restrictions on the  
20 availability and use of information obtained under that section  
21 and may define appropriate remedies, including liquidated  
22 damages, for a breach of a reasonable restriction on use;

23 (9) vary the causes of dissolution specified  
24 in Paragraph (4) of Subsection A of Section 701 of that act;

25 (10) vary the requirement to wind up the

1 company's activities and affairs as specified in Subsections A  
2 and E and Paragraph (1) of Subsection B of Section 702 of that  
3 act;

4 (11) unreasonably restrict the right of a  
5 member to maintain an action under Article 8 of that act;

6 (12) vary the provisions of Section 805 of  
7 that act, except that the operating agreement may provide that  
8 the company may not have a special litigation committee;

9 (13) vary the right of a member to approve a  
10 merger under Paragraph (2) of Subsection A of Section 1009 of  
11 that act, an interest exchange under Paragraph (2) of  
12 Subsection A of Section 1015 of that act, a conversion under  
13 Paragraph (2) of Subsection A of Section 1021 of that act or a  
14 domestication under Paragraph (2) of Subsection A of Section  
15 1027 of that act;

16 (14) vary the required contents of a plan of  
17 merger under Subsection A of Section 1008 of that act, a plan  
18 of interest exchange under Subsection A of Section 1014 of that  
19 act, a plan of conversion under Subsection A of Section 1020 of  
20 that act or a plan of domestication under Subsection A of  
21 Section 1012 of that act; and

22 (15) except as otherwise provided in Section  
23 106 and Subsection B of Section 107 of that act, restrict the  
24 rights under that act of a person other than a member or  
25 manager.

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1           D. Subject to Paragraph (7) of Subsection C of this  
2 section, and without limiting other terms that may be included  
3 in an operating agreement, the operating agreement may:

4                   (1) specify the method by which a specific act  
5 or transaction that would otherwise violate the duty of loyalty  
6 may, after full disclosure of all material facts, be authorized  
7 or ratified by one or more disinterested and independent  
8 persons;

9                   (2) alter the prohibition in Paragraph (2) of  
10 Subsection A of Section 405 of the Revised Uniform Limited  
11 Liability Company Act so that the prohibition requires only  
12 that the company's total assets not be less than the sum of its  
13 total liabilities;

14                   (3) to the extent that the operating agreement  
15 of a member-managed limited liability company expressly  
16 relieves a member of a responsibility that the member otherwise  
17 would have under that act and imposes that responsibility on  
18 one or more other members, eliminate or limit a fiduciary duty  
19 of the member relieved of the responsibility that would have  
20 pertained to the responsibility; and

21                   (4) if not manifestly unreasonable:

22                           (a) alter or eliminate the aspects of  
23 the duty of loyalty stated in Subsections B and I of Section  
24 409 of that act;

25                           (b) identify specific types or

1 categories of activities that do not violate the duty of  
2 loyalty;

3 (c) alter the duty of care; however, the  
4 operating agreement shall not authorize conduct involving bad  
5 faith, willful or intentional misconduct or a knowing violation  
6 of law; and

7 (d) alter or eliminate any other  
8 fiduciary duty.

9 E. The court shall decide as a matter of law  
10 whether a term of an operating agreement is manifestly  
11 unreasonable under Paragraph (6) of Subsection C or Paragraph  
12 (3) of Subsection D of this section. The court:

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

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

20 (a) the objective of the term is  
21 unreasonable; or

22 (b) the term is an unreasonable means to  
23 achieve the term's objective.

24 SECTION 106. [NEW MATERIAL] OPERATING AGREEMENT--EFFECT  
25 ON LIMITED LIABILITY COMPANY AND PERSON BECOMING MEMBER--PRE-

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1       FORMATION AGREEMENT.--

2               A. A limited liability company is bound by and may  
3       enforce the operating agreement, regardless of whether the  
4       company has itself manifested assent to the operating  
5       agreement.

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

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

16              SECTION 107. [NEW MATERIAL] OPERATING AGREEMENT--EFFECT  
17      ON THIRD PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON  
18      BEHALF OF LIMITED LIABILITY COMPANY.--

19              A. An operating agreement may specify that its  
20      amendment requires the approval of a person that is not a party  
21      to the agreement or the satisfaction of a condition. An  
22      amendment is ineffective if its adoption does not include the  
23      required approval or satisfy the specified condition.

24              B. The obligations of a limited liability company  
25      and its members to a person in the person's capacity as a

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1 transferee or a person dissociated as a member are governed by  
2 the operating agreement. Subject only to a court order issued  
3 under Paragraph (2) of Subsection B of Section 503 of the  
4 Revised Uniform Limited Liability Company Act to effectuate a  
5 charging order, an amendment to the operating agreement made  
6 after a person becomes a transferee or is dissociated as a  
7 member:

8 (1) is effective with regard to any debt,  
9 obligation or other liability of the limited liability company  
10 or its members to the person in the person's capacity as a  
11 transferee or person dissociated as a member; and

12 (2) is not effective to the extent that the  
13 amendment imposes a new debt, obligation or other liability on  
14 the transferee or person dissociated as a member.

15 C. If a record delivered by a limited liability  
16 company to the secretary of state for filing becomes effective  
17 and contains a provision that would be ineffective under  
18 Subsection C or Paragraph (3) of Subsection D of Section 105 of  
19 the Revised Uniform Limited Liability Company Act if contained  
20 in the operating agreement, the provision is ineffective in the  
21 record.

22 D. Subject to Subsection C of this section, if a  
23 record delivered by a limited liability company to the  
24 secretary of state for filing becomes effective and conflicts  
25 with a provision of the operating agreement:

1 (1) the agreement prevails as to members,  
2 persons dissociated as members, transferees and managers; and

3 (2) the record prevails as to other persons to  
4 the extent that they reasonably rely on the record.

5 SECTION 108. [NEW MATERIAL] NATURE, PURPOSE AND DURATION  
6 OF LIMITED LIABILITY COMPANY.--

7 A. A limited liability company is an entity  
8 distinct from its member or members.

9 B. A limited liability company may have any lawful  
10 purpose, regardless of whether it is for profit.

11 C. A limited liability company has perpetual  
12 duration.

13 SECTION 109. [NEW MATERIAL] POWERS.--A limited liability  
14 company has the capacity to sue and be sued in its own name and  
15 the power to do all things necessary or convenient to carry on  
16 its activities and affairs.

17 SECTION 110. [NEW MATERIAL] APPLICATION TO EXISTING  
18 RELATIONSHIPS.--

19 A. The Revised Uniform Limited Liability Company  
20 Act governs only:

21 (1) a limited liability company formed on or  
22 after July 1, 2018; and

23 (2) except as otherwise provided in this  
24 section, a limited liability company formed before July 1, 2018  
25 that:

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1 (a) elects, in the manner provided in  
2 its operating agreement or by law for amending the operating  
3 agreement, to be subject to that act; and

4 (b) presents to the secretary of state  
5 for filing an amended and restated certificate of organization  
6 stating that it desires to be subject to that act.

7 B. For purposes of applying the Revised Uniform  
8 Limited Liability Company Act to a limited liability company  
9 formed before July 1, 2018 and that follows Subparagraphs (a)  
10 and (b) of Paragraph (2) of Subsection A of this section,  
11 except as otherwise agreed:

12 (1) the company's articles of organization are  
13 deemed to be the company's certificate of organization; and

14 (2) for purposes of applying the definition in  
15 Subsection J of Section 102 of that act and subject to  
16 Subsection D of Section 107 of that act, language in the  
17 company's articles of organization designating the company's  
18 management structure operates as if that language were in the  
19 operating agreement.

20 C. Except as otherwise provided in Subsection E of  
21 this section, until a limited liability company formed before  
22 July 1, 2018 elects to be governed by the Revised Uniform  
23 Limited Liability Company Act, the company shall continue to be  
24 governed by the provisions of the Limited Liability Company Act  
25 as if that act had not been repealed, except that the company

1 shall not be renewed unless so provided in the original  
2 agreement or in the manner provided in its limited liability  
3 company agreement or by law for amending a limited liability  
4 company agreement.

5 D. After July 1, 2018, the Revised Uniform Limited  
6 Liability Company Act governs a foreign limited liability  
7 company formed at any time.

8 E. Sections 117, 212, 702 and 704 through 710 of  
9 the Revised Uniform Limited Liability Company Act apply to  
10 limited liability companies formed before July 1, 2018.

11 SECTION 111. [NEW MATERIAL] SUPPLEMENTAL PRINCIPLES OF  
12 LAW.--Unless displaced by particular provisions of the Revised  
13 Uniform Limited Liability Company Act, the principles of law  
14 and equity supplement that act.

15 SECTION 112. [NEW MATERIAL] NAMES PERMITTED.--

16 A. The name of a limited liability company shall  
17 contain the phrase "limited liability company" or "limited  
18 company" or the abbreviation "L.L.C.", "LLC", "L.C." or "LC".  
19 "Limited" may be abbreviated as "Ltd.", and "company" may be  
20 abbreviated as "Co.".

21 B. Except as otherwise provided in Subsection D of  
22 this section, the name of a limited liability company, and the  
23 name under which a foreign limited liability company may  
24 register to do business in New Mexico, shall be distinguishable  
25 on the records of the secretary of state from the name:

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1 (1) of an existing person whose formation  
2 required the filing of a record by the secretary of state and  
3 that is not at the time administratively dissolved;

4 (2) of a limited liability partnership whose  
5 statement of qualification is in effect;

6 (3) under which a person is registered to do  
7 business in New Mexico by the filing of a record by the  
8 secretary of state;

9 (4) reserved under Section 113 of the Revised  
10 Uniform Limited Liability Company Act or another law of New  
11 Mexico providing for the reservation of a name by the filing of  
12 a record by the secretary of state; and

13 (5) registered under Section 114 of that act  
14 or another law of New Mexico providing for the registration of  
15 a name by the filing of a record by the secretary of state.

16 C. If a person consents in a record to the use of  
17 its name and submits an undertaking in a form satisfactory to  
18 the secretary of state to change its name to a name that is  
19 distinguishable on the records of the secretary of state from  
20 any name in any category of names specified in Subsection B of  
21 this section, the name of the consenting person may be used by  
22 the person to which the consent was given.

23 D. Except as otherwise provided in Subsection E of  
24 this section, in determining whether a name is the same as or  
25 not distinguishable on the records of the secretary of state

1 from the name of another person, words, phrases or  
2 abbreviations indicating a type of person, such as  
3 "corporation", "corp.", "incorporated", "Inc.", "professional  
4 corporation", "P.C.", "PC", "professional association", "P.A.",  
5 "PA", "Limited", "Ltd.", "limited partnership", "L.P.", "LP",  
6 "limited liability partnership", "L.L.P.", "LLP", "registered  
7 limited liability partnership", "R.L.L.P.", "RLLP", "limited  
8 liability limited partnership", "L.L.L.P.", "LLL", "registered  
9 limited liability limited partnership", "R.L.L.L.P.", "RLLL",  
10 "limited liability company", "L.L.C." and "LLC", shall not be  
11 taken into account.

12 E. A person may consent in a record to the use of a  
13 name that is not distinguishable on the records of the  
14 secretary of state from its name except for the addition of a  
15 word, phrase or abbreviation indicating the type of person as  
16 provided in Subsection D of this section. In such a case, the  
17 person need not change its name in accordance with Subsection B  
18 of this section.

19 F. A limited liability company or foreign limited  
20 liability company may use a name that is not distinguishable  
21 from a name described in Paragraphs (1) through (5) of  
22 Subsection B of this section if the company delivers to the  
23 secretary of state a certified copy of a final judgment of the  
24 district court establishing the right of the company to use the  
25 name in New Mexico.

1           SECTION 113.   ~~[NEW MATERIAL]~~ RESERVATION OF NAME.--

2           A. A person may reserve the exclusive use of a name  
3 that complies with Section 112 of the Revised Uniform Limited  
4 Liability Company Act by delivering an application to the  
5 secretary of state for filing. The application shall state the  
6 name and address of the applicant and the name to be reserved.  
7 If the secretary of state finds that the name is available, the  
8 secretary of state shall reserve the name for the applicant's  
9 exclusive use for one hundred twenty days.

10          B. The owner of a reserved name may transfer the  
11 reservation to another person by delivering to the secretary of  
12 state a signed notice in a record of the transfer that states  
13 the name and address of the person to which the reservation is  
14 being transferred.

15           SECTION 114.   ~~[NEW MATERIAL]~~ REGISTRATION OF NAME.--

16          A. A foreign limited liability company not  
17 registered to do business in New Mexico under Article 9 of the  
18 Revised Uniform Limited Liability Company Act may register its  
19 name, or an alternate name adopted under Section 906 of that  
20 act, if the name is distinguishable on the records of the  
21 secretary of state from the names that are not available under  
22 Section 112 of that act.

23          B. To register its name or an alternate name  
24 adopted under Section 906 of the Revised Uniform Limited  
25 Liability Company Act, a foreign limited liability company

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1 shall deliver to the secretary of state for filing an  
2 application stating the company's name, the jurisdiction and  
3 date of its formation and any alternate name adopted under  
4 Section 906 of that act. If the secretary of state finds that  
5 the name applied for is available, the secretary of state shall  
6 register the name for the applicant's exclusive use.

7 C. The registration of a name under this section is  
8 effective for one year after the date of registration.

9 D. A foreign limited liability company whose name  
10 registration is effective may renew the registration for  
11 successive one-year periods by delivering, not earlier than  
12 three months before the expiration of the registration, to the  
13 secretary of state for filing a renewal application that  
14 complies with this section. When filed, the renewal  
15 application renews the registration for a succeeding one-year  
16 period.

17 E. A foreign limited liability company whose name  
18 registration is effective may register as a foreign limited  
19 liability company under the registered name or consent in a  
20 signed record to the use of that name by another person that is  
21 not an individual.

22 SECTION 115. [NEW MATERIAL] REGISTERED OFFICE AND  
23 REGISTERED AGENT--CHANGE OF PRINCIPAL PLACE OF BUSINESS.--

24 A. A limited liability company shall maintain in  
25 New Mexico:

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1 (1) a registered office, which may be the same  
2 as the limited liability company's principal place of business;  
3 and

4 (2) a registered agent for service of process  
5 on the limited liability company that is either:

6 (a) an individual resident of New  
7 Mexico;

8 (b) a domestic corporation, limited  
9 liability company or partnership having a place of business in  
10 New Mexico that is the same as the registered office; or

11 (c) a foreign corporation, limited  
12 liability company or partnership authorized to transact  
13 business in New Mexico whose place of business is the same as  
14 the registered office.

15 B. A limited liability company may change its  
16 registered office or registered agent by delivering to the  
17 secretary of state a statement setting forth:

18 (1) the name of the limited liability company;  
19 (2) the name of its current registered agent;  
20 (3) the street address of its current  
21 registered office; and

22 (4) if its current registered agent is to be  
23 changed:

24 (a) the name of its successor registered  
25 agent;

1 (b) the street address of the successor  
2 registered agent's place of business;

3 (c) a statement that such address is the  
4 same as the current address of the limited liability company's  
5 current registered office or, if there is a concurrent change  
6 in the address of the registered office, as the new address of  
7 the registered office; and

8 (d) a statement of the successor  
9 registered agent that the agent accepts the appointment;

10 (5) if the current address of the place of  
11 business of its current registered agent is to be changed, the  
12 new street address of the place of business of the current  
13 registered agent and a statement that the new street address is  
14 the same as the address of the limited liability company's  
15 registered office or, if there is a concurrent change in the  
16 address of the registered office, as the new street address of  
17 the registered office; or

18 (6) if the address of its current registered  
19 office is to be changed, the new street address to which the  
20 current registered office is to be changed and a statement that  
21 the new address is the same as the street address of the place  
22 of business of the current registered agent of the limited  
23 liability company or, if there is a concurrent change of the  
24 current registered agent, of the successor registered agent of  
25 the limited liability company.



1           C. If a registered agent changes the street address  
2 of the registered agent's business office, the registered agent  
3 may change the street address of the registered office of any  
4 limited liability company for which the registered agent is the  
5 registered agent by notifying the limited liability company in  
6 writing of the change and signing, either manually or in  
7 facsimile, and delivering to the secretary of state for filing  
8 a statement that complies with this section but need not be  
9 responsive to Paragraph (4) of Subsection B of this section and  
10 recites that the company has been notified of the change.

11           D. If the secretary of state finds that the  
12 statement conforms to this section, the secretary of state  
13 shall file the statement in the secretary of state's office  
14 and, upon such filing, the change of registered agent, change  
15 of address of the registered office or change of the registered  
16 agent's place of business shall become effective and fulfill  
17 any requirement that such change be reported to the secretary  
18 of state.

19           E. A registered agent of a limited liability  
20 company may resign as registered agent by delivering a written  
21 notice, executed in duplicate, to the secretary of state, who  
22 shall mail a copy of the notice to the limited liability  
23 company at its principal place of business as shown on the  
24 records of the secretary of state. The resigning registered  
25 agent's appointment terminates thirty days after receipt of the

1 notice by the secretary of state or on the effective date of  
2 the appointment of a successor registered agent, whichever  
3 occurs first.

4 F. A limited liability company shall notify the  
5 secretary of state of a change in the street address of its  
6 principal place of business by delivering a written statement  
7 to the secretary of state setting forth such change.

8 SECTION 116. [NEW MATERIAL] SERVICE OF PROCESS.--A  
9 limited liability company or a foreign limited liability  
10 company, regardless of whether registered under the Uniform  
11 Revised Limited Partnership Act, shall be served with process  
12 in the manner prescribed by law and the New Mexico Rules of  
13 Civil Procedure.

14 SECTION 117. [NEW MATERIAL] FILING, SERVICE AND COPYING  
15 FEES.--The secretary of state shall charge and collect, for:

16 A. filing the original certificate of organization  
17 and issuing a certificate of organization, a fee of fifty  
18 dollars (\$50.00);

19 B. filing amended or restated articles of merger  
20 and issuing a certificate of amended or restated articles, a  
21 fee of fifty dollars (\$50.00);

22 C. filing articles of merger, conversion or  
23 consolidation and issuing a certificate of consolidation, a fee  
24 of one hundred dollars (\$100);

25 D. filing articles of dissolution or revocation of

1 dissolution, a fee of twenty-five dollars (\$25.00);

2 E. issuing a certificate of good standing, a  
3 certificate of registration or a certificate for any purpose  
4 not otherwise specified, a fee of twenty-five dollars (\$25.00);

5 F. furnishing written information on any limited  
6 liability company, a fee of twenty-five dollars (\$25.00);

7 G. providing any number of pages of documents or  
8 instruments pertaining to one limited liability company, a fee  
9 of ten dollars (\$10.00); however, the secretary of state is  
10 required to furnish only one copy of each page at this fee;

11 H. providing a certification of documents or  
12 instruments pertaining to a limited liability company, a fee of  
13 twenty-five dollars (\$25.00);

14 I. accepting an application for reservation of a  
15 name or for filing a notice of the transfer of any name  
16 reservation, a fee of twenty dollars (\$20.00);

17 J. filing a statement of change of address of  
18 registered office or registered agent, or both, a fee of twenty  
19 dollars (\$20.00);

20 K. filing an agent's statement of change of address  
21 of registered agent, a fee of twenty dollars (\$20.00);

22 L. issuing a registration to a foreign limited  
23 liability company, a fee of one hundred dollars (\$100);

24 M. filing an amendment of the registration of a  
25 foreign limited liability company, a fee of fifty dollars

1 (\$50.00);

2 N. filing an application for cancellation of  
3 registration of a foreign limited liability company and issuing  
4 a certificate of cancellation, a fee of twenty-five dollars  
5 (\$25.00); and

6 O. filing a triennial report or any other report,  
7 statement, instrument or document not otherwise specified, a  
8 fee of twenty dollars (\$20.00).

9 SECTION 118. [NEW MATERIAL] DELIVERY OF RECORD.--

10 A. Except as otherwise provided in the Revised  
11 Uniform Limited Liability Company Act, permissible means of  
12 delivery of a record include delivery by hand, mail,  
13 conventional commercial practice and electronic transmission.

14 B. Delivery of a record to the secretary of state  
15 is effective only when it is received by the secretary of  
16 state.

17 SECTION 119. [NEW MATERIAL] RESERVATION OF POWER TO AMEND  
18 OR REPEAL.--The legislature may amend or repeal all or part of  
19 the Revised Uniform Limited Liability Company Act, and all  
20 limited liability companies and foreign limited liability  
21 companies subject to that act are governed by the amendment or  
22 repeal.

23 ARTICLE 2

24 FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

25 SECTION 201. [NEW MATERIAL] FORMATION OF LIMITED

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1 LIABILITY COMPANY--CERTIFICATE OF ORGANIZATION--FILING.--

2 A. One or more persons may act as organizers to  
3 form a limited liability company by delivering to the secretary  
4 of state for filing a certificate of organization.

5 B. A certificate of organization shall state:

6 (1) the name, which shall comply with Section  
7 112 of the Revised Uniform Limited Liability Company Act, of  
8 the limited liability company;

9 (2) the street address of the company's  
10 registered office and the name of the registered agent at that  
11 office; and

12 (3) the street and mailing address of the  
13 company's principal office, if different from the street  
14 address of its registered office.

15 C. A certificate of organization may contain  
16 statements as to matters other than those required by  
17 Subsection B of this section, but those statements shall not  
18 vary or otherwise affect the provisions specified in Subsection  
19 C or D of Section 105 of the Revised Uniform Limited Liability  
20 Company Act in a manner inconsistent with that section.  
21 However, a statement in a certificate of organization is not  
22 effective as a statement of authority.

23 D. A limited liability company is formed when the  
24 certificate of organization becomes effective and at least one  
25 person has become a member.

1 E. The organizer or organizers of a limited  
2 liability company shall file with the secretary of state:

3 (1) the signed original of the articles of  
4 organization, together with a duplicate copy, which may be  
5 either signed, photocopied or conformed;

6 (2) the statement of the person appointed  
7 registered agent, accepting appointment as registered agent;  
8 and

9 (3) any other documents required to be filed  
10 under the Revised Uniform Limited Liability Company Act.

11 F. The secretary of state may accept a facsimile  
12 transmission for filing.

13 G. If the secretary of state determines that the  
14 documents delivered for filing conform with the Revised Uniform  
15 Limited Liability Company Act, the secretary of state shall,  
16 when all required filing fees have been paid:

17 (1) endorse on each signed original and  
18 duplicate copy the word "filed" and the date of its acceptance  
19 for filing;

20 (2) retain a signed original in the files of  
21 the secretary of state; and

22 (3) return each duplicate copy to the person  
23 who delivered it to the secretary of state or to that person's  
24 representative.

25 SECTION 202. [NEW MATERIAL] AMENDMENT OR RESTATEMENT OF

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1 CERTIFICATE OF ORGANIZATION.--

2 A. A certificate of organization may be amended or  
3 restated at any time.

4 B. To amend its certificate of organization, a  
5 limited liability company shall deliver to the secretary of  
6 state for filing an amendment stating:

7 (1) the name of the company;

8 (2) the date of filing of its initial  
9 certificate; and

10 (3) the text of the amendment.

11 C. To restate its certificate of organization to  
12 consolidate all amendments into a single document, a limited  
13 liability company shall deliver to the secretary of state for  
14 filing a restatement, designated as a restatement in its  
15 heading. The restatement may include one or more new  
16 amendments. The restated certificate of organization  
17 supersedes the original certificate of organization and all  
18 previous amendments and restatements.

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

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

1 (2) if appropriate, deliver to the secretary  
2 of state for filing a statement of change in accordance with  
3 Section 115 of the Revised Uniform Limited Liability Company  
4 Act or a statement of correction in accordance with Section 209  
5 of that act.

6 SECTION 203. [NEW MATERIAL] SIGNING OF RECORDS TO BE  
7 DELIVERED FOR FILING TO SECRETARY OF STATE.--

8 A. A record delivered to the secretary of state for  
9 filing under the Revised Uniform Limited Liability Company Act  
10 shall be signed as follows:

11 (1) except as otherwise provided in Paragraphs  
12 (2) and (3) of this subsection, a record signed by a limited  
13 liability company or a registered foreign limited liability  
14 company shall be signed by a person authorized by the company;

15 (2) a limited liability company's initial  
16 certificate of organization shall be signed by at least one  
17 person acting as an organizer;

18 (3) a record delivered on behalf of a  
19 dissolved limited liability company or a dissolved registered  
20 foreign limited liability company that has no member shall be  
21 signed by the person winding up the company's activities and  
22 affairs under Subsection C of Section 702 of that act or under  
23 similar provisions of the jurisdiction of formation of a  
24 dissolved registered foreign limited liability company or a  
25 person appointed under Subsection D of Section 702 of that act



1 or under similar provisions of the jurisdiction of formation of  
2 a dissolved registered foreign limited liability company to  
3 wind up the activities and affairs;

4 (4) a statement of denial by a person under  
5 Section 303 of that act shall be signed by that person; and

6 (5) any other record delivered on behalf of a  
7 person to the secretary of state for filing shall be signed by  
8 that person.

9 B. Any record delivered for filing under the  
10 Revised Uniform Limited Liability Company Act may be signed by  
11 an agent. When that act requires a particular individual to  
12 sign a record and the individual is deceased or incapacitated,  
13 the record may be signed by a legal representative of the  
14 individual.

15 C. A person that signs a record as an agent or a  
16 legal representative affirms as a fact that the person is  
17 authorized to sign the record.

18 SECTION 204. [NEW MATERIAL] SIGNING AND FILING PURSUANT  
19 TO JUDICIAL ORDER.--

20 A. If a person required by the Revised Uniform  
21 Limited Liability Company Act to sign a record or deliver a  
22 record to the secretary of state for filing under that act does  
23 not do so, any other person that is aggrieved may petition the  
24 district court to order:

25 (1) the person to sign the record;

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1 (2) the person to deliver the record to the  
2 secretary of state for filing; or

3 (3) the secretary of state to file the record  
4 unsigned.

5 B. If a petitioner under Subsection A of this  
6 section is not the limited liability company or foreign limited  
7 liability company to which the record pertains, the petitioner  
8 shall make the company or foreign company a party to the  
9 action.

10 C. A record filed under Paragraph (3) of Subsection  
11 A of this section is effective without being signed.

12 SECTION 205. [NEW MATERIAL] LIABILITY FOR INACCURATE  
13 INFORMATION IN FILED RECORD.--

14 A. If a record delivered to the secretary of state  
15 for filing under the Revised Uniform Limited Liability Company  
16 Act and filed by the secretary of state contains inaccurate  
17 information, a person that suffers a loss by reliance on the  
18 information may recover damages for the loss from:

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

23 (2) subject to Subsection B of this section, a  
24 member of a member-managed limited liability company or a  
25 manager of a manager-managed limited liability company, if:

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1 (a) the record was delivered for filing  
2 on behalf of the company; and

3 (b) the member or manager knew or had  
4 notice of the inaccuracy for a reasonably sufficient time  
5 before the information was relied upon so that, before the  
6 reliance, the member or manager reasonably could have: 1)  
7 effected an amendment under Section 202 of the Revised Uniform  
8 Limited Liability Company Act; 2) filed a petition under  
9 Section 204 of that act; or 3) delivered to the secretary of  
10 state for filing a statement of change under Section 115 of  
11 that act or a statement of correction under Section 209 of that  
12 act.

13 B. To the extent that the operating agreement of a  
14 member-managed limited liability company expressly relieves a  
15 member of responsibility for maintaining the accuracy of  
16 information contained in records delivered on behalf of the  
17 company to the secretary of state for filing under the Revised  
18 Uniform Limited Liability Company Act and imposes that  
19 responsibility on one or more other members, the liability  
20 stated in Paragraph (2) of Subsection A of this section applies  
21 to those other members and not to the member that the operating  
22 agreement relieves of the responsibility.

23 C. An individual who signs a record authorized or  
24 required to be filed under the Revised Uniform Limited  
25 Liability Company Act affirms under penalty of perjury that the

1 information stated in the record is accurate.

2 SECTION 206. [NEW MATERIAL] FILING REQUIREMENTS.--

3 A. To be filed by the secretary of state under the  
4 Revised Uniform Limited Liability Company Act, a record shall  
5 be received by the secretary of state, comply with that act  
6 and:

7 (1) have its filing required or permitted by  
8 that act;

9 (2) be physically delivered in written form  
10 unless and to the extent that the secretary of state permits  
11 electronic delivery of records;

12 (3) have its words in English and its numbers  
13 in Arabic or Roman numerals. However, the name of an entity  
14 need not be in English if written in English letters or Arabic  
15 or Roman numerals;

16 (4) be signed by a person authorized or  
17 required by that act to sign the record; and

18 (5) state the name and capacity, if any, of  
19 each individual who signed the record, either on behalf of the  
20 individual or the person authorized or required to sign it, but  
21 the record need not contain a seal, attestation, acknowledgment  
22 or verification.

23 B. If a law other than the Revised Uniform Limited  
24 Liability Company Act prohibits the disclosure by the secretary  
25 of state of information contained in a record delivered to the

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1 secretary of state for filing, the secretary of state shall  
2 file the record if the record otherwise complies with that act.  
3 However, the secretary of state may redact the information  
4 whose disclosure is prohibited.

5 C. When a record is delivered to the secretary of  
6 state for filing, a fee, tax, interest or penalty required to  
7 be paid under the Revised Uniform Limited Liability Company Act  
8 or other law shall be paid in a manner permitted by the  
9 secretary of state or required by that law.

10 D. A record delivered in written form shall be  
11 accompanied by an identical or conformed copy.

12 E. The secretary of state may provide forms for  
13 filings that are required or permitted to be made by the  
14 Revised Uniform Limited Liability Company Act. However, except  
15 as otherwise provided in Subsection F of this section, the use  
16 of such forms is not required.

17 F. The secretary of state may require that a cover  
18 sheet for a filing or a triennial report be on a form  
19 prescribed by the secretary of state.

20 **SECTION 207. [NEW MATERIAL] EFFECTIVE DATE AND TIME.--**  
21 Except as otherwise provided in Section 208 of the Revised  
22 Uniform Limited Liability Company Act, and subject to  
23 Subsection D of Section 209 of that act, a record filed under  
24 that act is effective:

25 A. on the date and at the time of its filing by the

1 secretary of state, as provided in Subsection B of Section 210  
2 of that act;

3 B. if later than the time specified in Subsection A  
4 of this section, on the date of filing and at the time  
5 specified in the record as its effective time;

6 C. at the specified delayed effective date and  
7 time, which shall not be more than ninety days after the date  
8 of filing; or

9 D. if a delayed effective date, but no time, is  
10 specified, at 12:01 a.m. on the date specified, which shall not  
11 be more than ninety days after the date of filing.

12 SECTION 208. [NEW MATERIAL] WITHDRAWAL OF FILED RECORD  
13 BEFORE EFFECTIVENESS.--

14 A. Except as otherwise provided in Sections 1010,  
15 1016, 1022 and 1028 of the Revised Uniform Limited Liability  
16 Company Act, a record delivered to the secretary of state for  
17 filing may be withdrawn before it takes effect by delivering to  
18 the secretary of state for filing a statement of withdrawal.

19 B. A statement of withdrawal shall:

20 (1) be signed by each person that signed the  
21 record being withdrawn, except as otherwise agreed by those  
22 persons;

23 (2) identify the record to be withdrawn; and

24 (3) if signed by fewer than all the persons  
25 that signed the record being withdrawn, state that the record

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1 is withdrawn in accordance with the agreement of all the  
2 persons that signed the record.

3 C. On filing by the secretary of state of a  
4 statement of withdrawal, the action or transaction evidenced by  
5 the original record does not take effect.

6 SECTION 209. [NEW MATERIAL] CORRECTING FILED RECORD.--

7 A. A person on whose behalf a filed record was  
8 delivered to the secretary of state for filing may correct the  
9 record if:

- 10 (1) the record at the time of filing was  
11 inaccurate;
- 12 (2) the record was defectively signed; or
- 13 (3) the electronic transmission of the record  
14 to the secretary of state was defective.

15 B. To correct a filed record, a person on whose  
16 behalf the record was delivered to the secretary of state shall  
17 deliver to the secretary of state for filing a statement of  
18 correction.

- 19 C. A statement of correction shall:
- 20 (1) not state a delayed effective date;
- 21 (2) be signed by the person correcting the  
22 filed record;
- 23 (3) identify the filed record to be corrected;
- 24 (4) specify the inaccuracy or defect to be  
25 corrected; and

1 (5) correct the inaccuracy or defect.

2 D. A statement of correction is effective as of the  
3 effective date of the filed record that it corrects except as  
4 to persons relying on the uncorrected filed record and  
5 adversely affected by the correction. For those purposes and  
6 as to those persons, the statement of correction is effective  
7 when filed.

8 SECTION 210. [NEW MATERIAL] DUTY OF SECRETARY OF STATE TO  
9 FILE--REVIEW OF REFUSAL TO FILE--DELIVERY OF RECORD BY  
10 SECRETARY OF STATE.--

11 A. The secretary of state shall file a record that  
12 complies with the Revised Uniform Limited Liability Company Act  
13 and that is delivered to the secretary of state for filing.  
14 The duty of the secretary of state stated in this section is  
15 ministerial.

16 B. When the secretary of state files a record, the  
17 secretary of state shall record it as filed on the date and at  
18 the time of its delivery. After filing a record, the secretary  
19 of state shall deliver to the person that submitted the record  
20 a copy of the record with an acknowledgment of the date and  
21 time of filing and, in the case of a statement of denial, also  
22 to the limited liability company to which the statement  
23 pertains.

24 C. If the secretary of state refuses to file a  
25 record, the secretary of state shall, within fifteen business

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1 days after the record is delivered:

2 (1) return the record or notify the person  
3 that submitted the record of the refusal; and

4 (2) provide a brief explanation in a record of  
5 the reason for the refusal.

6 D. If the secretary of state refuses to file a  
7 record, the person that submitted the record may petition the  
8 district court to compel the filing of the record. The record  
9 and the explanation of the secretary of state of the refusal to  
10 file shall be attached to the petition. The court may decide  
11 the matter in a summary proceeding.

12 E. The filing of or refusal to file a record does  
13 not:

14 (1) affect the validity or invalidity of the  
15 record in whole or in part; or

16 (2) create a presumption that the information  
17 contained in the record is correct or incorrect.

18 F. The secretary of state may deliver any record to  
19 a person by delivering it:

20 (1) in person to the person that submitted it;  
21 (2) to the address of the person's registered  
22 agent;

23 (3) to the principal office of the person; or

24 (4) to another address that the person

25 provides to the secretary of state for delivery.

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1           SECTION 211. [NEW MATERIAL] CERTIFICATE OF GOOD STANDING  
2 OR REGISTRATION.--

3           A. On request of any person, the secretary of state  
4 shall issue a certificate of good standing for a limited  
5 liability company or a certificate of registration for a  
6 registered foreign limited liability company.

7           B. A certificate issued under Subsection A of this  
8 section shall state:

9                   (1) the limited liability company's name or  
10 the registered foreign limited liability company's name used in  
11 New Mexico;

12                   (2) in the case of a limited liability  
13 company:

14                           (a) that a certificate of organization  
15 has been filed and has taken effect;

16                           (b) the date that the certificate became  
17 effective;

18                           (c) if the records of the secretary of  
19 state reflect that the company's period of duration is less  
20 than perpetual, the period of the company's duration; and

21                           (d) that: 1) no statement of  
22 dissolution, statement of administrative dissolution or  
23 statement of termination has been filed; 2) the records of the  
24 secretary of state do not otherwise reflect that the company  
25 has been dissolved or terminated; and 3) a proceeding is not

1 pending under Section 708 of the Revised Uniform Limited  
2 Liability Company Act;

3 (3) in the case of a registered foreign  
4 limited liability company, that it is registered to do business  
5 in New Mexico;

6 (4) that all fees, taxes, interest and  
7 penalties owed to New Mexico by the limited liability company  
8 or foreign limited liability company and collected through the  
9 secretary of state have been paid, if:

10 (a) payment is reflected in the records  
11 of the secretary of state; and

12 (b) nonpayment affects the good standing  
13 or registration of the company or foreign company;

14 (5) that the most recent triennial report  
15 required by Section 212 of the Revised Uniform Limited  
16 Liability Company Act has been delivered to the secretary of  
17 state for filing; and

18 (6) other facts reflected in the records of  
19 the secretary of state pertaining to the limited liability  
20 company or foreign limited liability company that the person  
21 requesting the certificate reasonably requests.

22 C. Subject to any qualification stated in the  
23 certificate, a certificate issued by the secretary of state  
24 under Subsection A of this section may be relied on as  
25 conclusive evidence of the facts stated in the certificate.

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1           SECTION 212.   ~~[NEW MATERIAL]~~ TRIENNIAL REPORT FOR  
2 SECRETARY OF STATE.--

3           A.   A limited liability company or registered  
4 foreign limited liability company shall deliver to the  
5 secretary of state for filing a triennial report that states:

6                   (1)   the name of the company or foreign  
7 company;

8                   (2)   the street and mailing addresses of its  
9 principal office and, if different, the street address of its  
10 office in this state, if any;

11                  (3)   if the company does not have an office in  
12 this state, the street address of its registered office in New  
13 Mexico and the name of its registered agent at that office;

14                  (4)   if the company is member managed, the name  
15 of at least one member;

16                  (5)   if the company is manager managed, the  
17 name of at least one manager; and

18                  (6)   in the case of a foreign company, its  
19 jurisdiction of formation and any alternate name adopted under  
20 Subsection A of Section 906 of the Revised Uniform Limited  
21 Liability Company Act.

22           B.   Information in the triennial report shall be  
23 current as of the date that the report is signed by the limited  
24 liability company or registered foreign limited liability  
25 company.

1           C. The first triennial report shall be delivered to  
2 the secretary of state for filing by the end of the third  
3 calendar month that follows the date on which the limited  
4 liability company's certificate of organization became  
5 effective or the registered foreign limited liability company  
6 registered to do business in New Mexico. A subsequent report  
7 shall be delivered to the secretary of state for filing every  
8 third year thereafter, during the calendar month in which the  
9 first report was filed. The secretary of state may provide by  
10 rule for the orderly transition over several years of report  
11 filing for limited liability companies organized before July 1,  
12 2018 and for registered foreign limited liability companies  
13 registered before July 1, 2018.

14           D. If a triennial report does not contain the  
15 information required by this section, the secretary of state  
16 shall promptly notify the reporting limited liability company  
17 or registered foreign limited liability company of the  
18 deficiency in a record and return the report for correction.

19           E. A supplemental report shall be filed with the  
20 secretary of state within thirty days if, after filing a  
21 triennial report, there is a change in the information  
22 contained in that report.

23           SECTION 213. [NEW MATERIAL] FAILURE TO FILE REPORTS--  
24 PENALTY.--

25           A. A limited liability company that is required to  
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1 file a triennial report and that fails to submit the report  
2 within the time prescribed for a reporting period shall incur a  
3 civil penalty of two hundred dollars (\$200) in addition to the  
4 fee for filing the report. The civil penalty shall be paid  
5 upon filing the report. Sixty days after written notice of  
6 failure to file a report has been mailed to the limited  
7 liability company's mailing address as shown in the last  
8 triennial report or supplemental report filed with the  
9 secretary of state, the limited liability company shall have  
10 its certificate of organization canceled by the secretary of  
11 state without further proceedings, unless the report is filed  
12 and all fees and penalties are paid within that sixty-day  
13 period.

14 B. A registered foreign limited liability company  
15 that is required to file a triennial report and that fails to  
16 submit the report within the time prescribed for a reporting  
17 period shall incur a civil penalty of two hundred dollars  
18 (\$200) in addition to the fee for filing the report. The civil  
19 penalty shall be paid upon filing the report. Sixty days after  
20 written notice of failure to file a report has been mailed to  
21 the registered foreign limited liability company's mailing  
22 address as shown in the last triennial report or supplemental  
23 report filed with the secretary of state, the registered  
24 foreign limited liability company shall have its registration  
25 to do business in this state canceled by the secretary of state

1 without further proceedings, unless the report is filed and all  
2 fees and penalties are paid within that sixty-day period.  
3 Nothing in this section authorizes a forfeiture of the right or  
4 privilege of engaging in interstate commerce.

5 C. A limited liability company or registered  
6 foreign limited liability company that is not exempted from  
7 filing a supplemental report and that fails to submit the  
8 required report within the time prescribed for a reporting  
9 period shall incur a civil penalty of two hundred dollars  
10 (\$200) in addition to the fee for filing the report. The civil  
11 penalty shall be paid upon filing the report.

12 SECTION 214. [NEW MATERIAL] CANCELED LIMITED LIABILITY  
13 COMPANIES STRICKEN FROM SECRETARY OF STATE FILES.--A limited  
14 liability company whose certificate of organization has been  
15 canceled by the secretary of state under Section 213 of the  
16 Revised Uniform Limited Liability Company Act shall be stricken  
17 from the files of the secretary of state without further  
18 proceedings. A registered foreign limited liability company  
19 whose registration to do business in the state has been  
20 canceled by the secretary of state under that section shall be  
21 stricken from the files of the secretary of state without  
22 further proceedings.

23 SECTION 215. [NEW MATERIAL] ELECTRONIC FILING AND  
24 CERTIFICATION OF DOCUMENTS--USE OF ELECTRONIC PAYMENT OF  
25 FEES.--

1           A. The secretary of state may adopt rules  
2     permitting the electronic filing of documents, including  
3     original documents, and the certification of electronically  
4     filed documents when filing or certification is required or  
5     permitted under the Revised Uniform Limited Liability Company  
6     Act. The rules shall provide for the appropriate treatment of  
7     electronic filings for the purposes of satisfying requirements  
8     for original documents or copies and shall provide the  
9     requirements for signature with respect to electronic filings.  
10    If the secretary of state accepts the filing of a document by  
11    electronic transmission, the secretary of state may accept for  
12    filing a document containing a copy of a signature, however  
13    made. As used in this subsection:

14               (1) "electronic" means relating to technology  
15    having electrical, digital, magnetic, wireless, optical,  
16    electromagnetic or similar capabilities; and

17               (2) "electronic filing" means filing by  
18    facsimile, email or other electronic transmission.

19           B. The secretary of state may accept, in lieu of  
20    cash or check, a credit or debit card or other means of payment  
21    specified in the secretary of state's rules as payment of a  
22    fee, civil penalty or other financial liability required by the  
23    Revised Uniform Limited Liability Company Act. The secretary  
24    of state shall determine the credit or debit cards or other  
25    means of payment that may be accepted for payment.



ARTICLE 3

RELATIONS OF MEMBERS AND MANAGERS

TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

SECTION 301. [NEW MATERIAL] NO AGENCY POWER OF MEMBER AS  
MEMBER.--

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

B. A person's status as a member does not prevent  
or restrict a law other than the Revised Uniform Limited  
Liability Company Act from imposing liability on a limited  
liability company because of the person's conduct.

SECTION 302. [NEW MATERIAL] STATEMENT OF AUTHORITY.--

A. A limited liability company or a registered  
foreign limited liability company may deliver to the secretary  
of state for filing a statement of authority. The statement:

(1) shall include the name of the company, the  
name and street and mailing addresses of its registered agent  
in New Mexico and, if the company is a registered foreign  
limited liability company, the jurisdiction of its formation;

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

(a) sign an instrument transferring real  
property held in the name of the company; or

1 (b) enter into other transactions on  
2 behalf of, or otherwise act for or bind, the company; and

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

5 (a) sign an instrument transferring real  
6 property held in the name of the company; or

7 (b) enter into other transactions on  
8 behalf of, or otherwise act for or bind, the company.

9 B. To amend or cancel a statement of authority  
10 filed by the secretary of state, a limited liability company or  
11 a registered foreign limited liability company shall deliver to  
12 the secretary of state for filing an amendment or cancellation  
13 stating:

14 (1) the name of the company and, if the  
15 company is a registered foreign limited liability company, the  
16 jurisdiction of its formation;

17 (2) the name and street and mailing addresses  
18 of the company's registered agent in New Mexico;

19 (3) the date the statement being affected  
20 became effective; and

21 (4) the contents of the amendment or a  
22 declaration that the statement is canceled.

23 C. A statement of authority affects only the power  
24 of a person to bind a limited liability company or a registered  
25 foreign limited liability company to persons that are not

1 members.

2 D. Subject to Subsection C of this section and  
3 Subsection D of Section 103 of the Revised Uniform Limited  
4 Liability Company Act, and except as otherwise provided in  
5 Subsections F, G and H of this section, a limitation on the  
6 authority of a person or a position contained in an effective  
7 statement of authority is not by itself evidence of a person's  
8 knowledge or notice of the limitation.

9 E. Subject to Subsection C of this section, a grant  
10 of authority not pertaining to transfers of real property and  
11 contained in an effective statement of authority is conclusive  
12 in favor of a person that gives value in reliance on the grant,  
13 except to the extent that when the person gives value:

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

15 (2) the statement has been canceled or  
16 restrictively amended under Subsection B of this section; or

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

20 F. Subject to Subsection C of this section, an  
21 effective statement of authority that grants authority to  
22 transfer real property held in the name of the limited  
23 liability company, a certified copy of which statement is  
24 recorded in the office for recording transfers of the real  
25 property, is conclusive in favor of a person that gives value

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1 in reliance on the grant without knowledge to the contrary,  
2 except to the extent that when the person gives value:

3 (1) the statement has been canceled or  
4 restrictively amended under Subsection B of this section and a  
5 certified copy of the cancellation or restrictive amendment has  
6 been recorded in the office for recording transfers of the real  
7 property; or

8 (2) a limitation on the grant is contained in  
9 another statement of authority that became effective after the  
10 statement containing the grant became effective, and a  
11 certified copy of the later-effective statement is recorded in  
12 the office for recording transfers of the real property.

13 G. Subject to Subsection C of this section, if a  
14 certified copy of an effective statement containing a  
15 limitation on the authority to transfer real property held in  
16 the name of a limited liability company or a registered foreign  
17 limited liability company is recorded in the office for  
18 recording transfers of that real property, all persons are  
19 deemed to know of the limitation.

20 H. Subject to Subsection I of this section, an  
21 effective statement of withdrawal, a termination of  
22 registration or a withdrawal of registration is a cancellation  
23 of any filed statement of authority for the purposes of  
24 Subsection F of this section and is a limitation on authority  
25 for the purposes of Subsection G of this section.

1 I. After a statement of dissolution becomes  
2 effective or after a termination of registration or a  
3 withdrawal of registration, a limited liability company or a  
4 registered foreign limited liability company may deliver to the  
5 secretary of state for filing and, if appropriate, may record a  
6 statement of authority that is designated as a post-  
7 dissolution, post-termination or post-withdrawal, as  
8 applicable, statement of authority. The statement operates as  
9 provided in Subsections F and G of this section.

10 J. Unless earlier canceled, an effective statement  
11 of authority is canceled by operation of law five years after  
12 the date on which the statement, or its most recent amendment,  
13 becomes effective. This cancellation operates without need for  
14 any recording under Subsection F or G of this section.

15 K. An effective statement of denial operates as a  
16 restrictive amendment under this section and may be recorded by  
17 certified copy for purposes of Paragraph (1) of Subsection F of  
18 this section.

19 **SECTION 303. [NEW MATERIAL] STATEMENT OF DENIAL.--A**  
20 person named in a filed statement of authority granting that  
21 person authority may deliver to the secretary of state for  
22 filing a statement of denial that:

23 A. provides the name of the limited liability  
24 company or the registered foreign limited liability company and  
25 the caption of the statement of authority to which the

1 statement of denial pertains; and

2 B. denies the grant of authority.

3 SECTION 304. [NEW MATERIAL] LIABILITY OF MEMBERS AND  
4 MANAGERS.--

5 A. A debt, obligation or other liability of a  
6 limited liability company is solely the debt, obligation or  
7 other liability of the company. A member or manager is not  
8 personally liable, directly or indirectly, by way of  
9 contribution or otherwise, for a debt, obligation or other  
10 liability of the company solely by reason of being or acting as  
11 a member or manager. This subsection applies regardless of the  
12 dissolution of the company.

13 B. The failure of a limited liability company to  
14 observe formalities relating to the exercise of its powers or  
15 management of its activities and affairs is not a ground for  
16 imposing liability on a member or manager for a debt, an  
17 obligation or another liability of the company.

18 ARTICLE 4

19 RELATIONS OF MEMBERS TO EACH OTHER AND  
20 TO LIMITED LIABILITY COMPANY

21 SECTION 401. [NEW MATERIAL] BECOMING MEMBER.--

22 A. If a limited liability company is to have only  
23 one member upon formation, the person becomes a member as  
24 agreed by that person and the organizer of the company. That  
25 person and the organizer may, but need not, be different

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1 persons. If different, the organizer acts on behalf of the  
2 initial member.

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

8 C. After formation of a limited liability company,  
9 a person becomes a member:

10 (1) as provided in the operating agreement;

11 (2) as the result of a transaction effective  
12 under Article 10 of the Revised Uniform Limited Liability  
13 Company Act;

14 (3) with the affirmative vote or consent of  
15 all of the members; or

16 (4) as provided in Paragraph (3) of Subsection  
17 A of Section 701 of that act.

18 D. A person may become a member without:

19 (1) acquiring a transferable interest; or

20 (2) making or being obligated to make a  
21 contribution to the limited liability company.

22 SECTION 402. [NEW MATERIAL] FORM OF CONTRIBUTION.--A  
23 contribution may consist of property transferred to, services  
24 performed for or another benefit provided to the limited  
25 liability company or an agreement to transfer property to,

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1 perform services for or provide another benefit to the company.

2 SECTION 403. [NEW MATERIAL] LIABILITY FOR  
3 CONTRIBUTIONS.--

4 A. A person's obligation to make a contribution to  
5 a limited liability company is not excused by the person's  
6 death, disability, termination or other inability to perform  
7 personally.

8 B. If a person does not fulfill an obligation to  
9 make a contribution other than money, the person is obligated  
10 at the option of the limited liability company to contribute  
11 money equal to the value of the part of the contribution that  
12 has not been made.

13 C. The obligation of a person to make a  
14 contribution may be compromised only by the affirmative vote or  
15 consent of all of the members. If a creditor of a limited  
16 liability company extends credit or otherwise acts in reliance  
17 on an obligation described in Subsection A of this section  
18 without knowledge or notice of a compromise under this  
19 subsection, the creditor may enforce the obligation.

20 SECTION 404. [NEW MATERIAL] SHARING OF AND RIGHT TO  
21 DISTRIBUTIONS BEFORE DISSOLUTION.--

22 A. A distribution made by a limited liability  
23 company before its dissolution and winding up shall be in equal  
24 shares among members and persons dissociated as members, except  
25 to the extent necessary to comply with a transfer effective

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1 under Section 502 of the Revised Uniform Limited Liability  
2 Company Act or charging order in effect under Section 503 of  
3 that act.

4 B. A person has a right to a distribution before  
5 the dissolution and winding up of a limited liability company  
6 only if the company decides to make an interim distribution. A  
7 person's dissociation does not entitle the person to a  
8 distribution.

9 C. A person does not have a right to demand or  
10 receive a distribution from a limited liability company in a  
11 form other than money. Except as otherwise provided in  
12 Subsection D of Section 707 of the Revised Uniform Limited  
13 Liability Company Act, a company may distribute an asset in  
14 kind only if each part of the asset is fungible with each other  
15 part and each person receives a percentage of the asset equal  
16 in value to the person's share of distributions.

17 D. If a member or transferee becomes entitled to  
18 receive a distribution, the member or transferee has the status  
19 of, and is entitled to all remedies available to, a creditor of  
20 the limited liability company with respect to the distribution.  
21 However, the company's obligation to make a distribution is  
22 subject to offset for any amount owed to the company by the  
23 member or a person dissociated as a member on whose account the  
24 distribution is made.

25 SECTION 405. [NEW MATERIAL] LIMITATIONS ON

1 DISTRIBUTIONS.--

2 A. A limited liability company shall not make a  
3 distribution, including a distribution under Section 707 of the  
4 Revised Uniform Limited Liability Company Act, if after the  
5 distribution:

6 (1) the company would not be able to pay its  
7 debts as they become due in the ordinary course of the  
8 company's activities and affairs; or

9 (2) the company's total assets would be less  
10 than the sum of its total liabilities plus the amount that  
11 would be needed, if the company were to be dissolved and wound  
12 up at the time of the distribution, to satisfy the preferential  
13 rights upon dissolution and winding up of members and  
14 transferees whose preferential rights are superior to the  
15 rights of persons receiving the distribution.

16 B. A limited liability company may base a  
17 determination that a distribution is not prohibited under  
18 Subsection A of this section on:

19 (1) financial statements prepared on the basis  
20 of accounting practices and principles that are reasonable in  
21 the circumstances; or

22 (2) a fair valuation or other method that is  
23 reasonable under the circumstances.

24 C. Except as otherwise provided in Subsection E of  
25 this section, the effect of a distribution under Subsection A

1 of this section is measured:

2 (1) in the case of a distribution as defined  
3 in Paragraph (2) of Subsection D of Section 102 of the Revised  
4 Uniform Limited Liability Company Act, as of the earlier of the  
5 date that:

6 (a) money or other property is  
7 transferred or debt is incurred by the limited liability  
8 company; or

9 (b) the person entitled to the  
10 distribution ceases to own the interest or right being acquired  
11 by the company in return for the distribution;

12 (2) in the case of any other distribution of  
13 indebtedness, as of the date the indebtedness is distributed;  
14 and

15 (3) in all other cases, as of the date the:

16 (a) distribution is authorized, if the  
17 payment occurs within one hundred twenty days after that date;  
18 or

19 (b) payment is made, if the payment  
20 occurs more than one hundred twenty days after the distribution  
21 is authorized.

22 D. A limited liability company's indebtedness to a  
23 member or transferee incurred by reason of a distribution made  
24 in accordance with this section is at parity with the company's  
25 indebtedness to its general, unsecured creditors, except to the

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1 extent that it is subordinated by agreement.

2 E. A limited liability company's indebtedness,  
3 including indebtedness issued as a distribution, is not a  
4 liability for purposes of Subsection A of this section if the  
5 terms of the indebtedness provide that payment of principal and  
6 interest is made only if and to the extent that payment of a  
7 distribution could be made under this section. If the  
8 indebtedness is issued as a distribution, each payment of  
9 principal or interest is treated as a distribution, the effect  
10 of which is measured on the date the payment is made.

11 F. In measuring the effect of a distribution under  
12 Section 707 of the Revised Uniform Limited Liability Company  
13 Act, the liabilities of a dissolved limited liability company  
14 do not include a claim that has been disposed of under Section  
15 704, 705 or 706 of that act.

16 SECTION 406. [NEW MATERIAL] LIABILITY FOR IMPROPER  
17 DISTRIBUTIONS.--

18 A. Except as otherwise provided in Subsection B of  
19 this section, if a member of a member-managed limited liability  
20 company or manager of a manager-managed limited liability  
21 company consents to a distribution made in violation of Section  
22 405 of the Revised Uniform Limited Liability Company Act and in  
23 consenting to the distribution fails to comply with Section 409  
24 of that act, the member or manager is personally liable to the  
25 company for the amount of the distribution that exceeds the

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1 amount that could have been distributed without the violation  
2 of Section 405 of that act.

3 B. To the extent that the operating agreement of a  
4 member-managed limited liability company expressly relieves a  
5 member of the authority and responsibility to consent to  
6 distributions and imposes that authority and responsibility on  
7 one or more other members, the liability stated in Subsection A  
8 of this section applies to the other members and not the member  
9 that the operating agreement relieves of the authority and  
10 responsibility.

11 C. A person that receives a distribution knowing  
12 that the distribution violated Section 405 of the Revised  
13 Uniform Limited Liability Company Act is personally liable to  
14 the limited liability company, but only to the extent that the  
15 distribution received by the person exceeded the amount that  
16 could have been properly paid under Section 405 of that act.

17 D. A person against which an action is commenced  
18 because the person is liable under Subsection A of this section  
19 may:

20 (1) implead any other person that is liable  
21 under that subsection and seek to enforce a right of  
22 contribution from the person; and

23 (2) implead any person that received a  
24 distribution in violation of Subsection C of this section and  
25 seek to enforce a right of contribution from the person in the

1 amount that the person received in violation of that  
2 subsection.

3 E. An action under this section is barred unless it  
4 is commenced within two years after the distribution.

5 SECTION 407. [NEW MATERIAL] MANAGEMENT OF LIMITED  
6 LIABILITY COMPANY.--

7 A. A limited liability company is a member-managed  
8 limited liability company unless the operating agreement:

9 (1) expressly provides that:

10 (a) the company is or will be  
11 "manager-managed";

12 (b) the company is or will be "managed  
13 by managers"; or

14 (c) management of the company is or will  
15 be "vested in managers"; or

16 (2) includes words of similar import.

17 B. In a member-managed limited liability company:

18 (1) except as expressly provided in the  
19 Revised Uniform Limited Liability Company Act, the management  
20 and conduct of the company are vested in the members;

21 (2) each member has equal rights in the  
22 management and conduct of the company's activities and affairs;

23 (3) a difference arising among members as to a  
24 matter in the ordinary course of the activities and affairs of  
25 the company may be decided by a majority of the members; and

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1 (4) the affirmative vote or consent of all the  
2 members is required to:

3 (a) undertake an act outside the  
4 ordinary course of the activities and affairs of the company;  
5 or

6 (b) amend the operating agreement.

7 C. In a manager-managed limited liability company:

8 (1) except as expressly provided in the  
9 Revised Uniform Limited Liability Company Act, any matter  
10 relating to the activities and affairs of the company is  
11 decided exclusively by the manager or, if there is more than  
12 one manager, by a majority of the managers;

13 (2) each manager has equal rights in the  
14 management and conduct of the company's activities and affairs;

15 (3) the affirmative vote or consent of all  
16 members is required to:

17 (a) undertake an act outside the  
18 ordinary course of the company's activities and affairs; or

19 (b) amend the operating agreement;

20 (4) a manager may be chosen at any time by the  
21 affirmative vote or consent of a majority of the members and  
22 remains a manager until a successor has been chosen, unless the  
23 manager at an earlier time resigns, is removed, dies or, in the  
24 case of a manager that is not an individual, terminates. A  
25 manager may be removed, without notice or cause, at any time by

1 the affirmative vote or consent of a majority of the members;

2 (5) a person need not be a member to be a  
3 manager, but the dissociation of a member that is also a  
4 manager removes the person as a manager. If a person that is  
5 both a manager and a member ceases to be a manager, that  
6 cessation does not by itself dissociate the person as a member;  
7 and

8 (6) a person's ceasing to be a manager does  
9 not discharge any debt, obligation or other liability to the  
10 limited liability company or members that the person incurred  
11 while a manager.

12 D. An action requiring the vote or consent of  
13 members under the Revised Uniform Limited Liability Company Act  
14 may be taken without a meeting, and a member may appoint a  
15 proxy or other agent to vote, consent or otherwise act for the  
16 member by signing an appointing record, personally or by the  
17 member's agent.

18 E. The dissolution of a limited liability company  
19 does not affect the applicability of this section. However, a  
20 person that wrongfully causes dissolution of the company loses  
21 the right to participate in management as a member and a  
22 manager.

23 F. A limited liability company shall reimburse a  
24 member for an advance to the company beyond the amount of  
25 capital that the member agreed to contribute.



1           G. A payment or advance made by a member that gives  
2 rise to an obligation of the limited liability company under  
3 Subsection F of this section or Subsection A of Section 408 of  
4 the Revised Uniform Limited Liability Company Act constitutes a  
5 loan to the company that accrues interest from the date of the  
6 payment or advance.

7           H. A member is not entitled to remuneration for  
8 services performed for a member-managed limited liability  
9 company, except for reasonable compensation for services  
10 rendered in winding up the activities of the company.

11           **SECTION 408. [NEW MATERIAL] REIMBURSEMENT--**  
12 **INDEMNIFICATION--ADVANCEMENT--INSURANCE.--**

13           A. A limited liability company shall reimburse a  
14 member of a member-managed company or the manager of a manager-  
15 managed company for any payment made by the member or manager  
16 in the course of the member's or manager's activities on behalf  
17 of the company if the member or manager complied with Sections  
18 405, 407 and 409 of the Revised Uniform Limited Liability  
19 Company Act in making the payment.

20           B. A limited liability company shall indemnify and  
21 hold harmless a person with respect to any claim or demand  
22 against the person and any debt, obligation or other liability  
23 incurred by the person by reason of the person's former or  
24 present capacity as a member or manager, if the claim, demand,  
25 debt, obligation or other liability does not arise from the

1 person's breach of Section 405, 407 or 409 of the Revised  
2 Uniform Limited Liability Company Act.

3 C. In the ordinary course of its activities and  
4 affairs, a limited liability company may advance reasonable  
5 expenses, including attorney fees and costs, incurred by a  
6 person in connection with a claim or demand against the person  
7 by reason of the person's former or present capacity as a  
8 member or manager, if the person promises to repay the company  
9 if the person ultimately is determined not to be entitled to be  
10 indemnified as provided in Subsection B of this section.

11 D. A limited liability company may purchase and  
12 maintain insurance on behalf of a member or manager against  
13 liability asserted against or incurred by the member or manager  
14 in that capacity or arising from that status even if, under  
15 Paragraph (7) of Subsection C of Section 105 of the Revised  
16 Uniform Limited Liability Company Act, the operating agreement  
17 could not eliminate or limit the person's liability to the  
18 company for the conduct giving rise to the liability.

19 **SECTION 409. [NEW MATERIAL] STANDARDS OF CONDUCT FOR**  
20 **MEMBERS AND MANAGERS.--**

21 A. A member of a member-managed limited liability  
22 company owes to the company and, subject to Section 801 of the  
23 Revised Uniform Limited Liability Company Act, the other  
24 members the duties of loyalty and care stated in Subsections B  
25 and C of this section.

1           B. The fiduciary duty of loyalty of a member in a  
2 member-managed limited liability company includes the duties  
3 to:

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

6                           (a) in the conduct or winding up of the  
7 company's activities and affairs;

8                           (b) from a use by the member of the  
9 company's property; or

10                           (c) from the appropriation of a company  
11 opportunity;

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

16                   (3) refrain from competing with the company in  
17 the conduct of the company's activities and affairs before the  
18 dissolution of the company.

19           C. The duty of care of a member of a member-managed  
20 limited liability company in the conduct or winding up of the  
21 company's activities and affairs is to refrain from engaging  
22 in:

23                   (1) grossly negligent or reckless conduct;

24                   (2) willful or intentional misconduct; and

25                   (3) knowing violation of law.

1           D. A member shall discharge the duties and  
2 obligations under the Revised Uniform Limited Liability Company  
3 Act or the operating agreement and exercise any rights  
4 consistently with the contractual obligation of good faith and  
5 fair dealing.

6           E. A member does not violate a duty or obligation  
7 under the Revised Uniform Limited Liability Company Act or the  
8 operating agreement solely because the member's conduct  
9 furthers the member's own interest.

10          F. All the members of a member-managed limited  
11 liability company or a manager-managed limited liability  
12 company may authorize or ratify, after full disclosure of all  
13 material facts, a specific act or transaction that otherwise  
14 would violate the duty of loyalty.

15          G. It is a defense to a claim under Paragraph (2)  
16 of Subsection B of this section and any comparable claim in  
17 equity or at common law that the transaction was fair to the  
18 limited liability company.

19          H. If, as permitted by Subsection F or Paragraph  
20 (6) of Subsection I of this section or the operating agreement,  
21 a member enters into a transaction with the limited liability  
22 company that otherwise would be prohibited by Paragraph (2) of  
23 Subsection B of this section, then the member's rights and  
24 obligations arising from the transaction are the same as those  
25 of a person that is not a member.

1 I. In a manager-managed limited liability company:

2 (1) Subsections A, B, C and G of this section  
3 apply to the manager or managers and not the members;

4 (2) the duty under Paragraph (3) of Subsection  
5 B of this section continues until winding up is completed;

6 (3) Subsection D of this section applies to  
7 managers and members;

8 (4) Subsection E of this section applies only  
9 to members;

10 (5) the power to ratify under Subsection F of  
11 this section applies only to the members; and

12 (6) subject to Subsection D of this section, a  
13 member does not have a duty to the company or to any other  
14 member solely by reason of being a member.

15 SECTION 410. [NEW MATERIAL] RIGHTS TO INFORMATION OF  
16 MEMBER, MANAGER AND PERSON DISSOCIATED AS MEMBER.--

17 A. In a member-managed limited liability company:

18 (1) on reasonable notice, a member may inspect  
19 and copy during regular business hours, at a reasonable  
20 location specified by the company, any record maintained by the  
21 company regarding the company's activities, affairs, financial  
22 condition and other circumstances, to the extent that the  
23 information is material to the member's rights and duties under  
24 the operating agreement or the Revised Uniform Limited  
25 Liability Company Act;

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1 (2) the company shall furnish to each member:

2 (a) without demand, any information  
3 concerning the company's activities, affairs, financial  
4 condition and other circumstances that the company knows and is  
5 material to the proper exercise of the member's rights and  
6 duties under the operating agreement or the Revised Uniform  
7 Limited Liability Company Act, except to the extent that the  
8 company can establish that it reasonably believes the member  
9 already knows the information; and

10 (b) on demand, any other information  
11 concerning the company's activities, affairs, financial  
12 condition and other circumstances, except to the extent that  
13 the demand for the information demanded is unreasonable or  
14 otherwise improper under the circumstances; and

15 (3) the duty to furnish information under  
16 Paragraph (2) of this subsection also applies to each member to  
17 the extent that the member knows any of the information  
18 described in that paragraph.

19 B. In a manager-managed limited liability company:

20 (1) the informational rights stated in  
21 Subsection A of this section and the duty stated in Paragraph  
22 (3) of Subsection A of this section apply to the managers and  
23 not the members;

24 (2) during regular business hours and at a  
25 reasonable location specified by the company, a member may

1 inspect and copy information regarding the activities, affairs,  
2 financial condition and other circumstances of the company as  
3 is just and reasonable if:

4 (a) the member seeks the information for  
5 a purpose reasonably related to the member's interest as a  
6 member;

7 (b) the member makes a demand in a  
8 record received by the company, describing with reasonable  
9 particularity the information sought and the purpose for  
10 seeking the information; and

11 (c) the information sought is directly  
12 connected to the member's purpose;

13 (3) within ten days after receiving a demand  
14 under Subparagraph (b) of Paragraph (2) of this subsection, the  
15 company shall in a record inform the member that made the  
16 demand of:

17 (a) what information the company will  
18 provide in response to the demand and the place and time that  
19 the company will provide the information; and

20 (b) the company's reasons for declining,  
21 if the company declines to provide any demanded information;  
22 and

23 (4) whenever the Revised Uniform Limited  
24 Liability Company Act or an operating agreement provides for a  
25 member to vote on or give or withhold consent to a matter,

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1 before the vote is cast or consent is given or withheld, the  
2 company shall, without demand, provide the member with all  
3 information known to the company and material to the member's  
4 decision.

5 C. Subject to Subsection H of this section, on ten  
6 days' demand made in a record received by a limited liability  
7 company, a person dissociated as a member may have access to  
8 the information to which the person was entitled while a member  
9 if:

10 (1) the information pertains to the period  
11 during which the person was a member;

12 (2) the person seeks the information in good  
13 faith; and

14 (3) the person satisfies the requirements  
15 imposed on a member by Paragraph (2) of Subsection B of this  
16 section.

17 D. A limited liability company shall respond to a  
18 demand made under Subsection C of this section in the manner  
19 provided in Paragraph (3) of Subsection B of this section.

20 E. A limited liability company may charge a person  
21 that makes a demand under this section the reasonable costs of  
22 labor and material for copying.

23 F. A member or person dissociated as a member may  
24 exercise the rights under this section through an agent or, in  
25 the case of an individual under legal disability, a legal



1 representative. A restriction or condition imposed by the  
2 operating agreement or under Subsection H of this section  
3 applies both to the agent or legal representative and to the  
4 member or person dissociated as a member.

5 G. Subject to Section 504 of the Revised Uniform  
6 Limited Liability Company Act, the rights stated in this  
7 section do not extend to a person as transferee.

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

## 18 ARTICLE 5

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

20 SECTION 501. [NEW MATERIAL] NATURE OF TRANSFERABLE  
21 INTEREST.--A transferable interest is personal property.

22 SECTION 502. [NEW MATERIAL] TRANSFER OF TRANSFERABLE  
23 INTEREST.--

24 A. Subject to Subsection F of Section 503 of the  
25 Revised Uniform Limited Liability Company Act, a transfer, in

1 whole or in part, of a transferable interest:

2 (1) is permissible;

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

6 (3) subject to Section 504 of that act, does  
7 not entitle the transferee to:

8 (a) participate in the management or  
9 conduct of the company's activities and affairs; or

10 (b) except as otherwise provided in  
11 Subsection C of this section, have access to records or other  
12 information concerning the company's activities and affairs.

13 B. A transferee has the right to receive, in  
14 accordance with the transfer, distributions to which the  
15 transferor would otherwise be entitled.

16 C. In a dissolution and winding up of a limited  
17 liability company, a transferee is entitled to an account of  
18 the company's transactions only from the date of dissolution.

19 D. A transferable interest may be evidenced by a  
20 certificate of the interest issued by a limited liability  
21 company in a record, and, subject to the provisions of this  
22 section, the interest represented by a certificate may be  
23 transferred by a transfer of the certificate.

24 E. A limited liability company need not give effect  
25 to a transferee's rights under this section until the company

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1 knows or has notice of the transfer.

2 F. A transfer of a transferable interest in  
3 violation of a restriction on transfer contained in the  
4 operating agreement is ineffective if the intended transferee  
5 has knowledge or notice of the restriction at the time of  
6 transfer.

7 G. Except as otherwise provided in Paragraph (2) of  
8 Subsection E of Section 602 of the Revised Uniform Limited  
9 Liability Company Act, if a member transfers a transferable  
10 interest, the transferor retains the rights of a member other  
11 than the transferable interest transferred and retains all the  
12 duties and obligations of a member.

13 H. If a member transfers a transferable interest to  
14 a person that becomes a member with respect to the transferred  
15 interest, the transferee is liable for the member's obligations  
16 under Sections 403 and 406 of the Revised Uniform Limited  
17 Liability Company Act known to the transferee when the  
18 transferee becomes a member.

19 SECTION 503. [NEW MATERIAL] CHARGING ORDER.--

20 A. On application by a judgment creditor of a  
21 member or transferee, a court may enter a charging order  
22 against the transferable interest of the judgment debtor for  
23 the unsatisfied amount of the judgment. Except as otherwise  
24 provided in Subsection F of this section, a charging order  
25 constitutes a lien on a judgment debtor's transferable interest

1 and requires the limited liability company to pay over to the  
2 person to which the charging order was issued any distribution  
3 that otherwise would be paid to the judgment debtor.

4 B. To the extent necessary to effectuate the  
5 collection of distributions under a charging order in effect  
6 under Subsection A of this section, the court may:

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

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

12 C. Upon a showing that distributions under a  
13 charging order will not pay the judgment debt within a  
14 reasonable time, the court may foreclose the lien and order the  
15 sale of the transferable interest. Except as otherwise  
16 provided in Subsection F of this section, the purchaser at the  
17 foreclosure sale obtains only the transferable interest, does  
18 not thereby become a member and is subject to Section 502 of  
19 the Revised Uniform Limited Liability Company Act.

20 D. At any time before foreclosure under Subsection  
21 C of this section, the member or transferee whose transferable  
22 interest is subject to a charging order issued under Subsection  
23 A of this section may extinguish the charging order by  
24 satisfying the judgment and filing a certified copy of the  
25 satisfaction with the court that issued the charging order.

1           E. At any time before foreclosure under Subsection  
2 C of this section, a limited liability company or one or more  
3 members whose transferable interests are not subject to the  
4 charging order may pay to the judgment creditor the full amount  
5 due under the judgment and thereby succeed to the rights of the  
6 judgment creditor, including the charging order.

7           F. If a court orders foreclosure of a charging  
8 order lien against the sole member of a limited liability  
9 company:

10                   (1) the court shall confirm the sale;

11                   (2) the purchaser at the sale obtains the  
12 member's entire interest, not only the member's transferable  
13 interest;

14                   (3) the purchaser thereby becomes a member;

15 and

16                   (4) the person whose interest was subject to  
17 the foreclosed charging order is dissociated as a member.

18           G. The Revised Uniform Limited Liability Company  
19 Act does not deprive a member or transferee of the benefit of  
20 any exemption law applicable to the transferable interest of  
21 the member or transferee.

22           H. This section provides the exclusive remedy by  
23 which a person seeking in the capacity of judgment creditor to  
24 enforce a judgment against a member or transferee may satisfy  
25 the judgment from the judgment debtor's transferable interest.

1           **SECTION 504.** [NEW MATERIAL] POWER OF LEGAL REPRESENTATIVE  
2 OF DECEASED MEMBER.--If a member dies, the deceased member's  
3 legal representative may exercise:

4           A. the rights of a transferee provided in  
5 Subsection C of Section 502 of the Revised Uniform Limited  
6 Liability Company Act; and

7           B. for the purposes of settling the estate, the  
8 rights that the deceased member had under Section 410 of that  
9 act.

10                           ARTICLE 6

11                           DISSOCIATION

12           **SECTION 601.** [NEW MATERIAL] POWER TO DISSOCIATE AS  
13 MEMBER--WRONGFUL DISSOCIATION.--

14           A. A person may dissociate as a member at any time,  
15 rightfully or wrongfully, by withdrawing as a member by express  
16 will under Subsection A of Section 602 of the Revised Uniform  
17 Limited Liability Company Act.

18           B. A person's dissociation as a member is wrongful  
19 only if the dissociation:

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

22                           (2) occurs before the completion of the  
23 winding up of the limited liability company and:

24                                 (a) the person withdraws as a member by  
25 express will;

1 (b) the person is expelled as a member  
2 by judicial order under Subsection F of Section 602 of the  
3 Revised Uniform Limited Liability Company Act;

4 (c) the person is dissociated under  
5 Subsection H of Section 602 of that act; or

6 (d) in the case of a person that is not  
7 a trust other than a business trust, an estate or an  
8 individual, the person is expelled or otherwise dissociated as  
9 a member because it willfully dissolved or terminated.

10 C. A person that wrongfully dissociates as a member  
11 is liable to the limited liability company and, subject to  
12 Section 801 of the Revised Uniform Limited Liability Company  
13 Act, to the other members for damages caused by the  
14 dissociation. The liability is in addition to any debt,  
15 obligation or other liability of the member to the company or  
16 the other members.

17 SECTION 602. [NEW MATERIAL] EVENTS CAUSING  
18 DISSOCIATION.--A person is dissociated as a member when:

19 A. the limited liability company knows or has  
20 notice of the person's express will to withdraw as a member,  
21 but if the person has specified a withdrawal date later than  
22 the date the company knew or had notice, on that later date;

23 B. an event stated in the operating agreement as  
24 causing the person's dissociation occurs;

25 C. the person's entire interest is transferred in a

1 foreclosure sale under Subsection F of Section 503 of the  
2 Revised Uniform Limited Liability Company Act;

3 D. the person is expelled as a member under the  
4 operating agreement;

5 E. the person is expelled as a member by the  
6 affirmative vote or consent of all the other members if:

7 (1) it is unlawful to carry on the limited  
8 liability company's activities and affairs with the person as a  
9 member;

10 (2) there has been a transfer of all the  
11 person's transferable interest in the company other than a:

12 (a) transfer for security purposes; or

13 (b) charging order in effect under  
14 Section 503 of the Revised Uniform Limited Liability Company  
15 Act that has not been foreclosed;

16 (3) the person is an entity and:

17 (a) the company notifies the person that  
18 the person will be expelled as a member because the person has  
19 filed a statement of dissolution or the equivalent, the person  
20 has been administratively dissolved, the person's charter or  
21 the equivalent has been revoked or the person's right to  
22 conduct business has been suspended by the person's  
23 jurisdiction of formation; and

24 (b) within ninety days after the  
25 notification: 1) the statement of dissolution or the



1 equivalent has not been withdrawn, rescinded or revoked; 2) the  
2 person has not been reinstated; or 3) the person's charter or  
3 the equivalent or right to conduct business has not been  
4 reinstated; or

5 (4) the person is an unincorporated entity  
6 that has been dissolved and whose activities and affairs are  
7 being wound up;

8 F. on application by the limited liability company  
9 or a member in a direct action taken under Section 801 of the  
10 Revised Uniform Limited Liability Company Act, the person is  
11 expelled as a member by judicial order because the person:

12 (1) has engaged or is engaging in wrongful  
13 conduct that has affected adversely and materially, or will  
14 affect adversely and materially, the company's activities and  
15 affairs;

16 (2) has committed willfully or persistently,  
17 or is committing willfully and persistently, a material breach  
18 of the operating agreement or a duty or obligation under  
19 Section 409 of the Revised Uniform Limited Liability Company  
20 Act; or

21 (3) has engaged in or is engaging in conduct  
22 relating to the company's activities and affairs that makes it  
23 not reasonably practicable to carry on the activities and  
24 affairs with the person as a member;

25 G. in the case of an individual:

- 1 (1) the individual dies; or
- 2 (2) in a member-managed limited liability
- 3 company:
- 4 (a) a guardian or general conservator
- 5 for the individual is appointed; or
- 6 (b) a court orders that the individual
- 7 has otherwise become incapable of performing the individual's
- 8 duties as a member under the Revised Uniform Limited Liability
- 9 Company Act or the operating agreement;

10 H. in a member-managed limited liability company,

11 the person:

- 12 (1) becomes a debtor in bankruptcy;
- 13 (2) signs an assignment for the benefit of
- 14 creditors; or
- 15 (3) seeks, consents to or acquiesces in the
- 16 appointment of a trustee, receiver or liquidator of the person
- 17 or of all or substantially all the person's property;

18 I. in the case of a person that is a testamentary

19 or inter vivos trust or is acting as a member by virtue of

20 being a trustee of such a trust, the trust's entire

21 transferable interest in the limited liability company is

22 distributed;

23 J. in the case of a person that is an estate or is

24 acting as a member by virtue of being a personal representative

25 of an estate, the estate's entire transferable interest in the

1 limited liability company is distributed;

2 K. in the case of a person that is not an  
3 individual, the existence of the person terminates;

4 L. the limited liability company participates in a  
5 merger under Article 10 of the Revised Uniform Limited  
6 Liability Company Act and:

7 (1) the company is not the surviving entity;  
8 or

9 (2) otherwise as a result of the merger, the  
10 person ceases to be a member;

11 M. the limited liability company participates in an  
12 interest exchange under Article 10 of the Revised Uniform  
13 Limited Liability Company Act and, as a result of the interest  
14 exchange, the person ceases to be a member;

15 N. the limited liability company participates in a  
16 conversion under Article 10 of the Revised Uniform Limited  
17 Liability Company Act;

18 O. the limited liability company participates in a  
19 domestication under Article 10 of the Revised Uniform Limited  
20 Liability Company Act and, as a result of the domestication,  
21 the person ceases to be a member; or

22 P. the limited liability company dissolves and  
23 completes winding up.

24 SECTION 603. [NEW MATERIAL] EFFECT OF DISSOCIATION.--

25 A. If a person is dissociated as a member:

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

4 (2) the person's duties and obligations as a  
5 member under Section 409 of the Revised Uniform Limited  
6 Liability Company Act end with regard to matters arising and  
7 events occurring after the person's dissociation; and

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

12 B. A person's dissociation as a member does not of  
13 itself discharge the person from debt, an obligation or another  
14 liability to the limited liability company or the other members  
15 that the person incurred while a member.

#### 16 ARTICLE 7

#### 17 DISSOLUTION AND WINDING UP

#### 18 SECTION 701. [NEW MATERIAL] EVENTS CAUSING DISSOLUTION.--

19 A. A limited liability company is dissolved and its  
20 activities and affairs shall be wound up upon the occurrence  
21 of:

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

24 (2) the affirmative vote or consent of all  
25 the members;

1 (3) the passage of ninety consecutive days  
2 during which the company has no members, unless before the end  
3 of the period:

4 (a) consent to admit at least one  
5 specified person as a member is given by transferees owning the  
6 rights to receive a majority of distributions as transferees at  
7 the time the consent is to be effective; and

8 (b) at least one person becomes a member  
9 in accordance with the consent;

10 (4) on application by a member, the entry by  
11 the district court of an order dissolving the company on the  
12 grounds that:

13 (a) the conduct of all or substantially  
14 all the company's activities and affairs is unlawful;

15 (b) it is not reasonably practicable to  
16 carry on the company's activities and affairs in conformity  
17 with the certificate of organization and the operating  
18 agreement; or

19 (c) the managers or those members in  
20 control of the company: 1) have acted, are acting or will act  
21 in a manner that is illegal or fraudulent; or 2) have acted or  
22 are acting in a manner that is oppressive and was, is or will  
23 be directly harmful to the applicant; or

24 (5) the signing and filing of a statement of  
25 administrative dissolution by the secretary of state under

1 Section 708 of the Revised Uniform Limited Liability Company  
2 Act.

3 B. In a proceeding brought under Subparagraph (c)  
4 of Paragraph (4) of Subsection A of this section, the court may  
5 order a remedy other than dissolution.

6 SECTION 702. [NEW MATERIAL] WINDING UP.--

7 A. A dissolved limited liability company shall wind  
8 up its activities and affairs and, except as otherwise provided  
9 in Section 703 of the Revised Uniform Limited Liability Company  
10 Act, the company continues after dissolution only for the  
11 purpose of winding up.

12 B. In winding up its activities, a limited  
13 liability company:

14 (1) shall discharge the company's debts,  
15 obligations and other liabilities, settle and close the  
16 company's activities and affairs and marshal and distribute the  
17 assets of the company; and

18 (2) may:

19 (a) deliver to the secretary of state  
20 for filing a statement of dissolution stating the name of the  
21 company and that the company is dissolved;

22 (b) preserve the company activities,  
23 affairs and property as a going concern for a reasonable time;

24 (c) prosecute and defend actions and  
25 proceedings, whether civil, criminal or administrative;

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1 (d) transfer the company's property;

2 (e) settle disputes by mediation or  
3 arbitration;

4 (f) deliver to the secretary of state  
5 for filing a statement of termination stating the name of the  
6 company and that the company is terminated; and

7 (g) perform other acts necessary or  
8 appropriate to the winding up.

9 C. If a dissolved limited liability company has no  
10 members, the legal representative of the last person to have  
11 been a member may wind up the activities and affairs of the  
12 company. If the person does so, the person has the powers of a  
13 sole manager under Subsection C of Section 407 of the Revised  
14 Uniform Limited Liability Company Act and is deemed to be a  
15 manager under Subsection A of Section 304 of that act.

16 D. If the legal representative under Subsection C  
17 of this section declines or fails to wind up the limited  
18 liability company's activities and affairs, a person may be  
19 appointed to do so by the consent of transferees owning a  
20 majority of the rights to receive distributions as transferees  
21 at the time the consent is to be effective. A person appointed  
22 under this subsection:

23 (1) has the powers of a sole manager under  
24 Subsection C of Section 407 of the Revised Uniform Limited  
25 Liability Company Act and is deemed to be a manager for the

1 purposes of Subsection A of Section 304 of that act; and

2 (2) shall deliver promptly to the secretary of  
3 state for filing an amendment to the company's certificate of  
4 organization stating:

5 (a) that the company has no members;

6 (b) the name and street and mailing  
7 addresses of the person; and

8 (c) that the person has been appointed  
9 under this subsection to wind up the company.

10 E. The district court may order judicial  
11 supervision of the winding up of a dissolved limited liability  
12 company, including the appointment of a person to wind up the  
13 company's activities and affairs:

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

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

17 (a) the company does not have any  
18 members;

19 (b) the legal representative of the last  
20 person to have been a member declines or fails to wind up the  
21 company's activities; and

22 (c) within a reasonable time following  
23 the dissolution, a person has not been appointed under  
24 Subsection C of this section; or

25 (3) in connection with a proceeding under



1 Paragraph (4) of Subsection A of Section 701 of the Revised  
2 Uniform Limited Liability Company Act.

3 SECTION 703. [NEW MATERIAL] RESCINDING DISSOLUTION.--

4 A. Unless a statement of termination applicable to  
5 the limited liability company is effective, the district court  
6 has entered an order dissolving the company under Paragraph (4)  
7 of Subsection A of Section 701 of the Revised Uniform Limited  
8 Liability Company Act or the secretary of state has dissolved  
9 the company under Section 708 of that act, a limited liability  
10 company may rescind its dissolution.

11 B. Rescinding dissolution under this section  
12 requires:

13 (1) the affirmative vote or consent of each  
14 member; and

15 (2) if the limited liability company has  
16 delivered to the secretary of state for filing a statement of  
17 dissolution and:

18 (a) the statement has not become  
19 effective, delivery to the secretary of state for filing of a  
20 statement of withdrawal under Section 208 of the Revised  
21 Uniform Limited Liability Company Act applicable to the  
22 statement of dissolution; or

23 (b) if the statement of dissolution has  
24 become effective, delivery to the secretary of state for filing  
25 a statement of rescission stating the name of the company and

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1 that dissolution has been rescinded under this section.

2 C. If a limited liability company rescinds its  
3 dissolution:

4 (1) the company resumes carrying on its  
5 activities and affairs as if dissolution had never occurred;

6 (2) subject to Paragraph (3) of this  
7 subsection, any liability incurred by the company after the  
8 dissolution and before the rescission is effective is  
9 determined as if dissolution had never occurred; and

10 (3) the rights of a third party arising out of  
11 conduct in reliance on the dissolution before the third party  
12 knew or had notice of the rescission shall not be adversely  
13 affected.

14 SECTION 704. [NEW MATERIAL] KNOWN CLAIMS AGAINST  
15 DISSOLVED LIMITED LIABILITY COMPANY.--

16 A. Except as otherwise provided in Subsection D of  
17 this section, a dissolved limited liability company may give  
18 notice of a known claim under Subsection B of this section,  
19 which has the effect provided in Subsection C of this section.

20 B. A dissolved limited liability company may in a  
21 record notify its known claimants of the dissolution. The  
22 notice shall:

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

25 (2) state that a claim shall be in writing and

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1 provide a mailing address to which the claim is to be sent;

2 (3) state the deadline for receipt of a claim,  
3 which shall not be less than one hundred twenty days after the  
4 date the notice is received by the claimant; and

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

7 C. A claim against a dissolved limited liability  
8 company is barred if the requirements of Subsection B of this  
9 section are met and:

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

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

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

19 (b) the claimant does not commence the  
20 required action within the ninety days after the claimant  
21 receives the notice.

22 D. This section does not apply to a claim based on  
23 an event occurring after the date of dissolution or a liability  
24 that on that date is contingent.

25 SECTION 705. [NEW MATERIAL] OTHER CLAIMS AGAINST

1 DISSOLVED LIMITED LIABILITY COMPANY.--

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

6 B. A notice under Subsection A of this section  
7 shall:

8 (1) be published at least once in a newspaper  
9 of general circulation in the county in New Mexico in which the  
10 dissolved limited liability company's principal office is  
11 located or, if the principal office is not located in New  
12 Mexico, in the county in which the office of the company's  
13 registered agent is or was last located;

14 (2) describe the information required to be  
15 contained in a claim, state that the claim must be in writing  
16 and provide a mailing address to which the claim is to be sent;  
17 and

18 (3) state that a claim against the company is  
19 barred unless an action to enforce the claim is commenced  
20 within three years after publication of the notice.

21 C. If a dissolved limited liability company  
22 publishes a notice in accordance with Subsection B of this  
23 section, unless the claimant commences an action to enforce the  
24 claim against the company within three years after the  
25 publication date of the notice, the claim of each of the

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1 following claimants is barred:

2 (1) a claimant that did not receive notice in  
3 a record under Section 704 of the Revised Uniform Limited  
4 Liability Company Act;

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

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

9 D. A claim not barred under this section or Section  
10 704 of the Revised Uniform Limited Liability Company Act may be  
11 enforced:

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

14 (2) except as otherwise provided in Section  
15 706 of that act, if assets of the company have been distributed  
16 after dissolution, against a member or transferee to the extent  
17 of that person's proportionate share of the claim or of the  
18 company's assets distributed to the member or transferee after  
19 dissolution, whichever is less. However, a person's total  
20 liability for all claims under this paragraph shall not exceed  
21 the total amount of assets distributed to the person after  
22 dissolution.

23 SECTION 706. [NEW MATERIAL] COURT PROCEEDINGS.--

24 A. A dissolved limited liability company that has  
25 published a notice under Section 705 of the Revised Uniform

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1 Limited Liability Company Act may file an application with the  
2 district court in the county in New Mexico where the company's  
3 principal office is located or, if the principal office is not  
4 located in New Mexico, where the office of its registered agent  
5 is or was last located, for a determination of the amount and  
6 form of security to be provided for payment of claims that are  
7 reasonably expected to arise after the date of dissolution  
8 based on facts known to the company and:

9 (1) at the time of application:

10 (a) are contingent; or

11 (b) have not been made known to the  
12 company; or

13 (2) are based on an event occurring after the  
14 date of dissolution.

15 B. Security is not required for any claim that is  
16 or is reasonably anticipated to be barred under Section 705 of  
17 the Revised Uniform Limited Liability Company Act.

18 C. Within ten days after the filing of an  
19 application under Subsection A of this section, the dissolved  
20 limited liability company shall give notice of the proceeding  
21 to each claimant holding a contingent claim known to the  
22 company.

23 D. In a proceeding under this section, the court  
24 may appoint a guardian ad litem to represent all claimants  
25 whose identities are unknown. The reasonable fees and expenses

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1 of the guardian, including all reasonable expert witness fees,  
2 shall be paid by the dissolved limited liability company.

3 E. A dissolved limited liability company that  
4 provides security in the amount and form ordered by the court  
5 under Subsection A of this section satisfies the company's  
6 obligations with respect to claims that are contingent, have  
7 not been made known to the company or are based on an event  
8 occurring after the date of dissolution, and such claims shall  
9 not be enforced against a member or transferee on account of  
10 assets received in liquidation.

11 SECTION 707. [NEW MATERIAL] DISPOSITION OF ASSETS IN  
12 WINDING UP.--

13 A. In winding up its activities and affairs, a  
14 limited liability company shall apply its assets to discharge  
15 its obligations to creditors, including members that are  
16 creditors.

17 B. After a limited liability company complies with  
18 Subsection A of this section, any surplus shall be distributed  
19 in the following order, subject to any charging order in effect  
20 under Section 503 of the Revised Uniform Limited Liability  
21 Company Act:

22 (1) to each person owning a transferable  
23 interest that reflects contributions made and not previously  
24 returned, an amount equal to the value of the unreturned  
25 contributions; and

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1 (2) among persons owning transferable  
2 interests, in proportion to their respective rights to share in  
3 distributions immediately before the dissolution of the  
4 company.

5 C. If a limited liability company does not have  
6 sufficient surplus to comply with Paragraph (1) of Subsection B  
7 of this section, any surplus shall be distributed among the  
8 owners of transferable interests in proportion to the value of  
9 the respective unreturned contributions.

10 D. All distributions made under Subsections B and C  
11 of this section shall be paid in money.

12 SECTION 708. [NEW MATERIAL] ADMINISTRATIVE DISSOLUTION.--

13 A. The secretary of state may commence a proceeding  
14 under Subsection B of this section to dissolve a limited  
15 liability company administratively if the company does not:

16 (1) pay, within six months after it is due, a  
17 fee, tax or penalty required to be paid to the secretary of  
18 state;

19 (2) deliver, within six months after it is  
20 due, its triennial report to the secretary of state; or

21 (3) have a registered agent in New Mexico for  
22 thirty consecutive days.

23 B. If the secretary of state determines that one or  
24 more grounds exist for administratively dissolving a limited  
25 liability company, the secretary of state shall serve the



1 company with notice in a record of the secretary of state's  
2 determination.

3 C. If, within sixty days after service of the  
4 notice under Subsection B of this section, a limited liability  
5 company does not cure or demonstrate to the satisfaction of the  
6 secretary of state the nonexistence of each ground determined  
7 by the secretary of state, the secretary of state shall  
8 administratively dissolve the company by signing a statement of  
9 administrative dissolution that recites the grounds for  
10 dissolution and the effective date of dissolution. The  
11 secretary of state shall file the statement and serve a copy on  
12 the company in accordance with Section 210 of the Revised  
13 Uniform Limited Liability Company Act.

14 D. A limited liability company that is  
15 administratively dissolved continues in existence as an entity  
16 but shall not carry on any activities except as necessary to  
17 wind up its activities and affairs and liquidate its assets  
18 under Sections 702 and 704 through 707 of the Revised Uniform  
19 Limited Liability Company Act or to apply for reinstatement  
20 under Section 709 of that act.

21 E. The administrative dissolution of a limited  
22 liability company does not terminate the authority of its  
23 registered agent.

24 SECTION 709. [NEW MATERIAL] REINSTATEMENT.--

25 A. A limited liability company that is

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1 administratively dissolved under Section 708 of the Revised  
2 Uniform Limited Liability Company Act may apply to the  
3 secretary of state for reinstatement within two years after the  
4 effective date of dissolution. The application shall state:

5 (1) the name of the company at the time of its  
6 administrative dissolution and, if needed, a different name  
7 that satisfies Section 112 of that act;

8 (2) the address of the principal office of the  
9 company and the name and street and mailing addresses of its  
10 registered agent;

11 (3) the effective date of the company's  
12 administrative dissolution; and

13 (4) that the grounds for dissolution did not  
14 exist or have been cured.

15 B. To be reinstated, a limited liability company  
16 shall pay all fees, taxes, interest and penalties that were due  
17 to the secretary of state at the time of the company's  
18 administrative dissolution and all fees, taxes, interest and  
19 penalties that would have been due to the secretary of state  
20 while the company was administratively dissolved.

21 C. If the secretary of state determines that an  
22 application under Subsection A of this section contains the  
23 required information, is satisfied that the information is  
24 correct and determines that all payments required to be made to  
25 the secretary of state under Subsection B of this section have

1     been made, the secretary of state shall:

2                     (1)   cancel the statement of administrative  
3     dissolution and prepare a statement of reinstatement that  
4     states the secretary of state's determination and the effective  
5     date of reinstatement; and

6                     (2)   file the statement of reinstatement and  
7     serve a copy on the limited liability company.

8             D.   When reinstatement under this section is  
9     effective:

10                    (1)   the reinstatement relates back to and  
11     takes effect as of the effective date of the administrative  
12     dissolution;

13                    (2)   the limited liability company resumes  
14     carrying on its activities and affairs as if the administrative  
15     dissolution had not occurred; and

16                    (3)   the rights of a person arising out of an  
17     act or omission in reliance on the dissolution before the  
18     person knew or had notice of the reinstatement are not  
19     affected.

20             SECTION 710.   ~~[NEW MATERIAL]~~ JUDICIAL REVIEW OF DENIAL OF  
21     REINSTATEMENT.--

22                    A.   If the secretary of state denies a limited  
23     liability company's application for reinstatement following  
24     administrative dissolution, the secretary of state shall serve  
25     the company with a notice in a record that explains the reasons

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1 for the denial.

2 B. A limited liability company may seek judicial  
3 review of denial of reinstatement in the district court within  
4 thirty days after service of the notice of denial.

5 ARTICLE 8

6 ACTIONS BY MEMBERS

7 SECTION 801. [NEW MATERIAL] DIRECT ACTION BY MEMBER.--

8 A. Subject to Subsection B of this section, a  
9 member may maintain a direct action against another member, a  
10 manager or the limited liability company to enforce the  
11 member's rights and to protect the member's interests,  
12 including rights and interests under the operating agreement or  
13 the Revised Uniform Limited Liability Company Act or arising  
14 independently of the membership relationship.

15 B. A member maintaining a direct action under this  
16 section shall plead and prove an actual or threatened injury  
17 that is not solely the result of an injury suffered or  
18 threatened to be suffered by the limited liability company.

19 SECTION 802. [NEW MATERIAL] DERIVATIVE ACTION.--A member  
20 may maintain a derivative action to enforce a right of a  
21 limited liability company if:

22 A. the member first makes a demand on the other  
23 members in a member-managed limited liability company, or the  
24 managers of a manager-managed limited liability company,  
25 requesting that they cause the company to bring an action to

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1 enforce the right, and the managers or other members do not  
2 bring the action within a reasonable time; or

3 B. a demand made under Subsection A of this section  
4 would be futile.

5 SECTION 803. [NEW MATERIAL] PROPER PLAINTIFF.--A  
6 derivative action to enforce a right of a limited liability  
7 company may be maintained only by a person that is a member at  
8 the time the action is commenced and:

9 A. was a member when the conduct giving rise to the  
10 action occurred; or

11 B. whose status as a member devolved on the person  
12 by operation of law or under the operating agreement from a  
13 person that was a member at the time of the conduct.

14 SECTION 804. [NEW MATERIAL] PLEADING.--In a derivative  
15 action, the complaint shall state with particularity:

16 A. the date and content of the plaintiff's demand  
17 and the response to the demand by the other members or  
18 managers; or

19 B. why the demand should be excused as futile.

20 SECTION 805. [NEW MATERIAL] SPECIAL LITIGATION  
21 COMMITTEE.--

22 A. If a limited liability company is named as or  
23 made a party in a derivative proceeding, the company may  
24 appoint a special litigation committee to investigate the  
25 claims asserted in the proceeding and determine whether

1 pursuing the action is in the best interests of the company.

2 If the company appoints a special litigation committee, on  
3 motion by the committee made in the name of the company, except  
4 for good cause shown, the court shall stay discovery for the  
5 time reasonably necessary to permit the committee to make its  
6 investigation. This subsection does not prevent a court from:

7 (1) enforcing a person's right to information  
8 under Section 410 of the Revised Uniform Limited Liability  
9 Company Act; or

10 (2) granting extraordinary relief in the form  
11 of a temporary restraining order or preliminary injunction.

12 B. A special litigation committee shall be composed  
13 of one or more disinterested and independent individuals, who  
14 may be members.

15 C. A special litigation committee may be appointed:

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

18 (a) by the affirmative vote or consent  
19 of a majority of the members not named as parties in the  
20 proceeding; or

21 (b) if all members are named as parties  
22 in the proceeding, by a majority of the members named as  
23 defendants; or

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

1 (a) by a majority of the managers not  
2 named as parties in the proceeding; or

3 (b) if all managers are named as parties  
4 in the proceeding, by a majority of the managers named as  
5 defendants.

6 D. After appropriate investigation, a special  
7 litigation committee may determine that it is in the best  
8 interests of the limited liability company that the proceeding:

9 (1) continue under the control of the  
10 plaintiff;

11 (2) continue under the control of the  
12 committee;

13 (3) be settled on terms approved by the  
14 committee; or

15 (4) be dismissed.

16 E. After making a determination under Subsection D  
17 of this section, a special litigation committee shall file with  
18 the court a statement of its determination and its report  
19 supporting its determination and shall serve each party with a  
20 copy of the determination and report. The court shall  
21 determine whether the members of the committee were  
22 disinterested and independent and whether the committee  
23 conducted its investigation and made its recommendation in good  
24 faith, independently and with reasonable care, with the  
25 committee having the burden of proof. If the court finds that

1 the members of the committee were disinterested and independent  
2 and that the committee acted in good faith, independently and  
3 with reasonable care, the court shall enforce the determination  
4 of the committee. Otherwise, the court shall dissolve the stay  
5 of discovery entered under Subsection A of this section and  
6 allow the action to continue under the control of the  
7 plaintiff.

8 SECTION 806. [NEW MATERIAL] PROCEEDS AND EXPENSES.--

9 A. Except as otherwise provided in Subsection B of  
10 this section:

11 (1) any proceeds or other benefits of a  
12 derivative action, whether by judgment, compromise or  
13 settlement, belong to the limited liability company and not to  
14 the plaintiff; and

15 (2) if the plaintiff receives any proceeds,  
16 the plaintiff shall remit them immediately to the company.

17 B. If a derivative action is successful in whole or  
18 in part, the court may award the plaintiff reasonable expenses,  
19 including reasonable attorney fees and costs, from the recovery  
20 of the limited liability company.

21 C. A derivative action on behalf of a limited  
22 liability company shall not be voluntarily dismissed or settled  
23 without the court's approval.

24 ARTICLE 9

25 FOREIGN LIMITED LIABILITY COMPANIES



1           SECTION 901.   [NEW MATERIAL] GOVERNING LAW.--

2           A.   The law of the jurisdiction of formation of a  
3 foreign limited liability company governs:

4                   (1)   the internal affairs of the company;

5                   (2)   the liability of a member as member and a  
6 manager as manager for a debt, obligation or other liability of  
7 the company; and

8                   (3)   the liability of a series of the company.

9           B.   A foreign limited liability company is not  
10 precluded from registering to do business in New Mexico because  
11 of any difference between the law of its jurisdiction of  
12 formation and the law of New Mexico.

13           C.   Registration of a foreign limited liability  
14 company to do business in New Mexico does not authorize the  
15 foreign company to engage in any activities and affairs or  
16 exercise any power that a limited liability company may not  
17 engage in or exercise in New Mexico.

18           SECTION 902.   [NEW MATERIAL] REGISTRATION TO DO BUSINESS  
19 IN NEW MEXICO.--

20           A.   A foreign limited liability company shall not do  
21 business in New Mexico until it registers with the secretary of  
22 state under Article 9 of the Revised Uniform Limited Liability  
23 Company Act.

24           B.   A foreign limited liability company doing  
25 business in New Mexico may not maintain an action or proceeding

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1 in New Mexico unless it is registered to do business in New  
2 Mexico.

3 C. The failure of a foreign limited liability  
4 company to register to do business in New Mexico does not  
5 impair the validity of a contract or act of the company or  
6 preclude it from defending an action or proceeding in New  
7 Mexico.

8 D. A limitation on the liability of a member or  
9 manager of a foreign limited liability company is not waived  
10 solely because the company does business in New Mexico without  
11 registering to do business in New Mexico.

12 E. Subsections A and B of Section 901 of the  
13 Revised Uniform Limited Liability Company Act apply even if a  
14 foreign limited liability company fails to register under  
15 Article 9 of that act.

16 SECTION 903. [NEW MATERIAL] FOREIGN REGISTRATION  
17 STATEMENT.--To register to do business in New Mexico, a foreign  
18 limited liability company shall deliver a foreign registration  
19 statement to the secretary of state for filing. The statement  
20 shall state:

21 A. the name of the company and, if the name does  
22 not comply with Section 112 of the Revised Uniform Limited  
23 Liability Company Act, an alternate name adopted under  
24 Subsection A of Section 906 of that act;

25 B. that the company is a foreign limited liability

1 company;

2 C. the company's jurisdiction of formation;

3 D. the street and mailing addresses of the  
4 company's principal office and, if the law of the company's  
5 jurisdiction of formation requires the company to maintain an  
6 office in that jurisdiction, the street and mailing addresses  
7 of the required office;

8 E. the name and address of a registered agent for  
9 service of process, which agent meets the requirements of  
10 Section 115 of the Revised Uniform Limited Liability Company  
11 Act, whose original, signed statement, together with a copy,  
12 which may be a photocopy of the original after it was signed or  
13 a photocopy that is conformed to the original, to the effect  
14 that such person accepts designation as the registered agent of  
15 the foreign limited liability company, shall be submitted with  
16 the application; and

17 F. that the secretary of state is appointed the  
18 agent of the foreign limited liability company for service of  
19 process if no agent has been appointed upon resignation of an  
20 already appointed registered agent or, if appointed, the  
21 agent's authority has been revoked or the agent cannot be found  
22 or served in the exercise of reasonable diligence.

23 SECTION 904. [NEW MATERIAL] AMENDMENT OF FOREIGN  
24 REGISTRATION STATEMENT.--A registered foreign limited liability  
25 company shall deliver to the secretary of state for filing an

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1 amendment to its foreign registration statement if there is a  
2 change in:

- 3 A. the name of the company;  
4 B. the company's jurisdiction of formation;  
5 C. an address required by Subsection D of Section  
6 903 of the Revised Uniform Limited Liability Company Act; or  
7 D. the name and street and mailing addresses of the  
8 company's registered agent in New Mexico.

9 SECTION 905. [NEW MATERIAL] ACTIVITIES NOT CONSTITUTING  
10 DOING BUSINESS.--

11 A. Activities of a foreign limited liability  
12 company that do not constitute doing business in New Mexico  
13 under Article 9 of the Revised Uniform Limited Liability  
14 Company Act include:

15 (1) maintaining, defending, mediating,  
16 arbitrating or settling an action or proceeding;

17 (2) carrying on an activity concerning the  
18 company's internal affairs, including holding meetings of its  
19 members or managers;

20 (3) maintaining accounts in financial  
21 institutions;

22 (4) maintaining offices or agencies for the  
23 transfer, exchange and registration of securities of the  
24 company or maintaining trustees or depositories with respect to  
25 those securities;

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- 1 (5) selling through independent contractors;
- 2 (6) soliciting or obtaining orders, whether by
- 3 mail or through employees or agents or otherwise, if the orders
- 4 require acceptance outside New Mexico before they become
- 5 contracts;
- 6 (7) creating as borrower or lender or
- 7 acquiring indebtedness or mortgages or other security interests
- 8 in real or personal property;
- 9 (8) securing or collecting debts or enforcing
- 10 mortgages or security interests in property securing the debts
- 11 and holding, protecting or maintaining property;
- 12 (9) conducting an isolated transaction that is
- 13 not in the course of similar transactions;
- 14 (10) owning, without more, property;
- 15 (11) investing in or acquiring, in
- 16 transactions outside New Mexico, royalties and other
- 17 nonoperating mineral interests; executing division orders,
- 18 contracts of sale and other instruments incidental to the
- 19 ownership of such nonoperating mineral interests; and, in
- 20 general, owning, without more, real or personal property;
- 21 (12) conducting an isolated transaction that
- 22 is completed within thirty days and that is not one in the
- 23 course of repeated transactions of a like nature; and
- 24 (13) transacting business in interstate
- 25 commerce.

1           B. A person does not do business in New Mexico  
2 solely by being a member or manager of a foreign limited  
3 liability company that does business in New Mexico.

4           C. This section does not apply in determining the  
5 contacts or activities that may subject a foreign limited  
6 liability company to service of process, taxation or regulation  
7 under the law of New Mexico other than those in the Revised  
8 Uniform Limited Liability Company Act.

9           **SECTION 906. [NEW MATERIAL] NONCOMPLYING NAME OF FOREIGN**  
10 **LIMITED LIABILITY COMPANY.--**

11           A. A foreign limited liability company whose name  
12 does not comply with Section 112 of the Revised Uniform Limited  
13 Liability Company Act shall not register to do business in New  
14 Mexico until it adopts, for the purpose of doing business in  
15 New Mexico, an alternate name that complies with that section.  
16 After registering to do business in New Mexico with an  
17 alternate name, a company shall do business in New Mexico  
18 under:

19                   (1) the alternate name; or  
20                   (2) the company's name, with the addition of  
21 its jurisdiction of formation.

22           B. If a registered foreign limited liability  
23 company changes its name to one that does not comply with  
24 Section 112 of the Revised Uniform Limited Liability Company  
25 Act, it may not do business in New Mexico until it complies

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1 with Subsection A of this section by amending its registration  
2 to adopt an alternate name that complies with Section 112 of  
3 that act.

4 SECTION 907. [NEW MATERIAL] WITHDRAWAL DEEMED ON  
5 CONVERSION TO DOMESTIC FILING ENTITY OR DOMESTIC LIMITED  
6 LIABILITY PARTNERSHIP.--A registered foreign limited liability  
7 company that converts to a domestic limited liability  
8 partnership or to a domestic entity whose formation requires  
9 delivery of a record to the secretary of state for filing is  
10 deemed to have withdrawn its registration on the effective date  
11 of the conversion.

12 SECTION 908. [NEW MATERIAL] WITHDRAWAL ON DISSOLUTION OR  
13 CONVERSION TO NONFILING ENTITY OTHER THAN LIMITED LIABILITY  
14 PARTNERSHIP.--

15 A. A registered foreign limited liability company  
16 that has dissolved and completed winding up or has converted to  
17 a domestic or foreign entity whose formation does not require  
18 the public filing of a record, other than a limited liability  
19 partnership, shall deliver a statement of withdrawal to the  
20 secretary of state for filing. The statement shall state, in  
21 the case of a company that has:

22 (1) completed winding up:

23 (a) its name and jurisdiction of  
24 formation; and

25 (b) that the company surrenders its

1 registration to do business in New Mexico; and

2 (2) converted:

3 (a) the name of the converting company  
4 and its jurisdiction of formation;

5 (b) the type of entity to which the  
6 company has converted and its jurisdiction of formation;

7 (c) that the converted entity surrenders  
8 the converting company's registration to do business in New  
9 Mexico and revokes the authority of the converting company's  
10 registered agent to act as registered agent in New Mexico on  
11 behalf of the company or the converted entity; and

12 (d) a mailing address to which service  
13 of process may be made under Subsection B of this section.

14 B. After a withdrawal under this section is  
15 effective, service of process in an action or proceeding based  
16 on a cause of action arising during the time that the foreign  
17 limited liability company was registered to do business in New  
18 Mexico may be made under Section 116 of the Revised Uniform  
19 Limited Liability Company Act.

20 SECTION 909. [NEW MATERIAL] TRANSFER OF REGISTRATION.--

21 A. When a registered foreign limited liability  
22 company has merged into a foreign entity that is not registered  
23 to do business in New Mexico or has converted to a foreign  
24 entity required to register with the secretary of state to do  
25 business in New Mexico, the foreign entity shall deliver to the

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1 secretary of state for filing an application for transfer of  
2 registration. The application shall state:

3 (1) the name of the registered foreign limited  
4 liability company before the merger or conversion;

5 (2) that, before the merger or conversion, the  
6 registration pertained to a foreign limited liability company;

7 (3) the name of the applicant foreign entity  
8 into which the foreign limited liability company has merged or  
9 to which it has been converted and, if the name does not comply  
10 with Section 112 of the Revised Uniform Limited Liability  
11 Company Act, an alternate name adopted under Subsection A of  
12 Section 906 of that act;

13 (4) the type of entity of the applicant  
14 foreign entity and its jurisdiction of formation;

15 (5) the street and mailing addresses of the  
16 principal office of the applicant foreign entity and, if the  
17 law of the entity's jurisdiction of formation requires the  
18 entity to maintain an office in that jurisdiction, the street  
19 and mailing addresses of that office; and

20 (6) the name and street and mailing addresses  
21 of the applicant foreign entity's registered agent in New  
22 Mexico.

23 B. When an application for transfer of registration  
24 takes effect, the registration of the foreign limited liability  
25 company to do business in New Mexico is transferred without

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1 interruption to the foreign entity into which the company has  
2 merged or to which it has been converted.

3 SECTION 910. [NEW MATERIAL] TERMINATION OF  
4 REGISTRATION.--

5 A. The secretary of state may terminate the  
6 registration of a registered foreign limited liability company  
7 in the manner provided in Subsections B and C of this section  
8 if the company does not:

9 (1) pay, within sixty days after the due date,  
10 any fee, tax, interest or penalty required to be paid to the  
11 secretary of state under the Revised Uniform Limited Liability  
12 Company Act or a law other than one in that act;

13 (2) deliver to the secretary of state for  
14 filing, within sixty days after the due date, a triennial  
15 report required by Section 212 of that act;

16 (3) have a registered agent as required by  
17 Section 115 of that act; or

18 (4) deliver to the secretary of state for  
19 filing a statement of a change under Section 115 of that act  
20 within thirty days after a change has occurred in the name or  
21 address of the registered agent.

22 B. The secretary of state may terminate the  
23 registration of a registered foreign limited liability company  
24 by:

25 (1) filing a notice of termination or noting

1 the termination in the records of the secretary of state; and

2 (2) delivering a copy of the notice or the  
3 information in the notation to the company's registered agent  
4 or, if the company does not have a registered agent, to the  
5 company's principal office.

6 C. The notice shall state, or the information in  
7 the notation shall include:

8 (1) the effective date of the termination,  
9 which shall be at least sixty days after the date that the  
10 secretary of state delivers the copy; and

11 (2) the grounds for termination under  
12 Subsection A of this section.

13 D. The authority of a registered foreign limited  
14 liability company to do business in New Mexico ceases on the  
15 effective date of the notice of termination or notation under  
16 Subsection B of this section, unless before that date the  
17 company cures each ground for termination stated in the notice  
18 or notation. If the company cures each ground, the secretary  
19 of state shall file a record so stating.

20 SECTION 911. [NEW MATERIAL] WITHDRAWAL OF REGISTRATION OF  
21 REGISTERED FOREIGN LIMITED LIABILITY COMPANY.--

22 A. A registered foreign limited liability company  
23 may withdraw its registration by delivering a statement of  
24 withdrawal to the secretary of state for filing. The statement  
25 of withdrawal must state:

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1 (1) the name of the company and its  
2 jurisdiction of formation;

3 (2) that the company is not doing business in  
4 New Mexico and that it withdraws its registration to do  
5 business in New Mexico;

6 (3) that the company revokes the authority of  
7 its registered agent to accept service on its behalf in New  
8 Mexico; and

9 (4) an address to which service of process may  
10 be made under Subsection B of this section.

11 B. After the withdrawal of the registration of a  
12 foreign limited liability company, service of process in any  
13 action or proceeding based on a cause of action arising during  
14 the time that the company was registered to do business in New  
15 Mexico may be made under Section 116 of the Revised Uniform  
16 Limited Liability Company Act.

17 SECTION 912. [NEW MATERIAL] ACTION BY ATTORNEY GENERAL.--  
18 The attorney general may maintain an action to enjoin a foreign  
19 limited liability company from doing business in New Mexico in  
20 violation of Article 9 of the Revised Uniform Limited Liability  
21 Company Act.

## 22 ARTICLE 10

### 23 MERGER, INTEREST EXCHANGE, CONVERSION AND DOMESTICATION

24 SECTION 1001. [NEW MATERIAL] DEFINITIONS.--As used in  
25 this article:

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1           A. "acquired entity" means the entity, all of one  
2 or more classes or series of interests of which are acquired in  
3 an interest exchange;

4           B. "acquiring entity" means the entity that  
5 acquires all of one or more classes or series of interests of  
6 the acquired entity in an interest exchange;

7           C. "conversion" means a transaction authorized  
8 under Sections 1019 through 1024 of the Revised Uniform Limited  
9 Liability Company Act;

10          D. "converted entity" means the converting entity  
11 as it continues in existence after a conversion;

12          E. "converting entity" means the domestic entity  
13 that approves a plan of conversion under Section 1021 of the  
14 Revised Uniform Limited Liability Company Act or the foreign  
15 entity that approves a conversion under the law of its  
16 jurisdiction of formation;

17          F. "distributional interest" means the right under  
18 an unincorporated entity's organic law and organic rules to  
19 receive distributions from the entity;

20          G. "domestic", with respect to an entity, means  
21 governed as to the entity's internal affairs by the law of New  
22 Mexico;

23          H. "domesticated limited liability company" means  
24 the domesticating limited liability company as it continues in  
25 existence after a domestication;

1 I. "domesticating limited liability company" means  
2 the domestic limited liability company that approves a plan of  
3 domestication under Section 1027 of the Revised Uniform Limited  
4 Liability Company Act or the foreign limited liability company  
5 that approves a domestication under the law of its jurisdiction  
6 of formation;

7 J. "domestication" means a transaction authorized  
8 by Sections 1025 through 1030 of the Revised Uniform Limited  
9 Liability Company Act;

10 K. "entity":

11 (1) means:

- 12 (a) a business corporation;
- 13 (b) a nonprofit corporation;
- 14 (c) a general partnership, including a  
15 limited liability partnership;
- 16 (d) a limited partnership, including a  
17 limited liability limited partnership;
- 18 (e) a limited liability company;
- 19 (f) a general cooperative association;
- 20 (g) an unincorporated nonprofit  
21 association;
- 22 (h) a statutory trust, business trust or  
23 common-law business trust; or
- 24 (i) another person that has: 1) a legal  
25 existence separate from any interest holder of that person; or

1 2) the power to acquire an interest in real property in its own  
2 name; but

3 (2) does not include:

4 (a) an individual;

5 (b) a trust with a predominantly  
6 donative purpose or a charitable trust;

7 (c) an association or relationship that  
8 is not an entity listed in Paragraph (1) of this subsection and  
9 is not a partnership under the rules stated in Section 202(c)  
10 of the Uniform Partnership Act (1997) (Last Amended 2013),  
11 Section 7 of the Uniform Partnership Act (1914) or a similar  
12 provision of the law of another jurisdiction;

13 (d) a decedent's estate; or

14 (e) a government or a governmental  
15 subdivision, agency or instrumentality;

16 L. "filing entity" means an entity whose formation  
17 requires the filing of a public organic record. "Filing  
18 entity" does not include a limited liability partnership;

19 M. "foreign", with respect to an entity, means an  
20 entity governed as to its internal affairs by the law of a  
21 jurisdiction other than New Mexico;

22 N. "governance interest" means a right under the  
23 organic law or organic rules of an unincorporated entity, other  
24 than as a governor, an agent, an assignee or a proxy, to:

25 (1) receive or demand access to information

1 concerning, or the books and records of, the entity;

2 (2) vote for or consent to the election of the  
3 governors of the entity; or

4 (3) receive notice of or vote on or consent to  
5 an issue involving the internal affairs of the entity;

6 0. "governor" means:

7 (1) a director of a business corporation;

8 (2) a director or trustee of a nonprofit  
9 corporation;

10 (3) a general partner of a general  
11 partnership;

12 (4) a general partner of a limited  
13 partnership;

14 (5) a manager of a manager-managed limited  
15 liability company;

16 (6) a member of a member-managed limited  
17 liability company;

18 (7) a director of a general cooperative  
19 association;

20 (8) a manager of an unincorporated nonprofit  
21 association;

22 (9) a trustee of a statutory trust, business  
23 trust or common-law business trust; or

24 (10) another person under whose authority the  
25 powers of an entity are exercised and under whose direction the



1 activities and affairs of the entity are managed under the  
2 organic law and organic rules of the entity;

3 P. "interest" means a:

- 4 (1) share in a business corporation;  
5 (2) membership in a nonprofit corporation;  
6 (3) partnership interest in a general  
7 partnership;  
8 (4) partnership interest in a limited  
9 partnership;  
10 (5) membership interest in a limited liability  
11 company;  
12 (6) share in a general cooperative  
13 association;  
14 (7) membership in an unincorporated nonprofit  
15 association;  
16 (8) beneficial interest in a statutory trust,  
17 business trust or common-law business trust; or  
18 (9) governance interest or distributional  
19 interest in another type of unincorporated entity;

20 Q. "interest exchange" means a transaction  
21 authorized by Sections 1013 through 1018 of the Revised Uniform  
22 Limited Liability Company Act;

23 R. "interest holder" means:

- 24 (1) a shareholder of a business corporation;  
25 (2) a member of a nonprofit corporation;

- 1 (3) a general partner of a general  
2 partnership;  
3 (4) a general partner of a limited  
4 partnership;  
5 (5) a limited partner of a limited  
6 partnership;  
7 (6) a member of a limited liability company;  
8 (7) a shareholder of a general cooperative  
9 association;  
10 (8) a member of an unincorporated nonprofit  
11 association;  
12 (9) a beneficiary or beneficial owner of a  
13 statutory trust, business trust or common-law business trust;  
14 or  
15 (10) any other direct holder of an interest;  
16 S. "interest holder liability" means:  
17 (1) personal liability for a liability of an  
18 entity that is imposed on a person:  
19 (a) solely by reason of the status of  
20 the person as an interest holder; or  
21 (b) by the organic rules of the entity  
22 that make one or more specified interest holders or categories  
23 of interest holders liable in their capacity as interest  
24 holders for all or specified liabilities of the entity; or  
25 (2) an obligation of an interest holder under

1 the organic rules of an entity to contribute to the entity;

2 T. "merger" means a transaction authorized by  
3 Sections 1007 through 1012 of the Revised Uniform Limited  
4 Liability Company Act;

5 U. "merging entity" means an entity that is a party  
6 to a merger and exists immediately before the merger becomes  
7 effective;

8 V. "organic law" means the law of an entity's  
9 jurisdiction of formation governing the internal affairs of the  
10 entity;

11 W. "organic rules" means the public organic record  
12 and private organic rules of an entity;

13 X. "plan" means a plan of merger, plan of interest  
14 exchange, plan of conversion or plan of domestication;

15 Y. "plan of conversion" means a plan under Section  
16 1020 of the Revised Uniform Limited Liability Company Act;

17 Z. "plan of domestication" means a plan under  
18 Section 1026 of the Revised Uniform Limited Liability Company  
19 Act;

20 AA. "plan of interest exchange" means a plan under  
21 Section 1014 of the Revised Uniform Limited Liability Company  
22 Act;

23 BB. "plan of merger" means a plan under Section  
24 1008 of the Revised Uniform Limited Liability Company Act;

25 CC. "private organic rules" means the rules,

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1 regardless of whether in a record, that govern the internal  
2 affairs of an entity, are binding on all of its interest  
3 holders and are not part of its public organic record, if any.

4 "Private organic rules" includes the:

- 5 (1) bylaws of a business corporation;
- 6 (2) bylaws of a nonprofit corporation;
- 7 (3) partnership agreement of a general  
8 partnership;
- 9 (4) partnership agreement of a limited  
10 partnership;
- 11 (5) operating agreement of a limited liability  
12 company;
- 13 (6) bylaws of a general cooperative  
14 association;
- 15 (7) governing principles of an unincorporated  
16 nonprofit association; and
- 17 (8) trust instrument of a statutory trust or  
18 similar rules of a business trust or common-law business trust;

19 DD. "protected agreement" means:

- 20 (1) a record evidencing indebtedness and any  
21 related agreement in effect on July 1, 2018;
- 22 (2) an agreement that is binding on an entity  
23 on that date;
- 24 (3) the organic rules of an entity in effect  
25 on that date; or

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1 (4) an agreement that is binding on any of the  
2 governors or interest holders of an entity on that date;

3 EE. "public organic record" means the record the  
4 filing of which by the secretary of state is required to form  
5 an entity and any amendment to or restatement of that record.

6 "Public organic record" includes the:

7 (1) articles of incorporation of a business  
8 corporation;

9 (2) articles of incorporation of a nonprofit  
10 corporation;

11 (3) certificate of limited partnership of a  
12 limited partnership;

13 (4) certificate of organization of a limited  
14 liability company;

15 (5) articles of incorporation of a general  
16 cooperative association; and

17 (6) certificate of trust of a statutory trust  
18 or similar record of a business trust;

19 FF. "registered foreign entity" means a foreign  
20 entity that is registered to do business in New Mexico under a  
21 record filed by the secretary of state;

22 GG. "statement of conversion" means a statement  
23 under Section 1023 of the Revised Uniform Limited Liability  
24 Company Act;

25 HH. "statement of domestication" means a statement

1 under Section 1029 of the Revised Uniform Limited Liability  
2 Company Act;

3 II. "statement of interest exchange" means a  
4 statement under Section 1017 of the Revised Uniform Limited  
5 Liability Company Act;

6 JJ. "statement of merger" means a statement under  
7 Section 1011 of the Revised Uniform Limited Liability Company  
8 Act;

9 KK. "surviving entity" means the entity that  
10 continues in existence after or is created by a merger; and

11 LL. "type of entity" means a generic form of  
12 entity:

13 (1) recognized at common law; or

14 (2) formed under an organic law, regardless of  
15 whether some entities formed under that organic law are subject  
16 to provisions of that law that create different categories of  
17 the form of entity.

18 SECTION 1002. [NEW MATERIAL] RELATIONSHIP OF ARTICLE 10  
19 OF THE REVISED UNIFORM LIMITED LIABILITY COMPANY ACT TO OTHER  
20 LAWS.--

21 A. Article 10 of the Revised Uniform Limited  
22 Liability Company Act does not authorize an act prohibited by,  
23 and does not affect the application or requirements of, a law  
24 other than one in that article.

25 B. A transaction effected under Article 10 of the

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1 Revised Uniform Limited Liability Company Act shall not create  
2 or impair a right, a duty or an obligation of a person under a  
3 statutory law of New Mexico other than one in that article  
4 relating to a change in control, takeover, business  
5 combination, control-share acquisition or similar transaction  
6 involving a domestic merging, acquired, converting or  
7 domesticating business corporation unless, if the corporation:

8 (1) does not survive the transaction, the  
9 transaction satisfies any requirements of the law; or

10 (2) survives the transaction, the approval of  
11 the plan is by a vote of the shareholders or directors that  
12 would be sufficient to create or impair the right, duty or  
13 obligation directly pursuant to the provisions of the law.

14 SECTION 1003. [NEW MATERIAL] REQUIRED NOTICE OR  
15 APPROVAL.--

16 A. A domestic or foreign entity that is required to  
17 give notice to, or obtain the approval of, a governmental  
18 agency or officer of New Mexico to be a party to a merger shall  
19 give the notice or obtain the approval to be a party to an  
20 interest exchange, conversion or domestication.

21 B. Property held for a charitable purpose under the  
22 law of New Mexico by a domestic or foreign entity immediately  
23 before a transaction under Article 10 of the Revised Uniform  
24 Limited Liability Company Act becomes effective shall not, as a  
25 result of the transaction, be diverted from the objects for

1 which it was donated, granted, devised or otherwise transferred  
2 unless, to the extent required by or under the law of New  
3 Mexico concerning cy-pres or other law dealing with non-  
4 diversion of charitable assets, the entity obtains an  
5 appropriate order of the district court specifying the  
6 disposition of the property. The attorney general shall be  
7 given notice and an opportunity to be heard.

8 C. A bequest, devise, gift, grant or promise  
9 contained in a will or other instrument of donation,  
10 subscription or conveyance that is made to a merging entity  
11 that is not the surviving entity and that takes effect or  
12 remains payable after the merger inures to the surviving  
13 entity.

14 D. A trust obligation that would govern property if  
15 transferred to a non-surviving entity applies to property that  
16 is transferred to the surviving entity under this section.

17 SECTION 1004. [NEW MATERIAL] NONEXCLUSIVITY.--The fact  
18 that a transaction effected under this article produces a  
19 certain result does not preclude the same result from being  
20 accomplished in another manner permitted by a law other than  
21 one in this article.

22 SECTION 1005. [NEW MATERIAL] REFERENCE TO EXTERNAL  
23 FACTS.--A plan may refer to facts ascertainable outside the  
24 plan if the manner in which the facts will operate upon the  
25 plan is specified in the plan. The facts may include the



1 occurrence of an event or a determination or action by a  
2 person, regardless of whether the event, determination or  
3 action is within the control of a party to the transaction.

4 SECTION 1006. [NEW MATERIAL] APPRAISAL RIGHTS.--An  
5 interest holder of a domestic merging, acquired, converting or  
6 domesticating limited liability company is entitled to  
7 contractual appraisal rights in connection with a transaction  
8 under Article 10 of the Revised Uniform Limited Liability  
9 Company Act to the extent provided in the operating agreement  
10 or the plan.

11 SECTION 1007. [NEW MATERIAL] MERGER AUTHORIZED.--

12 A. By complying with Sections 1007 through 1012 of  
13 the Revised Uniform Limited Liability Company Act:

14 (1) one or more domestic limited liability  
15 companies may merge with one or more domestic or foreign  
16 entities into a domestic or foreign surviving entity; and

17 (2) two or more foreign entities may merge  
18 into a domestic limited liability company.

19 B. By complying with Sections 1007 through 1012 of  
20 the Revised Uniform Limited Liability Company Act applicable to  
21 foreign entities, a foreign entity may be a party to a merger  
22 under those sections or may be the surviving entity in such a  
23 merger if the merger is authorized by the law of the foreign  
24 entity's jurisdiction of formation.

25 SECTION 1008. [NEW MATERIAL] PLAN OF MERGER.--

1           A. A domestic limited liability company may become  
2 a party to a merger under Sections 1007 through 1012 of the  
3 Revised Uniform Limited Liability Company Act by approving a  
4 plan of merger. The plan shall be in a record and contain:

5                   (1) as to each merging entity, its name,  
6 jurisdiction of formation and type of entity;

7                   (2) if the surviving entity is to be created  
8 in the merger, a statement to that effect and the entity's  
9 name, jurisdiction of formation and type of entity;

10                  (3) the manner of converting the interests in  
11 each party to the merger into interests, securities,  
12 obligations, money, other property, rights to acquire interests  
13 or securities or any combination of the foregoing;

14                  (4) if the surviving entity exists before the  
15 merger, any proposed amendments to its:

16                           (a) public organic record, if any; and

17                           (b) private organic rules that are, or  
18 are proposed to be, in a record;

19                  (5) if the surviving entity is to be created  
20 in the merger:

21                           (a) its proposed public organic record,  
22 if any; and

23                           (b) the full text of its private organic  
24 rules that are proposed to be in a record;

25                  (6) the other terms and conditions of the

1 merger; and

2 (7) any other provision required by the law of  
3 a merging entity's jurisdiction of formation or the organic  
4 rules of a merging entity.

5 B. In addition to the requirements in Subsection A  
6 of this section, a plan of merger may contain any other  
7 provision not prohibited by law.

8 SECTION 1009. [NEW MATERIAL] APPROVAL OF MERGER.--

9 A. A plan of merger is not effective unless it has  
10 been approved:

11 (1) by a domestic merging limited liability  
12 company, by all of the members of the company who are entitled  
13 to vote on or consent to any matter; and

14 (2) in a record, by each member of a domestic  
15 merging limited liability company that will have interest  
16 holder liability for debts, obligations and other liabilities  
17 that arise after the merger becomes effective, unless:

18 (a) the operating agreement of the  
19 company provides in a record for the approval of a merger in  
20 which some or all of its members become subject to interest  
21 holder liability by the affirmative vote or consent of fewer  
22 than all of the members; and

23 (b) the member consented in a record to  
24 or voted for that provision of the operating agreement or  
25 became a member after the adoption of that provision.

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1           B. A merger involving a domestic merging entity  
2 that is not a limited liability company is not effective unless  
3 the merger is approved by that entity in accordance with its  
4 organic law.

5           C. A merger involving a foreign merging entity is  
6 not effective unless the merger is approved by the foreign  
7 entity in accordance with the law of the foreign entity's  
8 jurisdiction of formation.

9           SECTION 1010. [NEW MATERIAL] AMENDMENT OR ABANDONMENT OF  
10 PLAN OF MERGER.--

11           A. A plan of merger may be amended only with the  
12 consent of each party to the plan, except as otherwise provided  
13 in the plan.

14           B. A domestic merging limited liability company may  
15 approve an amendment of a plan of merger:

16                   (1) in the same manner as the plan was  
17 approved, if the plan does not provide for the manner in which  
18 it may be amended; or

19                   (2) by the company's managers or members in  
20 the manner provided in the plan. However, a member that was  
21 entitled to vote on or consent to approval of the merger may  
22 vote on or consent to any amendment of the plan that will  
23 change:

24                           (a) the amount or kind of interests,  
25 securities, obligations, money, other property, rights to

1 acquire interests or securities or any combination of the  
2 foregoing, to be received by the interest holders of any party  
3 to the plan;

4 (b) the public organic record, if any,  
5 or private organic rules of the surviving entity that will be  
6 in effect immediately after the merger becomes effective,  
7 except for changes that do not require approval of the interest  
8 holders of the surviving entity under its organic law or  
9 organic rules; or

10 (c) any other term or condition of the  
11 plan, if the change would adversely affect the member in any  
12 material respect.

13 C. After a plan of merger has been approved and  
14 before a statement of merger becomes effective, the plan may be  
15 abandoned as provided in the plan. Unless prohibited by the  
16 plan, a domestic merging limited liability company may abandon  
17 the plan in the same manner as the plan was approved.

18 D. If a plan of merger is abandoned after a  
19 statement of merger has been delivered to the secretary of  
20 state for filing and before the statement becomes effective, a  
21 statement of abandonment, signed by a party to the plan, shall  
22 be delivered to the secretary of state for filing before the  
23 statement of merger becomes effective. The statement of  
24 abandonment takes effect on filing, and the merger is abandoned  
25 and does not become effective. The statement of abandonment

1 shall contain:

2 (1) the name of each party to the plan of  
3 merger;

4 (2) the date on which the statement of merger  
5 was filed by the secretary of state; and

6 (3) a statement that the merger has been  
7 abandoned in accordance with this section.

8 SECTION 1011. [NEW MATERIAL] STATEMENT OF MERGER--  
9 EFFECTIVE DATE OF MERGER.--

10 A. A statement of merger shall be signed by each  
11 merging entity and delivered to the secretary of state for  
12 filing.

13 B. A statement of merger shall contain:

14 (1) the name, jurisdiction of formation and  
15 type of entity of each merging entity that is not the surviving  
16 entity;

17 (2) the name, jurisdiction of formation and  
18 type of entity of the surviving entity;

19 (3) a statement that the merger was approved  
20 by each domestic merging entity, if any, in accordance with  
21 Sections 1007 through 1012 of the Revised Uniform Limited  
22 Liability Company Act and by each foreign merging entity, if  
23 any, in accordance with the law of its jurisdiction of  
24 formation;

25 (4) if the surviving entity exists before the

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1 merger and is a domestic filing entity, any amendment to its  
2 public organic record approved as part of the plan of merger;

3 (5) if the surviving entity is created by the  
4 merger and is a domestic filing entity, its public organic  
5 record, as an attachment;

6 (6) if the surviving entity is created by the  
7 merger and is a domestic limited liability partnership, its  
8 statement of qualification, as an attachment; and

9 (7) if the surviving entity is a foreign  
10 entity that is not a registered foreign entity, a mailing  
11 address to which the secretary of state may send any process  
12 served on the secretary of state under Subsection E of Section  
13 1012 of the Revised Uniform Limited Liability Company Act.

14 C. In addition to the requirements of Subsection B  
15 of this section, a statement of merger may contain any other  
16 provision not prohibited by law.

17 D. If the surviving entity is a domestic entity,  
18 its public organic record, if any, must satisfy the  
19 requirements of the law of New Mexico, except that the public  
20 organic record does not need to be signed.

21 E. A plan of merger that is signed by all of the  
22 merging entities and that meets all the requirements of  
23 Subsection B of this section may be delivered to the secretary  
24 of state for filing instead of a statement of merger and on  
25 filing has the same effect. If a plan of merger is filed as

1 provided in this subsection, references in Article 10 of the  
2 Revised Uniform Limited Liability Company Act to a statement of  
3 merger refer to the plan of merger filed under this subsection.

4 F. If the surviving entity is a domestic limited  
5 liability company, the merger is effective when the statement  
6 of merger is effective. In all other cases, the merger is  
7 effective on the later of:

8 (1) the date and time provided by the organic  
9 law of the surviving entity; or

10 (2) when the statement is effective.

11 **SECTION 1012. [NEW MATERIAL] EFFECT OF MERGER.--**

12 A. When a merger becomes effective:

13 (1) the surviving entity continues or comes  
14 into existence;

15 (2) each merging entity that is not the  
16 surviving entity ceases to exist;

17 (3) all property of each merging entity vests  
18 in the surviving entity without transfer, reversion or  
19 impairment;

20 (4) all debts, obligations and other  
21 liabilities of each merging entity are debts, obligations and  
22 other liabilities of the surviving entity;

23 (5) except as otherwise provided by law or the  
24 plan of merger, all the rights, privileges, immunities, powers  
25 and purposes of each merging entity vest in the surviving



entity;

(6) if the surviving entity exists before the merger:

(a) all its property continues to be vested in it without transfer, reversion or impairment;

(b) it remains subject to all its debts, obligations and other liabilities; and

(c) all its rights, privileges, immunities, powers and purposes continue to be vested in it;

(7) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;

(8) if the surviving entity exists before the merger, its:

(a) public organic record, if any, is amended to the extent provided in the statement of merger; and

(b) private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;

(9) if the surviving entity is created by the merger, its private organic rules are effective, and if it is a:

(a) filing entity, its public organic record is effective; and

(b) limited liability partnership, its

1 statement of qualification is effective; and

2 (10) the interests in each merging entity that  
3 are to be converted in the merger are converted, and the  
4 interest holders of those interests are entitled only to the  
5 rights provided to them under the plan of merger and to any  
6 appraisal rights they have under Section 1006 of the Revised  
7 Uniform Limited Liability Company Act and the merging entity's  
8 organic law.

9 B. Except as otherwise provided in the organic law  
10 or organic rules of a merging entity, the merger does not give  
11 rise to any rights that an interest holder, a governor or a  
12 third party would have upon a dissolution, liquidation or  
13 winding up of the merging entity.

14 C. When a merger becomes effective, a person that  
15 did not have interest holder liability with respect to any of  
16 the merging entities and that becomes subject to interest  
17 holder liability with respect to a domestic entity as a result  
18 of the merger has interest holder liability only to the extent  
19 provided by the organic law of that entity and only for those  
20 debts, obligations and other liabilities that arise after the  
21 merger becomes effective.

22 D. When a merger becomes effective, the interest  
23 holder liability of a person that ceases to hold an interest in  
24 a domestic merging limited liability company with respect to  
25 which the person had interest holder liability is subject to

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1 the following rules:

2 (1) the merger does not discharge any interest  
3 holder liability under the Revised Uniform Limited Liability  
4 Company Act to the extent that the interest holder liability  
5 arose before the merger became effective;

6 (2) the person does not have interest holder  
7 liability under that act for any debt, obligation or other  
8 liability that arises after the merger becomes effective;

9 (3) that act continues to apply to the  
10 release, collection or discharge of any interest holder  
11 liability preserved under Paragraph (1) of this subsection as  
12 if the merger had not occurred; and

13 (4) the person has whatever rights of  
14 contribution from any other person as provided by that act, a  
15 law other than one in that act or the operating agreement of  
16 the domestic merging limited liability company with respect to  
17 any interest holder liability preserved under Paragraph (1) of  
18 this subsection as if the merger had not occurred.

19 E. When a merger becomes effective, a foreign  
20 entity that is the surviving entity may be served with process  
21 in New Mexico for the collection and enforcement of any debts,  
22 obligations or other liabilities of a domestic merging limited  
23 liability company as provided in Section 116 of the Revised  
24 Uniform Limited Liability Company Act.

25 F. When a merger becomes effective, the

1 registration to do business in New Mexico of any foreign  
2 merging entity that is not the surviving entity is canceled.

3 SECTION 1013. [NEW MATERIAL] INTEREST EXCHANGE  
4 AUTHORIZED.--

5 A. By complying with Sections 1013 through 1018 of  
6 the Revised Uniform Limited Liability Company Act:

7 (1) a domestic limited liability company may  
8 acquire all of one or more classes or series of interests of  
9 another domestic entity or a foreign entity in exchange for  
10 interests, securities, obligations, money, other property,  
11 rights to acquire interests or securities or any combination of  
12 the foregoing; or

13 (2) all of one or more classes or series of  
14 interests of a domestic limited liability company may be  
15 acquired by another domestic entity or a foreign entity in  
16 exchange for interests, securities, obligations, money, other  
17 property, rights to acquire interests or securities or any  
18 combination of the foregoing.

19 B. By complying with Sections 1013 through 1018 of  
20 the Revised Uniform Limited Liability Company Act applicable to  
21 foreign entities, a foreign entity may be the acquiring or  
22 acquired entity in an interest exchange under Sections 1013  
23 through 1018 of that act if the interest exchange is authorized  
24 by the law of the foreign entity's jurisdiction of formation.

25 C. If a protected agreement contains a provision

1 that applies to a merger of a domestic limited liability  
2 company but does not refer to an interest exchange, the  
3 provision applies to an interest exchange in which the domestic  
4 limited liability company is the acquired entity as if the  
5 interest exchange were a merger until the provision is amended  
6 after July 1, 2018.

7 SECTION 1014. [NEW MATERIAL] PLAN OF INTEREST EXCHANGE.--

8 A. A domestic limited liability company may be the  
9 acquired entity in an interest exchange under Sections 1013  
10 through 1018 of the Revised Uniform Limited Liability Company  
11 Act by approving a plan of interest exchange. The plan shall  
12 be in a record and shall contain:

13 (1) the name of the acquired entity;

14 (2) the name, jurisdiction of formation and  
15 type of entity of the acquiring entity;

16 (3) the manner of converting the interests in  
17 the acquired entity into interests, securities, obligations,  
18 money, other property, rights to acquire interests or  
19 securities or any combination of the foregoing;

20 (4) any proposed amendments to the:

21 (a) certificate of organization of the  
22 acquired entity; and

23 (b) operating agreement of the acquired  
24 entity that are, or are proposed to be, in a record;

25 (5) the other terms and conditions of the

1 interest exchange; and

2 (6) any other provision required by the law of  
3 New Mexico or the operating agreement of the acquired entity.

4 B. In addition to the requirements of Subsection A  
5 of this section, a plan of interest exchange may contain any  
6 other provision not prohibited by law.

7 SECTION 1015. [NEW MATERIAL] APPROVAL OF INTEREST  
8 EXCHANGE.--

9 A. A plan of interest exchange is not effective  
10 unless it has been approved:

11 (1) by all the members of a domestic acquired  
12 limited liability company entitled to vote on or consent to any  
13 matter; and

14 (2) in a record, by each member of the  
15 domestic acquired limited liability company that will have  
16 interest holder liability for debts, obligations and other  
17 liabilities that arise after the interest exchange becomes  
18 effective, unless:

19 (a) the operating agreement of the  
20 company provides in a record for the approval of an interest  
21 exchange or a merger in which some or all its members become  
22 subject to interest holder liability by the affirmative vote or  
23 consent of fewer than all the members; and

24 (b) the member consented in a record to  
25 or voted for that provision of the operating agreement or

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1 became a member after the adoption of that provision.

2 B. An interest exchange involving a domestic  
3 acquired entity that is not a limited liability company is not  
4 effective unless it is approved by the domestic entity in  
5 accordance with its organic law.

6 C. An interest exchange involving a foreign  
7 acquired entity is not effective unless it is approved by the  
8 foreign entity in accordance with the law of the foreign  
9 entity's jurisdiction of formation.

10 D. Except as otherwise provided in its organic law  
11 or organic rules, the interest holders of the acquiring entity  
12 are not required to approve the interest exchange.

13 SECTION 1016. [NEW MATERIAL] AMENDMENT OR ABANDONMENT OF  
14 PLAN OF INTEREST EXCHANGE.--

15 A. A plan of interest exchange may be amended only  
16 with the consent of each party to the plan, except as otherwise  
17 provided in the plan.

18 B. A domestic acquired limited liability company  
19 may approve an amendment of a plan of interest exchange:

20 (1) in the same manner as the plan was  
21 approved, if the plan does not provide for the manner in which  
22 it may be amended; or

23 (2) by its managers or members in the manner  
24 provided in the plan. However, a member that was entitled to  
25 vote on or consent to approval of the interest exchange is

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1 entitled to vote on or consent to any amendment of the plan  
2 that will change:

3 (a) the amount or kind of interests,  
4 securities, obligations, money, other property, rights to  
5 acquire interests or securities or any combination of the  
6 foregoing, to be received by any of the members of the acquired  
7 company under the plan;

8 (b) the certificate of organization or  
9 operating agreement of the acquired company that will be in  
10 effect immediately after the interest exchange becomes  
11 effective, except for changes that do not require approval of  
12 the members of the acquired company under the Revised Uniform  
13 Limited Liability Company Act or the operating agreement; or

14 (c) any other terms or conditions of the  
15 plan, if the change would adversely affect the member in any  
16 material respect.

17 C. After a plan of interest exchange has been  
18 approved and before a statement of interest exchange becomes  
19 effective, the plan may be abandoned as provided in the plan.  
20 Unless prohibited by the plan, a domestic acquired limited  
21 liability company may abandon the plan in the same manner the  
22 plan was approved.

23 D. If a plan of interest exchange is abandoned  
24 after a statement of interest exchange has been delivered to  
25 the secretary of state for filing and before the statement



1 becomes effective, a statement of abandonment, signed by the  
2 acquired limited liability company, shall be delivered to the  
3 secretary of state for filing before the statement of interest  
4 exchange becomes effective. The statement of abandonment takes  
5 effect on filing, and the interest exchange is abandoned and  
6 does not become effective. The statement of abandonment shall  
7 contain:

- 8 (1) the name of the acquired company;
- 9 (2) the date on which the statement of  
10 interest exchange was filed by the secretary of state; and
- 11 (3) a statement that the interest exchange has  
12 been abandoned in accordance with this section.

13 SECTION 1017. [NEW MATERIAL] STATEMENT OF INTEREST  
14 EXCHANGE--EFFECTIVE DATE OF INTEREST EXCHANGE.--

15 A. A statement of interest exchange shall be signed  
16 by a domestic acquired limited liability company and delivered  
17 to the secretary of state for filing.

18 B. A statement of interest exchange shall contain:

- 19 (1) the name of the acquired limited liability  
20 company;
- 21 (2) the name, jurisdiction of formation and  
22 type of entity of the acquiring entity;
- 23 (3) a statement that the plan of interest  
24 exchange was approved by the acquired company in accordance  
25 with Sections 1013 through 1018 of the Revised Uniform Limited

1 Liability Company Act; and

2 (4) any amendments to the company's  
3 certificate of organization approved as part of the plan of  
4 interest exchange.

5 C. In addition to the requirements of Subsection B  
6 of this section, a statement of interest exchange may contain  
7 any other provision not prohibited by law.

8 D. A plan of interest exchange that is signed by a  
9 domestic acquired limited liability company and that meets all  
10 the requirements of Subsection B of this section may be  
11 delivered to the secretary of state for filing instead of a  
12 statement of interest exchange and on filing has the same  
13 effect. If a plan of interest exchange is filed as provided in  
14 this subsection, references in Article 10 of the Revised  
15 Uniform Limited Liability Company Act to a statement of  
16 interest exchange refer to the plan of interest exchange filed  
17 under this subsection.

18 E. An interest exchange is effective when the  
19 statement of interest exchange is effective.

20 SECTION 1018. [NEW MATERIAL] EFFECT OF INTEREST  
21 EXCHANGE.--

22 A. When an interest exchange in which the acquired  
23 entity is a domestic limited liability company becomes  
24 effective, the:

25 (1) interests in the acquired company that are

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1 the subject of the interest exchange are converted, and the  
2 members holding those interests are entitled only to the rights  
3 provided to them by the plan of interest exchange and to any  
4 appraisal rights that they have under Section 1006 of the  
5 Revised Uniform Limited Liability Company Act;

6 (2) acquiring entity becomes the interest  
7 holder of the interests in the acquired company stated in the  
8 plan of interest exchange to be acquired by the acquiring  
9 entity;

10 (3) certificate of organization of the  
11 acquired company is amended to the extent provided in the  
12 statement of interest exchange; and

13 (4) provisions of the operating agreement of  
14 the acquired company that are to be in a record, if any, are  
15 amended to the extent provided in the plan of interest  
16 exchange.

17 B. Except as otherwise provided in the operating  
18 agreement of a domestic acquired limited liability company, the  
19 interest exchange does not give rise to any rights that a  
20 member, manager or third party would have upon a dissolution,  
21 liquidation or winding up of the acquired company.

22 C. When an interest exchange becomes effective, a  
23 person that did not have interest holder liability with respect  
24 to a domestic acquired limited liability company and that  
25 becomes subject to interest holder liability with respect to a

1 domestic entity as a result of the interest exchange has  
2 interest holder liability only to the extent provided by the  
3 organic law of the entity and only for those debts, obligations  
4 and other liabilities that arise after the interest exchange  
5 becomes effective.

6 D. When an interest exchange becomes effective, the  
7 interest holder liability of a person that ceases to hold an  
8 interest in a domestic acquired limited liability company with  
9 respect to which the person had interest holder liability is  
10 subject to the following rules:

11 (1) the interest exchange does not discharge  
12 any interest holder liability under the Revised Uniform Limited  
13 Liability Company Act to the extent that the interest holder  
14 liability arose before the interest exchange became effective;

15 (2) the person does not have interest holder  
16 liability under that act for any debt, obligation or other  
17 liability that arises after the interest exchange becomes  
18 effective;

19 (3) that act continues to apply to the  
20 release, collection or discharge of any interest holder  
21 liability preserved under Paragraph (1) of this subsection as  
22 if the interest exchange had not occurred; and

23 (4) the person has whatever rights of  
24 contribution from any other person as are provided by that act,  
25 a law other than one in that act or the operating agreement of

1 the acquired company with respect to any interest holder  
2 liability preserved under Paragraph (1) of this subsection as  
3 if the interest exchange had not occurred.

4 SECTION 1019. [NEW MATERIAL] CONVERSION AUTHORIZED.--

5 A. By complying with Sections 1019 through 1024 of  
6 the Revised Uniform Limited Liability Company Act, a domestic  
7 limited liability company may become a:

8 (1) domestic entity that is a different type  
9 of entity; or

10 (2) foreign entity that is a different type of  
11 entity, if the conversion is authorized by the law of the  
12 foreign entity's jurisdiction of formation.

13 B. By complying with the provisions of Sections  
14 1019 through 1024 of the Revised Uniform Limited Liability  
15 Company Act applicable to foreign entities, a foreign entity  
16 that is not a foreign limited liability company may become a  
17 domestic limited liability company if the conversion is  
18 authorized by the law of the foreign entity's jurisdiction of  
19 formation.

20 C. If a protected agreement contains a provision  
21 that applies to a merger of a domestic limited liability  
22 company but does not refer to a conversion, the provision  
23 applies to a conversion of the company as if the conversion  
24 were a merger until the provision is amended after July 1,  
25 2018.

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1           SECTION 1020.   ~~[NEW MATERIAL]~~ PLAN OF CONVERSION.--

2           A. A domestic limited liability company may convert  
3 to a different type of entity under Sections 1019 through 1024  
4 of the Revised Uniform Limited Liability Company Act by  
5 approving a plan of conversion. The plan shall be in a record  
6 and contain:

7                       (1) the name of the converting limited  
8 liability company;

9                       (2) the name, jurisdiction of formation and  
10 type of entity of the converted entity;

11                      (3) the manner of converting the interests in  
12 the converting limited liability company into interests,  
13 securities, obligations, money, other property, rights to  
14 acquire interests or securities or any combination of the  
15 foregoing;

16                      (4) the proposed public organic record of the  
17 converted entity if it will be a filing entity;

18                      (5) the full text of the private organic rules  
19 of the converted entity that are proposed to be in a record;

20                      (6) the other terms and conditions of the  
21 conversion; and

22                      (7) any other provision required by the law of  
23 New Mexico or the operating agreement of the converting limited  
24 liability company.

25           B. In addition to the requirements in Subsection A

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1 of this section, a plan of conversion may contain any other  
2 provision not prohibited by law.

3 SECTION 1021. [NEW MATERIAL] APPROVAL OF CONVERSION.--

4 A. A plan of conversion is not effective unless it  
5 has been approved:

6 (1) by a domestic converting limited liability  
7 company, by all the members of the limited liability company  
8 entitled to vote on or consent to any matter; and

9 (2) in a record, by each member of a domestic  
10 converting limited liability company that will have interest  
11 holder liability for debts, obligations and other liabilities  
12 that arise after the conversion becomes effective, unless:

13 (a) the operating agreement of the  
14 company provides in a record for the approval of a conversion  
15 or a merger in which some or all of its members become subject  
16 to interest holder liability by the affirmative vote or consent  
17 of fewer than all the members; and

18 (b) the member voted for or consented in  
19 a record to that provision of the operating agreement or became  
20 a member after the adoption of that provision.

21 B. A conversion involving a domestic converting  
22 entity that is not a limited liability company is not effective  
23 unless it is approved by the domestic converting entity in  
24 accordance with its organic law.

25 C. A conversion of a foreign converting entity is

1 not effective unless it is approved by the foreign entity in  
2 accordance with the law of the foreign entity's jurisdiction of  
3 formation.

4 SECTION 1022. [NEW MATERIAL] AMENDMENT OR ABANDONMENT OF  
5 PLAN OF CONVERSION.--

6 A. A plan of conversion of a domestic converting  
7 limited liability company may be amended:

8 (1) in the same manner as the plan was  
9 approved, if the plan does not provide for the manner in which  
10 it may be amended; or

11 (2) by its managers or members in the manner  
12 provided in the plan, but a member that was entitled to vote on  
13 or consent to approval of the conversion is entitled to vote on  
14 or consent to any amendment of the plan that will change:

15 (a) the amount or kind of interests,  
16 securities, obligations, money, other property, rights to  
17 acquire interests or securities or any combination of the  
18 foregoing, to be received by any of the members of the  
19 converting company under the plan;

20 (b) the public organic record, if any,  
21 or private organic rules of the converted entity that will be  
22 in effect immediately after the conversion becomes effective,  
23 except for changes that do not require the approval of the  
24 interest holders of the converted entity under its organic law  
25 or organic rules; or

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1 (c) any other terms or conditions of the  
2 plan, if the change would adversely and materially affect the  
3 member.

4 B. After a plan of conversion has been approved by  
5 a domestic converting limited liability company and before a  
6 statement of conversion becomes effective, the plan may be  
7 abandoned as provided in the plan. Unless prohibited by the  
8 plan, a domestic converting limited liability company may  
9 abandon the plan in the same manner as the plan was approved.

10 C. If a plan of conversion is abandoned after a  
11 statement of conversion has been delivered to the secretary of  
12 state for filing and before the statement becomes effective, a  
13 statement of abandonment, signed by the converting entity,  
14 shall be delivered to the secretary of state for filing before  
15 the statement of conversion becomes effective. The statement  
16 of abandonment takes effect on filing, and the conversion is  
17 abandoned and does not become effective. The statement of  
18 abandonment shall contain:

19 (1) the name of the converting limited  
20 liability company;

21 (2) the date on which the statement of  
22 conversion was filed by the secretary of state; and

23 (3) a statement that the conversion has been  
24 abandoned in accordance with the provisions of this section.

25 SECTION 1023. [NEW MATERIAL] STATEMENT OF CONVERSION--

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1 EFFECTIVE DATE OF CONVERSION.--

2 A. A statement of conversion shall be signed by the  
3 converting entity and delivered to the secretary of state for  
4 filing.

5 B. A statement of conversion shall contain:

6 (1) the name, jurisdiction of formation and  
7 type of entity of the converting entity;

8 (2) the name, jurisdiction of formation and  
9 type of entity of the converted entity;

10 (3) if the converting entity is a domestic  
11 limited liability company, a statement that the plan of  
12 conversion was approved in accordance with Sections 1019  
13 through 1024 of the Revised Uniform Limited Liability Company  
14 Act or, if the converting entity is a foreign entity, a  
15 statement that the conversion was approved by the foreign  
16 entity in accordance with the law of its jurisdiction of  
17 formation;

18 (4) if the converted entity is a domestic  
19 filing entity, its public organic record, as an attachment;

20 (5) if the converted entity is a domestic  
21 limited liability partnership, its statement of qualification,  
22 as an attachment; and

23 (6) if the converted entity is a foreign  
24 entity, a mailing address to which the secretary of state may  
25 send any process served on the secretary of state under

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1 Subsection E of Section 1024 of the Revised Uniform Limited  
2 Liability Company Act.

3 C. In addition to the requirements of Subsection B  
4 of this section, a statement of conversion may contain any  
5 other provision not prohibited by law.

6 D. If the converted entity is a domestic entity,  
7 its public organic record, if any, shall satisfy the  
8 requirements of the law of New Mexico, except that the public  
9 organic record does not need to be signed.

10 E. A plan of conversion that is signed by a  
11 domestic converting limited liability company and that meets  
12 all the requirements in Subsection B of this section may be  
13 delivered to the secretary of state for filing instead of a  
14 statement of conversion and on filing has the same effect. If  
15 a plan of conversion is filed as provided in this subsection,  
16 references in Article 10 of the Revised Uniform Limited  
17 Liability Company Act to a statement of conversion refer to the  
18 plan of conversion filed under this subsection.

19 F. If the converted entity is a domestic limited  
20 liability company, the conversion is effective when the  
21 statement of conversion is effective. In all other cases, the  
22 conversion is effective on the later of:

23 (1) the date and time provided by the organic  
24 law of the converted entity; or

25 (2) when the statement is effective.

1           SECTION 1024.   ~~[NEW MATERIAL]~~ EFFECT OF CONVERSION.--

2                   A.   When a conversion becomes effective:

3                           (1)   the converted entity is:

4                                   (a)   organized under and subject to the  
5   organic law of the converted entity; and

6                                   (b)   without interruption, the same  
7   entity as the converting entity;

8                           (2)   all property of the converting entity  
9   continues to be vested in the converted entity without  
10   transfer, reversion or impairment;

11                           (3)   all debts, obligations and other  
12   liabilities of the converting entity continue as debts,  
13   obligations and other liabilities of the converted entity;

14                           (4)   except as otherwise provided by law or the  
15   plan of conversion, all the rights, privileges, immunities,  
16   powers and purposes of the converting entity remain in the  
17   converted entity;

18                           (5)   the name of the converted entity may be  
19   substituted for the name of the converting entity in any  
20   pending action or proceeding;

21                           (6)   the certificate of organization of the  
22   converted entity is effective;

23                           (7)   the provisions of the operating agreement  
24   of the converted entity that are to be in a record, if any,  
25   approved as part of the plan of conversion are effective; and

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1 (8) the interests in the converting entity are  
2 converted, and the interest holders of the converting entity  
3 are entitled only to the rights provided to them under the plan  
4 of conversion and to any appraisal rights they have under  
5 Section 1006 of the Revised Uniform Limited Liability Company  
6 Act.

7 B. Except as otherwise provided in the operating  
8 agreement of a domestic converting limited liability company,  
9 the conversion does not give rise to any right that a member,  
10 manager or third party would have upon a dissolution,  
11 liquidation or winding up of the converting entity.

12 C. When a conversion becomes effective, a person  
13 that did not have interest holder liability with respect to the  
14 converting entity and becomes subject to interest holder  
15 liability with respect to a domestic entity as a result of the  
16 conversion has interest holder liability only to the extent  
17 provided by the organic law of the entity and only for those  
18 debts, obligations and other liabilities that arise after the  
19 conversion becomes effective.

20 D. When a conversion becomes effective, the  
21 interest holder liability of a person that ceases to hold an  
22 interest in a domestic converting limited liability company  
23 with respect to which the person had interest holder liability  
24 is subject to the following rules:

25 (1) the conversion does not discharge any

1 interest holder liability under the Revised Uniform Limited  
2 Liability Company Act to the extent that the interest holder  
3 liability arose before the conversion became effective;

4 (2) the person does not have interest holder  
5 liability under that act for any debt, obligation or other  
6 liability that arises after the conversion becomes effective;

7 (3) that act continues to apply to the  
8 release, collection or discharge of any interest holder  
9 liability preserved under Paragraph (1) of this subsection as  
10 if the conversion had not occurred; and

11 (4) the person has whatever rights of  
12 contribution from any other person as are provided by that act,  
13 a law other than one in that act or the organic rules of the  
14 converting entity with respect to any interest holder liability  
15 preserved under Paragraph (1) of this subsection as if the  
16 conversion had not occurred.

17 E. When a conversion becomes effective, a foreign  
18 entity that is the converted entity may be served with process  
19 in New Mexico for the collection and enforcement of any of its  
20 debts, obligations and other liabilities as provided in Section  
21 116 of the Revised Uniform Limited Liability Company Act.

22 F. If the converting entity is a registered foreign  
23 entity, its registration to do business in New Mexico is  
24 canceled when the conversion becomes effective.

25 G. A conversion does not require the entity to wind

1 up its affairs and does not constitute or cause the dissolution  
2 of the entity.

3 SECTION 1025. [NEW MATERIAL] DOMESTICATION AUTHORIZED.--

4 A. By complying with Sections 1025 through 1030 of  
5 the Revised Uniform Limited Liability Company Act, a domestic  
6 limited liability company may become a foreign limited  
7 liability company if the domestication is authorized by the law  
8 of the foreign jurisdiction.

9 B. By complying with the provisions of Sections  
10 1025 through 1030 of the Revised Uniform Limited Liability  
11 Company Act applicable to foreign limited liability companies,  
12 a foreign limited liability company may become a domestic  
13 limited liability company if the domestication is authorized by  
14 the law of the foreign limited liability company's jurisdiction  
15 of formation.

16 C. If a protected agreement contains a provision  
17 that applies to a merger of a domestic limited liability  
18 company but does not refer to a domestication, the provision  
19 applies to a domestication of the limited liability company as  
20 if the domestication were a merger until the provision is  
21 amended after July 1, 2018.

22 SECTION 1026. [NEW MATERIAL] PLAN OF DOMESTICATION.--

23 A. A domestic limited liability company may become  
24 a foreign limited liability company in a domestication by  
25 approving a plan of domestication. The plan shall be in a

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1 record and shall contain:

2 (1) the name of the domesticating limited  
3 liability company;

4 (2) the name and jurisdiction of formation of  
5 the domesticated limited liability company;

6 (3) the manner of converting the interests in  
7 the domesticating limited liability company into interests,  
8 securities, obligations, money, other property, rights to  
9 acquire interests or securities or any combination of the  
10 foregoing;

11 (4) the proposed certificate of organization  
12 of the domesticated limited liability company;

13 (5) the full text of the provisions of the  
14 operating agreement of the domesticated limited liability  
15 company that are proposed to be in a record;

16 (6) the other terms and conditions of the  
17 domestication; and

18 (7) any other provision required by the law of  
19 New Mexico or the operating agreement of the domesticating  
20 limited liability company.

21 B. In addition to the requirements of Subsection A  
22 of this section, a plan of domestication may contain any other  
23 provision not prohibited by law.

24 SECTION 1027. [NEW MATERIAL] APPROVAL OF DOMESTICATION.--

25 A. A plan of domestication of a domestic

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1 domesticating limited liability company is not effective unless  
2 it has been approved:

3 (1) by all the members entitled to vote on or  
4 consent to any matter; and

5 (2) in a record, by each member that will have  
6 interest holder liability for debts, obligations and other  
7 liabilities that arise after the domestication becomes  
8 effective, unless:

9 (a) the operating agreement of the  
10 domesticating company in a record provides for the approval of  
11 a domestication or merger in which some or all of its members  
12 become subject to interest holder liability by the affirmative  
13 vote or consent of fewer than all the members; and

14 (b) the member voted for or consented in  
15 a record to that provision of the operating agreement or became  
16 a member after the adoption of that provision.

17 B. A domestication of a foreign domesticating  
18 limited liability company is not effective unless it is  
19 approved in accordance with the law of the foreign limited  
20 liability company's jurisdiction of formation.

21 SECTION 1028. [NEW MATERIAL] AMENDMENT OR ABANDONMENT OF  
22 PLAN OF DOMESTICATION.--

23 A. A plan of domestication of a domestic  
24 domesticating limited liability company may be amended:

25 (1) in the same manner as the plan was

1 approved, if the plan does not provide for the manner in which  
2 it may be amended; or

3 (2) by its managers or members in the manner  
4 provided in the plan, but a member that was entitled to vote on  
5 or consent to the approval of the domestication is entitled to  
6 vote on or consent to any amendment of the plan that will  
7 change:

8 (a) the amount or kind of interests,  
9 securities, obligations, money, other property, rights to  
10 acquire interests or securities or any combination of the  
11 foregoing, to be received by any of the members of the  
12 domesticating limited liability company under the plan;

13 (b) the certificate of organization or  
14 operating agreement of the domesticated limited liability  
15 company that will be in effect immediately after the  
16 domestication becomes effective, except for changes that do not  
17 require the approval of the members of the domesticated limited  
18 liability company under its organic law or operating agreement;  
19 or

20 (c) any other terms or conditions of the  
21 plan, if the change would adversely affect the member in any  
22 material respect.

23 B. After a plan of domestication has been approved  
24 by a domestic domesticating limited liability company and  
25 before a statement of domestication becomes effective, the plan

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1 may be abandoned as provided in the plan. Unless prohibited by  
2 the plan, a domestic domesticating limited liability company  
3 may abandon the plan in the same manner as the plan was  
4 approved.

5 C. If a plan of domestication is abandoned after a  
6 statement of domestication has been delivered to the secretary  
7 of state for filing and before the statement becomes effective,  
8 a statement of abandonment, signed by the domesticating limited  
9 liability company, shall be delivered to the secretary of state  
10 for filing before the statement of domestication becomes  
11 effective. The statement of abandonment takes effect on  
12 filing, and the domestication is abandoned and does not become  
13 effective. The statement of abandonment shall contain:

14 (1) the name of the domesticating limited  
15 liability company;

16 (2) the date on which the statement of  
17 domestication was filed by the secretary of state; and

18 (3) a statement that the domestication has  
19 been abandoned in accordance with this section.

20 SECTION 1029. [NEW MATERIAL] STATEMENT OF DOMESTICATION--  
21 EFFECTIVE DATE OF DOMESTICATION.--

22 A. A statement of domestication shall be signed by  
23 the domesticating limited liability company and delivered to  
24 the secretary of state for filing.

25 B. A statement of domestication shall contain:

1 (1) the name and jurisdiction of formation of  
2 the domesticating limited liability company;

3 (2) the name and jurisdiction of formation of  
4 the domesticated limited liability company;

5 (3) if the domesticating limited liability  
6 company is a domestic limited liability company, a statement  
7 that the plan of domestication was approved in accordance with  
8 Sections 1025 through 1030 of the Revised Uniform Limited  
9 Liability Company Act or, if the domesticating limited  
10 liability company is a foreign limited liability company, a  
11 statement that the domestication was approved in accordance  
12 with the law of its jurisdiction of formation;

13 (4) the certificate of organization of the  
14 domesticated limited liability company, as an attachment; and

15 (5) if the domesticated entity is a foreign  
16 limited liability company, a mailing address to which the  
17 secretary of state may send any process served on the secretary  
18 of state under Subsection E of Section 1030 of the Revised  
19 Uniform Limited Liability Company Act.

20 C. In addition to the requirements of Subsection B  
21 of this section, a statement of domestication may contain any  
22 other provision not prohibited by law.

23 D. The certificate of organization of a domestic  
24 domesticated limited liability company shall satisfy the  
25 requirements of the Revised Uniform Limited Liability Company

1 Act, but the certificate does not need to be signed.

2 E. A plan of domestication that is signed by a  
3 domestic domesticating limited liability company and that meets  
4 all of the requirements of Subsection B of this section may be  
5 delivered to the secretary of state for filing instead of a  
6 statement of domestication and on filing has the same effect.  
7 If a plan of domestication is filed as provided in this  
8 subsection, references in Article 10 of the Revised Uniform  
9 Limited Liability Company Act to a statement of domestication  
10 refer to the plan of domestication filed under this subsection.

11 F. If the domesticated entity is a domestic limited  
12 liability company, the domestication is effective when the  
13 statement of domestication is effective. If the domesticated  
14 entity is a foreign limited liability company, the  
15 domestication is effective on the later of:

16 (1) the date and time provided by the organic  
17 law of the domesticated entity; or

18 (2) when the statement is effective.

19 SECTION 1030. [NEW MATERIAL] EFFECT OF DOMESTICATION.--

20 A. When a domestication becomes effective:

21 (1) the domesticated entity is:

22 (a) organized under and subject to the  
23 organic law of the domesticated entity; and

24 (b) without interruption, the same  
25 entity as the domesticating entity;

1                   (2) all property of the domesticating entity  
2 continues to be vested in the domesticated entity without  
3 transfer, reversion or impairment;

4                   (3) all debts, obligations and other  
5 liabilities of the domesticating entity continue as debts,  
6 obligations and other liabilities of the domesticated entity;

7                   (4) except as otherwise provided by law or the  
8 plan of domestication, all the rights, privileges, immunities,  
9 powers and purposes of the domesticating entity remain in the  
10 domesticated entity;

11                   (5) the name of the domesticated entity may be  
12 substituted for the name of the domesticating entity in any  
13 pending action or proceeding;

14                   (6) the certificate of organization of the  
15 domesticated entity is effective;

16                   (7) the provisions of the operating agreement  
17 of the domesticated entity that are to be in a record, if any,  
18 and that are approved as part of the plan of domestication, are  
19 effective; and

20                   (8) the interests in the domesticating entity  
21 are converted to the extent and as approved in connection with  
22 the domestication, and the members of the domesticating entity  
23 are entitled only to the rights provided to them under the plan  
24 of domestication and to any appraisal rights they have under  
25 Section 1006 of the Revised Uniform Limited Liability Company

1 Act.

2 B. Except as otherwise provided in the organic law  
3 or operating agreement of the domesticating limited liability  
4 company, the domestication does not give rise to any rights  
5 that a member, manager or third party would otherwise have upon  
6 a dissolution, liquidation or winding up of the domesticating  
7 company.

8 C. When a domestication becomes effective, a person  
9 that did not have interest holder liability with respect to the  
10 domesticating limited liability company and that becomes  
11 subject to interest holder liability with respect to a domestic  
12 company as a result of the domestication has interest holder  
13 liability only to the extent provided by the Revised Uniform  
14 Limited Liability Company Act and only for those debts,  
15 obligations and other liabilities that arise after the  
16 domestication becomes effective.

17 D. When a domestication becomes effective, the  
18 interest holder liability of a person that ceases to hold an  
19 interest in a domestic domesticating limited liability company  
20 with respect to which the person had interest holder liability  
21 is subject to the following rules:

22 (1) the domestication does not discharge any  
23 interest holder liability under the Revised Uniform Limited  
24 Liability Company Act to the extent that the interest holder  
25 liability arose before the domestication became effective;

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1 (2) a person does not have interest holder  
2 liability under that act for any debt, obligation or other  
3 liability that arises after the domestication becomes  
4 effective;

5 (3) that act continues to apply to the  
6 release, collection or discharge of any interest holder  
7 liability preserved under Paragraph (1) of this subsection as  
8 if the domestication had not occurred; and

9 (4) a person has whatever rights of  
10 contribution from any other person as provided by that act, a  
11 law other than one in that act or the operating agreement of  
12 the domestic domesticating limited liability company with  
13 respect to any interest holder liability preserved under  
14 Paragraph (1) of this subsection as if the domestication had  
15 not occurred.

16 E. When a domestication becomes effective, a  
17 foreign limited liability company that is the domesticated  
18 company may be served with process in New Mexico for the  
19 collection and enforcement of any of its debts, obligations and  
20 liabilities as provided in Section 116 of the Revised Uniform  
21 Limited Liability Company Act.

22 F. If the domesticating limited liability company  
23 is a registered foreign entity, the registration of the company  
24 is canceled when the domestication becomes effective.

25 G. A domestication does not require a domestic



1 domesticating limited liability company to wind up its affairs  
2 and does not constitute or cause the dissolution of the  
3 company.

4 ARTICLE 11

5 MISCELLANEOUS PROVISIONS

6 SECTION 1101. [NEW MATERIAL] UNIFORMITY OF APPLICATION  
7 AND CONSTRUCTION.--In applying and construing the provisions of  
8 the Revised Uniform Limited Liability Company Act,  
9 consideration shall be given to the need to promote uniformity  
10 of the law with respect to its subject matter among states that  
11 enact it.

12 SECTION 1102. [NEW MATERIAL] RELATION TO ELECTRONIC  
13 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Revised  
14 Uniform Limited Liability Company Act modifies, limits and  
15 supersedes the federal Electronic Signatures in Global and  
16 National Commerce Act, 15 U.S.C. Section 7001 et seq., but does  
17 not modify, limit or supersede Section 101(c) of that act, 15  
18 U.S.C. Section 7001(c) or authorize electronic delivery of any  
19 of the notices described in Section 103(b) of that act, 15  
20 U.S.C. Section 7003(b).

21 SECTION 1103. [NEW MATERIAL] SAVING CLAUSE.--The Revised  
22 Uniform Limited Liability Company Act does not affect an action  
23 commenced, a proceeding brought or a right accrued before July  
24 1, 2018.

25 SECTION 1104. Section 53-13-7 NMSA 1978 (being Laws 1975,  
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1 Chapter 64, Section 32, as amended) is repealed and a new  
2 Section 53-13-7 NMSA 1978 is enacted to read:

3 "53-13-7. [NEW MATERIAL] RESTATED ARTICLES OF  
4 INCORPORATION.--

5 A. A corporation's board of directors may restate  
6 its articles of incorporation at any time, with or without  
7 shareholder approval, to consolidate all amendments into a  
8 single document.

9 B. If the restated articles of incorporation  
10 include one or more new amendments that require shareholder  
11 approval, the new amendments shall be adopted or approved as  
12 provided in Sections 53-13-2 and 53-13-3 NMSA 1978.

13 C. A corporation that restates its articles of  
14 incorporation shall deliver to the secretary of state for  
15 filing the original and a copy of restated articles of  
16 incorporation setting forth the name of the corporation and the  
17 text of the restated articles of incorporation together with a  
18 certificate that:

19 (1) states that the restated articles of  
20 incorporation consolidate all amendments into one document; and

21 (2) if one or more new amendments are included  
22 in the restated articles of incorporation, also includes the  
23 statements required by Subsections B, C, D, E and F of Section  
24 53-13-4 NMSA 1978.

25 D. The restated articles of incorporation shall be

1     executed by the corporation by an authorized officer. The copy  
2     may be signed, photocopied or conformed. If the secretary of  
3     state finds that the restated articles of incorporation conform  
4     to law, the secretary of state shall, when all fees have been  
5     paid:

6                     (1) endorse on the original and a copy the  
7     word "filed" and the month, date and year of the filing;

8                     (2) file the original in the secretary of  
9     state's office; and

10                    (3) issue a restated certificate of  
11     incorporation to which the secretary of state shall affix the  
12     file-stamped copy.

13                    E. The restated certificate of incorporation,  
14     together with the file-stamped copy of the restated articles of  
15     incorporation affixed to it, shall be returned by the secretary  
16     of state to the corporation or its representative. Unless the  
17     secretary of state disapproves under Subsection A of Section  
18     53-18-2 NMSA 1978, the restated articles of incorporation shall  
19     become effective upon delivery of the restated articles of  
20     incorporation to the secretary of state or on such later date,  
21     not more than thirty days after delivery of the restated  
22     articles of incorporation, to the secretary of state, as is  
23     provided for in the restated articles of incorporation. The  
24     restated articles of incorporation shall supersede the original  
25     articles of incorporation and all previous amendments.

1 F. The secretary of state may certify restated  
2 articles of incorporation as the articles of incorporation  
3 currently in effect, without including the certificate  
4 information required by Subsection C of this section."

5 SECTION 1105. A new Section 53-14-2.1 NMSA 1978 is  
6 enacted to read:

7 "53-14-2.1. [NEW MATERIAL] PROCEDURE FOR CONVERSION.--A  
8 domestic corporation may become a domestic limited liability  
9 company or limited partnership, and any domestic limited  
10 liability company or limited partnership may become a domestic  
11 corporation, in either case pursuant to a plan of conversion  
12 approved by the domestic corporation in the manner provided in  
13 the Business Corporation Act. The board of directors of the  
14 corporation shall, by resolution adopted by the board, approve  
15 a plan conversion setting forth:

16 A. the name of the corporation, limited liability  
17 company or limited partnership proposing to convert, which is  
18 hereinafter designated as the "converting entity", and the name  
19 of the corporation, limited liability company or limited  
20 partnership into which the converting entity proposes to  
21 convert, which is hereinafter designated as the "converted  
22 entity";

23 B. the terms and conditions of the proposed  
24 conversion;

25 C. the manner and basis of converting shares or

1 other interests in the converting entity into interests in the  
2 converted entity or the cash or other consideration to be paid  
3 or delivered as a result of the conversion of the shareholder's  
4 interests or a combination of these; and

5 D. other provisions with respect to the proposed  
6 conversion as deemed necessary or desirable."

7 SECTION 1106. A new Section 53-14-2.2 NMSA 1978 is  
8 enacted to read:

9 "53-14-2.2. [NEW MATERIAL] PROCEDURE FOR DOMESTICATION.--  
10 A domestic corporation may become a foreign corporation  
11 pursuant to a plan of domestication approved in the manner  
12 provided in the Business Corporation Act if the domestication  
13 is authorized by the laws of the state under which the foreign  
14 corporation is organized. The board of directors of the  
15 domestic corporation shall, by resolution adopted by the board,  
16 approve a plan of domestication setting forth:

17 A. the name of the corporation proposing to  
18 domesticate to another state, which shall hereinafter be  
19 referred to as the "domesticating corporation";

20 B. the name and state of organization of the  
21 foreign corporation into which the corporation proposes to  
22 domesticate, which is hereinafter referred to as the  
23 "domesticated corporation";

24 C. the terms and conditions of the proposed  
25 domestication;

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1 D. the manner and basis of converting the shares of  
2 the domesticating corporation into the shares, obligations or  
3 other securities of the domesticated corporation or, in whole  
4 or in part, into cash or other property; and

5 E. other provisions with respect to the proposed  
6 domestication as deemed necessary or desirable."

7 SECTION 1107. Section 53-14-3 NMSA 1978 (being Laws 1967,  
8 Chapter 81, Section 70, as amended) is amended to read:

9 "53-14-3. APPROVAL BY SHAREHOLDERS.--

10 A. The board of directors of each domestic  
11 corporation, ~~[in the case of a]~~ upon approving a plan of  
12 merger, ~~[or]~~ consolidation, ~~[and the board of directors of the~~  
13 ~~corporation the shares of which are to be acquired in the case~~  
14 ~~of an exchange, upon approving a plan of merger, consolidation~~  
15 ~~or]~~ exchange, conversion or domestication, shall, by  
16 resolution, direct that the plan be submitted to a vote at a  
17 meeting of its shareholders, which may be either an annual or a  
18 special meeting. Written notice shall be given to each  
19 shareholder of record, whether or not entitled to vote at the  
20 meeting, not less than twenty days before the meeting, in the  
21 manner provided in the Business Corporation Act for the giving  
22 of notice of meetings of shareholders and, whether the meeting  
23 is an annual or a special meeting, shall state that the purpose  
24 or one of the purposes is to consider the proposed plan. A  
25 copy or a summary of the plan shall be included in or enclosed

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1 with the notice.

2 B. At each meeting, a vote of the shareholders  
3 shall be taken on the proposed plan. The plan shall be  
4 approved upon receiving the affirmative vote of the holders of  
5 a majority of the shares entitled to vote thereon of each such  
6 corporation, unless any class of shares of any such corporation  
7 is entitled to vote thereon as a class, in which event, as to  
8 such corporation, the plan shall be approved upon receiving the  
9 affirmative vote of the holders of a majority of the shares of  
10 each class of shares entitled to vote thereon, ~~[Any]~~ except  
11 that:

12 (1) any class of shares of any such  
13 corporation shall be entitled to vote as a class if any such  
14 plan contains any provision ~~[which]~~ that, if contained in a  
15 proposed amendment to articles of incorporation, would entitle  
16 such class of shares to vote as a class and, in the case of an  
17 exchange, if the class is included in the exchange; and

18 (2) if the articles of incorporation or bylaws  
19 of any such corporation contain a provision that applies to a  
20 merger of the corporation but does not refer to a conversion or  
21 a domestication, the provision applies to a conversion or a  
22 domestication of the corporation as if the conversion or the  
23 domestication were a merger until the provision is amended  
24 after July 1, 2018.

25 C. After such approval by a vote of the

1 shareholders of each such corporation and at any time prior to  
2 the filing of the articles of merger, ~~[or]~~ consolidation, ~~[or]~~  
3 exchange, conversion or domestication, the merger, ~~[or]~~  
4 consolidation, ~~[or]~~ exchange, conversion or domestication may  
5 be abandoned pursuant to provisions therefor, if any, set forth  
6 in the plan.

7 D. ~~[(1)]~~ Notwithstanding the provisions of  
8 Subsections A and B of this section, submission of a plan of  
9 merger to a vote at a meeting of shareholders of a surviving  
10 corporation shall not be required if:

11 ~~[(a)]~~ (1) the articles of incorporation of the  
12 surviving corporation do not differ except in name from those  
13 of the corporation before the merger;

14 ~~[(b)]~~ (2) each holder of shares of the  
15 surviving corporation ~~[which]~~ that were outstanding immediately  
16 before the effective date of the merger is to hold the same  
17 number of shares with identical rights immediately after;

18 ~~[(c)]~~ (3) the number of voting shares  
19 outstanding immediately after the merger, plus the number of  
20 voting shares issuable on conversion of other securities issued  
21 by virtue of the terms of the merger and on exercise of rights  
22 and warrants so issued, will not exceed by more than twenty  
23 percent the number of voting shares outstanding immediately  
24 before the merger; and

25 ~~[(d)]~~ (4) the number of participating shares



1 outstanding immediately after the merger, plus the number of  
2 participating shares issuable on conversion of other securities  
3 issued by virtue of the terms of the merger and on exercise of  
4 rights and warrants so issued, will not exceed by more than  
5 twenty percent the number of participating shares outstanding  
6 immediately before the merger.

7 ~~[(2)]~~ E. As used in ~~[this]~~ Subsection D of this  
8 section:

9 ~~[(a)]~~ (1) "voting shares" means shares ~~[which]~~  
10 that entitle their holders to vote unconditionally in election  
11 of directors; and

12 ~~[(b)]~~ (2) "participating shares" means shares  
13 ~~[which]~~ that entitle their holders to participate without  
14 limitations in distribution of earnings or surplus."

15 **SECTION 1108.** Section 53-14-4 NMSA 1978 (being Laws 1967,  
16 Chapter 81, Section 71, as amended) is amended to read:

17 "53-14-4. ARTICLES OF MERGER, CONSOLIDATION, ~~[OR]~~  
18 EXCHANGE, CONVERSION OR DOMESTICATION.--

19 A. Upon receiving the approvals required by  
20 Sections 53-14-1, 53-14-2, 53-14-2.1, 53-14-2.2 and 53-14-3  
21 NMSA 1978, articles of merger, ~~[or articles of]~~ consolidation,  
22 conversion or domestication shall be executed by each domestic  
23 corporation by an authorized officer and shall set forth:

24 (1) the plan of merger, ~~[or the plan of]~~  
25 consolidation, conversion or domestication;

- 1 (2) as to each domestic corporation, either:
- 2 (a) the number of shares outstanding
- 3 and, if the shares of any class are entitled to vote as a
- 4 class, the designation and number of outstanding shares of each
- 5 such class; or
- 6 (b) a statement that the vote of
- 7 shareholders is not required by virtue of Subsection D of
- 8 Section 53-14-3 NMSA 1978;
- 9 (3) as to each domestic corporation, the
- 10 approval of whose shareholders is required:
- 11 (a) the number of shares required for
- 12 approval if that number is different from a majority;
- 13 (b) the number of shares voted for and
- 14 against the plan, respectively; and
- 15 (c) if the shares of any class are
- 16 entitled to vote as a class, the number of shares of each such
- 17 class required for approval if that number is different from a
- 18 majority and the number of shares of each such class voted for
- 19 and against the plan, respectively; and
- 20 (4) as to the domestic acquiring corporation
- 21 in a plan of exchange, a statement that the adoption plan and
- 22 performance of its terms were duly approved by its board of
- 23 directors and such other requisite corporate action, if any, as
- 24 may be required of it.

25 B. The original of the articles of merger,

1 consolidation, ~~[or]~~ exchange, conversion or domestication,  
2 together with a copy, which may be signed, photocopied or  
3 conformed, shall be delivered to the ~~[commission]~~ secretary of  
4 state. If the ~~[commission]~~ secretary of state finds that the  
5 articles conform to law, ~~[it]~~ the secretary of state shall,  
6 when all fees have been paid:

7 (1) endorse on the original and copy the word  
8 "filed" and the month, day and year of the filing;

9 (2) file the original in ~~[its]~~ the secretary  
10 of state's office; and

11 (3) issue a certificate of merger,  
12 consolidation, ~~[or]~~ exchange, conversion or domestication to  
13 which ~~[it]~~ the secretary of state shall affix the file-stamped  
14 copy.

15 C. The certificate of merger, consolidation, ~~[or]~~  
16 exchange, conversion or domestication, together with the file-  
17 stamped copy of the articles affixed to it, shall be returned  
18 by the ~~[commission]~~ secretary of state to the surviving, new,  
19 ~~[or]~~ acquiring or domesticated corporation, to the converted  
20 corporation, limited liability company or limited partnership  
21 or [its] to the representative of any of them."

22 SECTION 1109. Section 53-14-6 NMSA 1978 (being Laws 1967,  
23 Chapter 81, Section 73, as amended) is amended to read:

24 "53-14-6. EFFECT OF MERGER, CONSOLIDATION, ~~[OR]~~ EXCHANGE,  
25 CONVERSION OR DOMESTICATION.--

1           A. Unless the ~~[commission]~~ secretary of state  
2 disapproves pursuant to Subsection A of Section 53-18-2 NMSA  
3 1978:

4                 (1) a merger, consolidation, ~~[or]~~ exchange or  
5 conversion shall become effective upon delivery of the articles  
6 of merger, consolidation, ~~[or]~~ exchange or conversion to the  
7 ~~[commission]~~ secretary of state or on such later date, not more  
8 than thirty days ~~[subsequent to]~~ after the delivery thereof to  
9 the ~~[commission]~~ secretary of state, as shall be provided for  
10 in the plan; and

11                 (2) a domestication to a state other than this  
12 state shall become effective upon the later of:

13                         (a) the date provided by the laws of the  
14 state under which the domesticated corporation is organized;  
15 and

16                         (b) delivery of the articles of  
17 domestication to the secretary of state, or such later date,  
18 not more than thirty days after the delivery thereof to the  
19 secretary of state, as shall be provided in the plan.

20           B. When a merger, ~~[or]~~ consolidation, conversion or  
21 domestication has become effective:

22                         ~~[A.]~~ (1) the several corporations that are  
23 parties to the plan of merger or consolidation shall be a  
24 single corporation, which, in the case of a merger, shall be  
25 that corporation designated in the plan of merger as the

1 surviving corporation and, in the case of a consolidation,  
2 shall be the new corporation provided for in the plan of  
3 consolidation;

4 (2) the converted corporation, limited  
5 liability company or limited partnership that is party to the  
6 plan of conversion shall be the same entity without  
7 interruption as any converting corporation, limited liability  
8 company or limited partnership provided for in the plan of  
9 conversion;

10 (3) the domesticated corporation that is party  
11 to the plan of domestication shall be subject to the laws of  
12 the state under which it is organized and shall be the same  
13 corporation without interruption as the domesticating  
14 corporation provided for in the plan of domestication;

15 ~~[B-]~~ (4) the separate existence of all  
16 corporations that are parties to the plan of merger or  
17 consolidation, except the surviving or new corporation, shall  
18 cease;

19 ~~[C-]~~ (5) the surviving ~~[or]~~ corporation, new  
20 corporation and converted corporation shall have all the  
21 rights, privileges, immunities and powers and shall be subject  
22 to all the duties and liabilities of a corporation organized  
23 under the Business Corporation Act. The domesticated  
24 corporation shall have all the rights, privileges, immunities  
25 and powers, and shall be subject to all the duties and

1 liabilities, of a corporation organized under the laws of the  
2 state under which it is organized;

3 [D-] (6) the surviving, [Ø-] new, converted or  
4 domesticated corporation shall thereupon possess all the  
5 rights, privileges, immunities and franchises of a public or  
6 private nature of each of the merging [Ø-], consolidating,  
7 converting or domesticating corporations, limited liability  
8 companies or limited partnerships; and all property, real,  
9 personal and mixed and all debts due on whatever account,  
10 including subscriptions to shares, and all other choses in  
11 action and every other interest of, or belonging to, or due to,  
12 each of the corporations, limited liability companies or  
13 limited partnerships so merged, [Ø-] consolidated, converted or  
14 domesticated shall be taken and deemed to be transferred to and  
15 vested in [such] the single corporation without further act or  
16 deed, and the title to any real estate, or any interest  
17 therein, vested in any of such corporations shall not revert or  
18 be in any way impaired by reason of the merger, [Ø-]  
19 consolidation, conversion or domestication;

20 [E-] (7) the surviving, [Ø-] new, converted or  
21 domesticated corporation shall thenceforth be responsible and  
22 liable for all the liabilities and obligations of each of the  
23 corporations, limited liability companies or limited  
24 partnerships so merged [Ø-], consolidated, converted or  
25 domesticated, and any claim existing or action or proceeding

1 pending by or against any of such corporations may be  
2 prosecuted as if the merger or consolidation had not taken  
3 place, or the surviving, ~~[or]~~ new, converted or domesticated  
4 corporation may be substituted in its place. Neither the  
5 rights of creditors nor any liens upon the property of any such  
6 corporation, limited liability company or limited partnership  
7 shall be impaired by the merger, ~~[or]~~ consolidation, conversion  
8 or domestication. Neither a conversion nor a domestication  
9 constitutes or causes the dissolution of any such domesticating  
10 corporation or converting corporation or the winding up of the  
11 affairs or dissolution of any such converting limited liability  
12 company or limited partnership;

13 ~~[F-]~~ (8) in the case of a merger, the articles  
14 of incorporation of the surviving corporation shall be deemed  
15 to be amended to the extent, if any, that changes in its  
16 articles of incorporation are stated in the plan of merger,  
17 and, in the case of a consolidation, the statements set forth  
18 in the articles of consolidation and ~~[which]~~ that are required  
19 or permitted to be set forth in the articles of incorporation  
20 of corporations organized under the Business Corporation Act  
21 shall be deemed to be the original articles of incorporation of  
22 the new corporation; ~~and~~

23 ~~G-]~~ (9) when a merger, consolidation, ~~[or]~~  
24 exchange, conversion or domestication has become effective, the  
25 shares of the corporation or corporations party to the plan

1 that are, under the terms of the plan, to be converted or  
2 exchanged shall cease to exist, in the case of a merger or  
3 consolidation, or be deemed to be exchanged, in the case of an  
4 exchange, and the holders of such shares shall thereafter be  
5 entitled only to the shares, obligations, other securities,  
6 cash or other property into which they shall have been  
7 converted or for which they shall have been exchanged, in  
8 accordance with the plan, subject to any rights under Section  
9 53-14-4 NMSA 1978; and

10 (10) when a domestication has become  
11 effective, if the domesticated corporation is a foreign  
12 corporation and if it is to transact business in this state, it  
13 shall comply with the provisions of the Business Corporation  
14 Act with respect to foreign corporations, and in every case it  
15 shall file with the secretary of state:

16 (a) an agreement that the domesticating  
17 corporation may be served with process in this state in any  
18 proceeding for the enforcement of any obligation of the  
19 corporation and in any proceeding for the enforcement of the  
20 rights of a dissenting shareholder in connection with the  
21 domestication;

22 (b) an irrevocable appointment of the  
23 secretary of state as the corporation's agent to accept service  
24 of process in any such proceeding; and

25 (c) an agreement that the corporation



1 will promptly pay to such dissenting shareholders of any such  
2 domesticating corporation the amount, if any, to which they are  
3 entitled under the Business Corporation Act with respect to the  
4 rights of dissenting shareholders."

5 SECTION 1110. Section 53-14-7 NMSA 1978 (being Laws 1967,  
6 Chapter 81, Section 74, as amended) is amended to read:

7 "53-14-7. MERGER, CONSOLIDATION, [ØR] EXCHANGE OF SHARES  
8 OR CONVERSION BETWEEN DOMESTIC AND FOREIGN CORPORATIONS,  
9 LIMITED LIABILITY COMPANIES AND LIMITED PARTNERSHIPS--  
10 DOMESTICATION BY FOREIGN CORPORATIONS INTO DOMESTIC  
11 CORPORATIONS.--

12 A. One or more foreign corporations and one or more  
13 domestic corporations may be merged or consolidated or  
14 participate in an exchange [~~in the following manner, if~~] with a  
15 foreign corporation; a foreign corporation, a foreign limited  
16 liability company or a foreign limited partnership may be  
17 converted into a domestic corporation; and a foreign  
18 corporation may become a New Mexico corporation by  
19 domestication if, in any of those cases, the merger,  
20 consolidation, [Ør] exchange, conversion or domestication is  
21 permitted by the laws of the state under which each foreign  
22 corporation, foreign limited liability company or foreign  
23 limited partnership is organized and if:

24 (1) each domestic corporation [~~shall comply~~]  
25 complies with the provisions of the Business Corporation Act

1 with respect to the merger, consolidation, ~~[or]~~ exchange,  
2 conversion or domestication, as the case may be, of domestic  
3 corporations, and each foreign corporation, ~~[shall comply]~~  
4 foreign limited liability company or foreign limited  
5 partnership complies with the applicable provisions of the laws  
6 of the state under which it is organized; and

7 (2) ~~[if]~~ in the case in which the surviving,  
8 ~~[or]~~ new or converted corporation in a merger, ~~[or]~~  
9 consolidation or conversion is to be governed by the laws of  
10 any state other than this state ~~[it shall comply]~~ and is to  
11 transact business in this state, the corporation complies with  
12 the provisions of the Business Corporation Act with respect to  
13 foreign corporations ~~[if it is to transact business in this~~  
14 ~~state, and in every case it shall file]~~ and it files with the  
15 ~~[commission]~~ secretary of state:

16 (a) an agreement that it may be served  
17 with process in this state in any proceeding for the  
18 enforcement of any obligation of any domestic corporation  
19 ~~[which]~~ that is a party to the merger, ~~[or]~~ consolidation or  
20 conversion and in any proceeding for the enforcement of the  
21 rights of a dissenting shareholder of any such domestic  
22 corporation against the surviving, ~~[or]~~ new or converted  
23 corporation;

24 (b) an irrevocable appointment of the  
25 secretary of state as its agent to accept service of process in

1 any such proceeding; and

2 (c) an agreement that it will promptly  
3 pay to the dissenting shareholders of any such domestic  
4 corporation the amount, if any, to which ~~[they]~~ it shall be  
5 entitled under the provisions of the Business Corporation Act  
6 with respect to the rights of dissenting shareholders.

7 B. The effect of such merger, ~~[or]~~ consolidation,  
8 conversion or domestication shall be the same as in the case of  
9 the merger, ~~[or]~~ consolidation, conversion or domestication of  
10 domestic corporations if the surviving, ~~[or]~~ new, converted or  
11 domesticated corporation is to be governed by the laws of this  
12 state. If the surviving, ~~[or]~~ new or converted corporation is  
13 to be governed by the laws of any state other than this state,  
14 the effect of such merger, ~~[or]~~ consolidation or conversion  
15 shall be the same as in the case of the merger, ~~[or]~~  
16 consolidation or conversion of domestic corporations except  
17 insofar as the laws of such other state provide otherwise. If  
18 the domesticated corporation is to be governed by the laws of  
19 any state but this state, the effect of such domestication  
20 shall be as stated in Paragraph (5) of Subsection B of Section  
21 53-14-6 NMSA 1978. At any time prior to the filing of the  
22 articles of merger, ~~[or]~~ consolidation, conversion or  
23 domestication, the merger, ~~[or]~~ consolidation, conversion or  
24 domestication may be abandoned pursuant to provisions therefor,  
25 if any, set forth in the plan of merger, ~~[or]~~ consolidation,

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1 conversion or domestication."

2           SECTION 1111. REPEAL.--Sections 53-19-1 through 53-19-74  
3 NMSA 1978 (being Laws 1993, Chapter 280, Sections 1 through 58,  
4 Laws 1995, Chapter 213, Sections 7 and 8, Laws 2001, Chapter  
5 200, Section 79, Laws 1995, Chapter 213, Sections 9 through 13,  
6 Laws 1993, Chapter 280, Sections 63 through 66, Laws 2001,  
7 Chapter 200, Sections 74 and 75 and Laws 1993, Chapter 280,  
8 Sections 67 through 74, as amended) are repealed.

9           SECTION 1112. EFFECTIVE DATE.--The effective date of the  
10 provisions of Sections 101 through 1103 and Section 1111 of  
11 this act is July 1, 2018. The effective date of the provisions  
12 of Sections 1104 through 1110 of this act is January 1, 2018.

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