

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 888

Introduced by Conrad, 46.

Read first time January 11, 2010

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to limited liability companies; to amend
2 sections 9-614, 67-248.02, 70-1903, 77-2704.57, 77-2716,
3 and 77-2734.01, Reissue Revised Statutes of Nebraska;
4 to adopt the Nebraska Uniform Limited Liability Company
5 Act; to terminate the Limited Liability Company Act;
6 to provide applicability; to harmonize provisions; to
7 provide an operative date; to provide severability; and
8 to repeal the original sections.

9 Be it enacted by the people of the State of Nebraska,

1 Section 1. (ULLCA 101) Sections 1 to 97 of this act shall
2 be known and may be cited as the Nebraska Uniform Limited Liability
3 Company Act.

4 Sec. 2. (ULLCA 102) In the Nebraska Uniform Limited
5 Liability Company Act:

6 (1) Certificate of organization means the certificate
7 required by section 17 of this act. The term includes the
8 certificate as amended or restated.

9 (2) Certificate of registration means either a document
10 prepared and issued by a regulatory body or the electronic
11 accessing of the regulatory body's licensing records by the
12 Secretary of State.

13 (3) Contribution means any benefit provided by a person
14 to a limited liability company:

15 (A) in order to become a member upon formation of the
16 company and in accordance with an agreement between or among the
17 persons that have agreed to become the initial members of the
18 company;

19 (B) in order to become a member after formation of the
20 company and in accordance with an agreement between the person and
21 the company; or

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

25 (4) Debtor in bankruptcy means a person that is the

1 subject of:

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

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

6 (5) Designated office means:

7 (A) the office that a limited liability company is
8 required to designate and maintain under section 13 of this act; or

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

11 (6) Distribution, except as otherwise provided in
12 subsection (g) of section 34 of this act, means a transfer of
13 money or other property from a limited liability company to another
14 person on account of a transferable interest.

15 (7) Effective, with respect to a record required or
16 permitted to be delivered to the Secretary of State for filing
17 under the Nebraska Uniform Limited Liability Company Act, means
18 effective under subsection (c) of section 21 of this act.

19 (8) Foreign limited liability company means an
20 unincorporated entity formed under the law of a jurisdiction other
21 than this state and denominated by that law as a limited liability
22 company.

23 (9) Limited liability company, except in the phrase
24 foreign limited liability company, means an entity formed under the
25 Nebraska Uniform Limited Liability Company Act.

1 (10) Manager means a person that under the operating
2 agreement of a manager-managed limited liability company is
3 responsible, alone or in concert with others, for performing the
4 management functions stated in subsection (c) of section 36 of this
5 act.

6 (11) Manager-managed limited liability company means a
7 limited liability company that qualifies under subsection (a) of
8 section 36 of this act.

9 (12) Member means a person that has become a member of a
10 limited liability company under section 30 of this act and has not
11 dissociated under section 45 of this act.

12 (13) Member-managed limited liability company means a
13 limited liability company that is not a manager-managed limited
14 liability company.

15 (14) Operating agreement means the agreement, whether or
16 not referred to as an operating agreement and whether oral, in a
17 record, implied, or in any combination thereof, of all the members
18 of a limited liability company, including a sole member. The term
19 includes the agreement as amended or restated.

20 (15) Organizer means a person that acts under section 17
21 of this act to form a limited liability company.

22 (16) Person means an individual, corporation, business
23 trust, estate, trust, partnership, limited liability company,
24 association, joint venture, public corporation, government or
25 governmental subdivision, agency, or instrumentality, or any other

1 legal or commercial entity.

2 (17) Principal office means the principal executive
3 office of a limited liability company or foreign limited liability
4 company, whether or not the office is located in this state.

5 (18) Professional service means any type of personal
6 service to the public which requires as a condition precedent
7 to the rendering of such service the obtaining of a license
8 or other legal authorization and which includes, but is not
9 limited to, personal services rendered by a certified public
10 accountant, dentist, osteopathic physician, physician and surgeon,
11 veterinarian, real estate broker, associate real estate broker,
12 real estate salesperson, or attorney at law. For purposes of
13 the act, those professions pertaining to the diagnosis, care,
14 and treatment of humans shall be considered to be of the same
15 profession.

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

19 (20) Regulatory body means a board, commission, court,
20 or governmental authority which is charged with licensing or
21 regulating the rendering of a professional service in this state.

22 (21) Sign means, with the present intent to authenticate
23 or adopt a record:

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

25 (B) to attach to or logically associate with the record

1 an electronic symbol, sound, or process.

2 (22) State means a state of the United States, the
3 District of Columbia, Puerto Rico, the United States Virgin
4 Islands, or any territory or insular possession subject to the
5 jurisdiction of the United States.

6 (23) Transfer includes an assignment, conveyance, deed,
7 bill of sale, lease, mortgage, trust deed, security interest,
8 encumbrance, gift, and transfer by operation of law.

9 (24) Transferable interest means the right, as originally
10 associated with a person's capacity as a member, to receive
11 distributions from a limited liability company in accordance with
12 the operating agreement, whether or not the person remains a member
13 or continues to own any part of the right.

14 (25) Transferee means a person to which all or part of
15 a transferable interest has been transferred, whether or not the
16 transferor is a member.

17 Sec. 3. (ULLCA 103) (a) A person knows a fact when the
18 person:

19 (1) has actual knowledge of it; or

20 (2) is deemed to know it under subdivision (d) (1) of this
21 section or law other than the Nebraska Uniform Limited Liability
22 Company Act.

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

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

1 (2) is deemed to have notice of the fact under
2 subdivision (d)(2) of this section.

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

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

7 (1) to know of a limitation on authority to transfer real
8 property as provided in subsection (g) of section 27 of this act;

9 and

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

11 (A) dissolution, ninety days after a statement of
12 dissolution under subdivision (b)(1)(B) of section 48 of this act
13 becomes effective;

14 (B) termination, ninety days after a statement of
15 termination under subdivision (b)(2)(E) of section 48 of this act
16 becomes effective; and

17 (C) merger, conversion, or domestication, ninety days
18 after articles of merger, conversion, or domestication under
19 sections 70 to 84 of this act become effective.

20 Sec. 4. (ULLCA 104) (a) A limited liability company is an
21 entity distinct from its members.

22 (b) A limited liability company may have any lawful
23 purpose, regardless of whether for profit.

24 (c) A limited liability company has perpetual duration.

25 Sec. 5. (ULLCA 105) A limited liability company has the

1 capacity to sue and be sued in its own name and the power to
2 do all things necessary or convenient to carry on its activities,
3 including the power to render a professional service within or
4 without this state.

5 Sec. 6. (ULLCA 106) The law of this state governs:

6 (1) the internal affairs of a limited liability company;
7 and

8 (2) the liability of a member as member and a manager
9 as manager for the debts, obligations, or other liabilities of a
10 limited liability company.

11 Sec. 7. (ULLCA 107) Unless displaced by particular
12 provisions of the Nebraska Uniform Limited Liability Company Act,
13 the principles of law and equity supplement the act.

14 Sec. 8. (ULLCA 108) (a) The name of a limited liability
15 company must contain the words limited liability company or limited
16 company or the abbreviation L.L.C., LLC, L.C., or LC. Limited may
17 be abbreviated as Ltd., and company may be abbreviated as Co.

18 (b) Unless authorized by subsection (c) of this section,
19 the name of a limited liability company must not be the same as or
20 deceptively similar to, in the records of the Secretary of State:

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

24 (2) each name reserved under section 9 of this act
25 or other state laws allowing the reservation or registration of

1 business names, including fictitious or assumed name statutes.

2 (c) A limited liability company may apply to the
3 Secretary of State for authorization to use a name that is
4 deceptively similar to, upon the records of the Secretary of State,
5 one or more of the names described in subsection (a) of this
6 section. The Secretary of State shall authorize use of the name
7 applied for if, as to each noncomplying name:

8 (1) the present user, registrant, or owner of the
9 noncomplying name consents in a signed record to the use; or

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

13 (d) Subject to section 59 of this act, this section
14 applies to a foreign limited liability company transacting business
15 in this state which has a certificate of authority to transact
16 business in this state or which has applied for a certificate of
17 authority.

18 Sec. 9. (ULLCA 109) (a) A person may reserve the
19 exclusive use of the name of a limited liability company, including
20 a fictitious or assumed name for a foreign limited liability
21 company whose name is not available, by delivering an application
22 to the Secretary of State for filing. The application must state
23 the name and address of the applicant and the name proposed to be
24 reserved. If the Secretary of State finds that the name applied for
25 is available, it must be reserved for the applicant's exclusive use

1 for a one-hundred-twenty-day period.

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

6 Sec. 10. (ULLCA 110) (a) To the extent the operating
7 agreement does not otherwise provide for a matter, the act governs
8 the matter.

9 (b) An operating agreement may not:

10 (1) vary a limited liability company's capacity under
11 section 5 of this act to sue and be sued in its own name;

12 (2) vary the law applicable under section 6 of this act;

13 (3) vary the power of the court under section 20 of this
14 act;

15 (4) subject to subsections (c) through (f) of this
16 section, eliminate the duty of loyalty or the duty of care;

17 (5) subject to subsections (c) through (f) of this
18 section, eliminate the contractual obligation of good faith and
19 fair dealing under subsection (d) of section 38 of this act;

20 (6) unreasonably restrict the duties and rights stated in
21 section 39 of this act;

22 (7) vary the power of a court to decree dissolution
23 in the circumstances specified in subdivisions (a)(4) and (5) of
24 section 47 of this act;

25 (8) vary the requirement to wind up a limited liability

1 company's business as specified in subsection (a) and subdivision
2 (b) (1) (a) of section 48 of this act;

3 (9) unreasonably restrict the right of a member to
4 maintain an action under sections 64 to 69 of this act;

5 (10) except as otherwise provided in section 83 of
6 this act, restrict the right to approve a merger, conversion, or
7 domestication of a member that will have personal liability with
8 respect to a surviving, converted, or domesticated organization; or

9 (11) except as otherwise provided in subsection (b) of
10 section 12 of this act, restrict the rights under the act of a
11 person other than a member or manager.

12 (c) If not manifestly unreasonable, the operating
13 agreement may:

14 (1) restrict or eliminate the duty:

15 (A) as required in subdivision (b) (1) and subsection (g)
16 of section 38 of this act, to account to the limited liability
17 company and to hold as trustee for it any property, profit, or
18 benefit derived by the member in the conduct or winding up of
19 the company's business, from a use by the member of the company's
20 property, or from the appropriation of a limited liability company
21 opportunity;

22 (B) as required in subdivision (b) (2) and subsection (g)
23 of section 38 of this act, to refrain from dealing with the company
24 in the conduct or winding up of the company's business as or on
25 behalf of a party having an interest adverse to the company; and

1 (C) as required by subdivision (b)(3) and subsection
2 (g) of section 38 of this act, to refrain from competing with
3 the company in the conduct of the company's business before the
4 dissolution of the company;

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

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

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

11 (5) prescribe the standards by which to measure the
12 performance of the contractual obligation of good faith and fair
13 dealing under subsection (d) of section 38 of this act.

14 (d) The operating agreement may specify the method by
15 which a specific act or transaction that would otherwise violate
16 the duty of loyalty may be authorized or ratified by one or more
17 disinterested and independent persons after full disclosure of all
18 material facts.

19 (e) To the extent the operating agreement of a
20 member-managed limited liability company expressly relieves a
21 member of a responsibility that the member would otherwise have
22 under the act and imposes the responsibility on one or more other
23 members, the operating agreement may, to the benefit of the member
24 that the operating agreement relieves of the responsibility, also
25 eliminate or limit any fiduciary duty that would have pertained to

1 the responsibility.

2 (f) The operating agreement may alter or eliminate the
3 indemnification for a member or manager provided by subsection (a)
4 of section 37 of this act and may eliminate or limit a member or
5 manager's liability to the limited liability company and members
6 for money damages, except for:

7 (1) breach of the duty of loyalty;

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

10 (3) a breach of a duty under section 35 of this act;

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

13 (5) an intentional violation of criminal law.

14 (g) The court shall decide any claim under subsection (c)
15 of this section that a term of an operating agreement is manifestly
16 unreasonable. The court:

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

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

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

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

1 Sec. 11. (ULLCA 111) (a) A limited liability company
2 is bound by and may enforce the operating agreement, whether or
3 not the company has itself manifested assent to the operating
4 agreement.

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

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

14 Sec. 12. (ULLCA 112) (a) An operating agreement may
15 specify that its amendment requires the approval of a person that
16 is not a party to the operating agreement or the satisfaction of
17 a condition. An amendment is ineffective if its adoption does not
18 include the required approval or satisfy the specified condition.

19 (b) The obligations of a limited liability company and
20 its members to a person in the person's capacity as a transferee
21 or dissociated member are governed by the operating agreement.
22 Subject only to any court order issued under subdivision (b)(2)
23 of section 42 of this act to effectuate a charging order, an
24 amendment to the operating agreement made after a person becomes
25 a transferee or dissociated member is effective with regard to

1 any debt, obligation, or other liability of the limited liability
2 company or its members to the person in the person's capacity as a
3 transferee or dissociated member.

4 (c) If a record that has been delivered by a limited
5 liability company to the Secretary of State for filing and has
6 become effective under the Nebraska Uniform Limited Liability
7 Company Act contains a provision that would be ineffective under
8 subsection (b) of section 10 of this act if contained in the
9 operating agreement, the provision is likewise ineffective in the
10 record.

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

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

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

19 Sec. 13. (ULLCA 113) (a) A limited liability company
20 shall designate and continuously maintain in this state:

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

23 (2) an agent for service of process.

24 (b) A foreign limited liability company that has a
25 certificate of authority under section 56 of this act shall

1 designate and continuously maintain in this state an agent for
2 service of process.

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

7 Sec. 14. (ULLCA 114) (a) A limited liability company or
8 foreign limited liability company may change its designated office,
9 its agent for service of process, or the address of its agent for
10 service of process by delivering to the Secretary of State for
11 filing a statement of change containing:

12 (1) the name of the company;

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

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

17 (4) the name and street and mailing addresses and post
18 office box number, if any, of its current agent for service of
19 process; and

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

22 (b) Subject to subsection (c) of section 21 of this act,
23 a statement of change is effective when filed by the Secretary of
24 State.

25 Sec. 15. (ULLCA 115) (a) To resign as an agent for

1 service of process of a limited liability company or foreign
2 limited liability company, the agent must deliver to the Secretary
3 of State for filing a statement of resignation containing the
4 company name and stating that the agent is resigning.

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

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

15 (1) the thirty-first day after the Secretary of State
16 files the statement of resignation; or

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

20 Sec. 16. (ULLCA 116) (a) An agent for service of process
21 appointed by a limited liability company or foreign limited
22 liability company is an agent of the company for service of
23 any process, notice, or demand required or permitted by law to be
24 served on the company.

25 (b) If a limited liability company or foreign limited

1 liability company does not appoint or maintain an agent for service
2 of process in this state or the agent for service of process
3 cannot with reasonable diligence be found at the agent's street
4 address, service of any process, notice, or demand on the limited
5 liability company or foreign limited liability company may be made
6 by registered or certified mail, return receipt requested, to the
7 company at its designated office.

8 (c) Service is effected under subsection (b) of this
9 section at the earliest of:

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

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

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

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

19 Sec. 17. (ULLCA 201) (a) One or more persons may act
20 as organizers to form a limited liability company by signing and
21 delivering to the Secretary of State for filing a certificate
22 of organization and, if applicable, a current certificate of
23 registration as provided in sections 85 to 89 of this act.

24 (b) A certificate of organization must state:

25 (1) the name of the limited liability company, which must

1 comply with section 8 of this act;

2 (2) the street and mailing addresses of the initial
3 designated office and the name and street and mailing addresses and
4 post office box number, if any, of the initial agent for service of
5 process of the company; and

6 (3) if the company is organized to render a professional
7 service, the professional service its members, managers,
8 professional employees, and agents are licensed or otherwise
9 legally authorized to render in this state.

10 (c) Subject to subsection (c) of section 12 of this
11 act, a certificate of organization may also contain statements as
12 to matters other than those required by subsection (b) of this
13 section. However, a statement in a certificate of organization is
14 not effective as a statement of authority.

15 (d) The following rules apply to the filing of a
16 certificate of organization:

17 (1) A limited liability company is formed when the
18 Secretary of State has filed the certificate of organization and a
19 certificate of registration, if applicable, and the company has at
20 least one member, unless the certificate states a delayed effective
21 date pursuant to subsection (c) of section 21 of this act.

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

1 files the certificate.

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

7 Sec. 18. (ULLCA 202) (a) A certificate of organization
8 may be amended or restated at any time.

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

12 (1) the name of the company;

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

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

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

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

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

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

3 (d) Subject to subsection (c) of section 12 and
4 subsection (c) of section 21 of this act, an amendment to or
5 restatement of a certificate of organization is effective when
6 filed by the Secretary of State.

7 (e) If a member of a member-managed limited liability
8 company, or a manager of a manager-managed limited liability
9 company, knows that any information in a filed certificate of
10 organization was inaccurate when the certificate was filed or has
11 become inaccurate owing to changed circumstances, the member or
12 manager shall promptly:

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

14 (2) if appropriate, deliver to the Secretary of State for
15 filing a statement of change under section 14 of this act or a
16 statement of correction under section 22 of this act.

17 Sec. 19. (ULLCA 203) (a) A record delivered to the
18 Secretary of State for filing pursuant to the Nebraska Uniform
19 Limited Liability Company Act must be signed as follows:

20 (1) Except as otherwise provided in subdivisions (2) and
21 (3) of this subsection, a record signed on behalf of a limited
22 liability company must be signed by a person authorized by the
23 company.

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

1 organizer.

2 (3) A record filed on behalf of a dissolved limited
3 liability company that has no members must be signed by the person
4 winding up the company's activities under subsection (c) of section
5 48 of this act or a person appointed under subsection (d) of such
6 section to wind up those activities.

7 (4) A statement of cancellation under subdivision (d) (2)
8 of section 17 of this act must be signed by each organizer that
9 signed the initial certificate of organization, but a personal
10 representative of a deceased or incompetent organizer may sign in
11 the place of the decedent or incompetent.

12 (5) A statement of denial by a person under section 28 of
13 this act must be signed by that person.

14 (6) Any other record must be signed by the person on
15 whose behalf the record is delivered to the Secretary of State.

16 (b) Any record filed under the act may be signed by an
17 agent.

18 Sec. 20. (ULLCA 204) (a) If a person required by the
19 Nebraska Uniform Limited Liability Company Act to sign a record or
20 deliver a record to the Secretary of State for filing under the act
21 does not do so, any other person that is aggrieved may petition the
22 district court:

23 (1) the person to sign the record;

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

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

2 (b) If a petitioner under subsection (a) of this section
3 is not the limited liability company or foreign limited liability
4 company to which the record pertains, the petitioner shall make the
5 company a party to the action.

6 Sec. 21. (ULLCA 205) (a) A record authorized or required
7 to be delivered to the Secretary of State for filing under the
8 Nebraska Uniform Limited Liability Company Act must be captioned
9 to describe the record's purpose, be in a medium permitted by
10 the Secretary of State, and be delivered to the Secretary of
11 State. If the filing fees have been paid, unless the Secretary
12 of State determines that a record does not comply with the filing
13 requirements of the act, the Secretary of State shall file the
14 record and:

15 (1) for a statement of denial under section 28 of this
16 act, send a copy of the filed statement and a receipt for the
17 fees to the person on whose behalf the statement was delivered for
18 filing and to the limited liability company; and

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

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

25 (c) Except as otherwise provided in sections 15 and 22 of

1 this act, a record delivered to the Secretary of State for filing
2 under the act may specify an effective time and a delayed effective
3 date. Subject to section 15 of this act, subdivision (d)(1) of
4 section 17 of this act, and section 22 of this act, a record filed
5 by the Secretary of State is effective:

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

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

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

15 (A) the specified date; or

16 (B) the ninetieth day after the record is filed; or

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

19 (A) the specified date; or

20 (B) the ninetieth day after the record is filed.

21 Sec. 22. (ULLCA 206) (a) A limited liability company or
22 foreign limited liability company may deliver to the Secretary of
23 State for filing a statement of correction to correct a record
24 previously delivered by the company to the Secretary of State and
25 filed by the Secretary of State, if at the time of filing the

1 record contained inaccurate information or was defectively signed.

2 (b) A statement of correction under subsection (a) of
3 this section may not state a delayed effective date and must:

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

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

8 (3) correct the defective signature or inaccurate
9 information.

10 (c) When filed by the Secretary of State, a statement
11 of correction under subsection (a) of this section is effective
12 retroactively as of the effective date of the record the statement
13 corrects, but the statement is effective when filed:

14 (1) for the purposes of subsection (d) of section 3 of
15 this act; and

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

19 Sec. 23. (ULLCA 207) (a) If a record delivered to the
20 Secretary of State for filing under the Nebraska Uniform Limited
21 Liability Company Act and filed by the Secretary of State contains
22 inaccurate information, a person that suffers a loss by reliance on
23 the information may recover damages for the loss from:

24 (1) a person that signed the record, or caused another
25 to sign it on the person's behalf, and knew the information to be

1 inaccurate at the time the record was signed; and

2 (2) subject to subsection (b) of this section, a member
3 of a member-managed limited liability company or the manager of a
4 manager-managed limited liability company, if:

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

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

11 (i) effected an amendment under section 18 of this act;

12 (ii) filed a petition under section 20 of this act; or

13 (iii) delivered to the Secretary of State for filing a
14 statement of change under section 14 of this act or a statement of
15 correction under section 22 of this act.

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

25 (c) An individual who signs a record authorized or

1 required to be filed under the act affirms under penalty of perjury
2 that the information stated in the record is accurate.

3 Sec. 24. (ULLCA 208) (a) The Secretary of State, upon
4 request and payment of the requisite fee, shall furnish to any
5 person a certificate of existence for a limited liability company
6 if the records filed in the office of the Secretary of State show
7 that the company has been formed under section 17 of this act and
8 the Secretary of State has not filed a statement of termination
9 pertaining to the company. A certificate of existence must state:

10 (1) the company's name;

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

13 (3) whether all fees, taxes, and penalties due under the
14 Nebraska Uniform Limited Liability Company Act or other law to the
15 Secretary of State have been paid;

16 (4) whether the company's most recent biennial report
17 required by section 25 of this act has been filed by the Secretary
18 of State;

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

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

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

25 (8) other facts of record in the office of the Secretary

1 of State which are specified by the person requesting the
2 certificate.

3 (b) The Secretary of State, upon request and payment
4 of the requisite fee, shall furnish to any person a certificate
5 of authorization for a foreign limited liability company if the
6 records filed in the office of the Secretary of State show that the
7 Secretary of State has filed a certificate of authority, has not
8 revoked the certificate of authority, and has not filed a notice of
9 cancellation. A certificate of authorization must state:

10 (1) the company's name and any alternate name adopted
11 under subsection (a) of section 59 of this act for use in this
12 state;

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

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

17 (4) whether the company's most recent biennial report
18 required by section 25 of this act has been filed by the Secretary
19 of State;

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

23 (6) other facts of record in the office of the Secretary
24 of State which are specified by the person requesting the
25 certificate.

1 (c) Subject to any qualification stated in the
2 certificate, a certificate of existence or certificate of
3 authorization issued by the Secretary of State is conclusive
4 evidence that the limited liability company is in existence or
5 the foreign limited liability company is authorized to transact
6 business in this state.

7 Sec. 25. (ULLCA 209) (a) Each odd-numbered year, a
8 limited liability company or a foreign limited liability company
9 authorized to transact business in this state shall deliver to the
10 Secretary of State for filing a biennial report that states:

11 (1) the name of the company;

12 (2) the street and mailing addresses of the company's
13 designated office and the name and street and mailing addresses and
14 post office box number, if any, of its agent for service of process
15 in this state;

16 (3) the street and mailing addresses of its principal
17 office; and

18 (4) in the case of a foreign limited liability company,
19 the state or other jurisdiction under whose law the company is
20 formed and any alternate name adopted under subsection (a) of
21 section 59 of this act.

22 (b) Information in a biennial report under this section
23 must be current as of the date the report is delivered to the
24 Secretary of State for filing.

25 (c) The first biennial report under this section must be

1 delivered to the Secretary of State between January 1 and April 1
2 of the odd-numbered year following the calendar year in which a
3 limited liability company was formed or a foreign limited liability
4 company was authorized to transact business. A report must be
5 delivered to the Secretary of State between January 1 and April 1
6 of each subsequent odd-numbered calendar year.

7 (d) If a biennial report under this section does not
8 contain the information required in subsection (a) of this section,
9 the Secretary of State shall promptly notify the reporting limited
10 liability company or foreign limited liability company and return
11 the report to it for correction. If the report is corrected to
12 contain the information required in subsection (a) of this section
13 and delivered to the Secretary of State within thirty days after
14 the effective date of the notice, it is timely delivered.

15 Sec. 26. (ULLCA 301) (a) A member is not an agent of a
16 limited liability company solely by reason of being a member.

17 (b) A person's status as a member does not prevent or
18 restrict law other than the Nebraska Uniform Limited Liability
19 Company Act from imposing liability on a limited liability company
20 because of the person's conduct.

21 Sec. 27. (ULLCA 302) (a) A limited liability company
22 may deliver to the Secretary of State for filing a statement of
23 authority. The statement:

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

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

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

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

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

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

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

14 (b) To amend or cancel a statement of authority filed by
15 the Secretary of State under subsection (a) of section 21 of this
16 act, a limited liability company must deliver to the Secretary of
17 State for filing an amendment or cancellation stating:

18 (1) the name of the company;

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

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

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

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

4 (d) Subject to subsection (c) of this section and
5 subsection (d) of section 3 of this act and except as otherwise
6 provided in subsections (f), (g), and (h) of this section, a
7 limitation on the authority of a person or a position contained in
8 an effective statement of authority is not by itself evidence of
9 knowledge or notice of the limitation by any person.

10 (e) Subject to subsection (c) of this section, a grant
11 of authority not pertaining to transfers of real property and
12 contained in an effective statement of authority is conclusive in
13 favor of a person that gives value in reliance on the grant, except
14 to the extent that when the person gives value:

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

16 (2) the statement has been canceled or restrictively
17 amended under subsection (b) of this section; or

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

21 (f) Subject to subsection (c) of this section, an
22 effective statement of authority that grants authority to transfer
23 real property held in the name of the limited liability company
24 and that is recorded by certified copy in the office for recording
25 transfers of the real property is conclusive in favor of a person

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

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

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

12 (g) Subject to subsection (c) of this section, if a
13 certified copy of an effective statement containing a limitation
14 on the authority to transfer real property held in the name of a
15 limited liability company is recorded in the office for recording
16 transfers of that real property, all persons are deemed to know of
17 the limitation.

18 (h) Subject to subsection (i) of this section, an
19 effective statement of dissolution or termination is a cancellation
20 of any filed statement of authority for the purposes of subsection
21 (f) of this section and is a limitation on authority for the
22 purposes of subsection (g) of this section.

23 (i) After a statement of dissolution becomes effective,
24 a limited liability company may deliver to the Secretary of State
25 for filing and, if appropriate, may record a statement of authority

1 that is designated as a post-dissolution statement of authority.
2 The statement operates as provided in subsections (f) and (g) of
3 this section.

4 (j) Unless earlier canceled, an effective statement of
5 authority is canceled by operation of law five years after the
6 date on which the statement, or its most recent amendment,
7 becomes effective. This cancellation operates without need for
8 any recording under subsection (f) or (g) of this section.

9 (k) An effective statement of denial operates as a
10 restrictive amendment under this section and may be recorded by
11 certified copy for the purposes of subdivision (f)(1) of this
12 section.

13 Sec. 28. (ULLCA 303) A person named in a filed statement
14 of authority granting that person authority may deliver to the
15 Secretary of State for filing a statement of denial that:

16 (1) provides the name of the limited liability company
17 and the caption of the statement of authority to which the
18 statement of denial pertains; and

19 (2) denies the grant of authority.

20 Sec. 29. (ULLCA 304) (a) The debts, obligations, or other
21 liabilities of a limited liability company, whether arising in
22 contract, tort, or otherwise:

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

25 (2) do not become the debts, obligations, or other

1 liabilities of a member or manager solely by reason of the member
2 acting as a member or manager acting as a manager.

3 (b) The mere failure of a limited liability company to
4 observe any particular formalities relating to the exercise of its
5 powers or management of its activities is not a ground for imposing
6 liability on the members or managers for the debts, obligations, or
7 other liabilities of the company.

8 (c) Any member, manager, or employee of a limited
9 liability company with the duty to collect, account for, or
10 pay over any taxes imposed upon a limited liability company or
11 with the authority to decide whether the limited liability company
12 will pay taxes imposed upon a limited liability company shall be
13 personally liable for the payment of such taxes in the event of
14 willful failure on his or her part to have a limited liability
15 company perform such act. Such taxes shall be collected in the same
16 manner as provided under section 77-1783.01.

17 Sec. 30. (ULLCA 401) (a) If a limited liability company
18 is to have only one member upon formation, the person becomes a
19 member as agreed by that person and the organizer of the company.
20 That person and the organizer may be, but need not be, different
21 persons. If different, the organizer acts on behalf of the initial
22 member.

23 (b) If a limited liability company is to have more than
24 one member upon formation, those persons become members as agreed
25 by the persons before the formation of the company. The organizer

1 acts on behalf of the persons in forming the company and may be,
2 but need not be, one of the persons.

3 (c) After formation of a limited liability company, a
4 person becomes a member:

5 (1) as provided in the operating agreement;

6 (2) as the result of a transaction effective under
7 sections 70 to 84 of this act;

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

9 (4) if, within ninety consecutive days after the company
10 ceases to have any members:

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

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

15 (d) A person may become a member without acquiring a
16 transferable interest and without making or being obligated to make
17 a contribution to the limited liability company.

18 Sec. 31. (ULLCA 402) A contribution may consist of
19 tangible or intangible property or other benefit to a limited
20 liability company, including money, services performed, promissory
21 notes, other agreements to contribute money or property, and
22 contracts for services to be performed.

23 Sec. 32. (ULLCA 403) (a) A person's obligation to make
24 a contribution to a limited liability company is not excused by
25 the person's death, disability, or other inability to perform

1 personally. If a person does not make a required contribution,
2 the person or the person's estate is obligated to contribute money
3 equal to the value of the part of the contribution which has not
4 been made, at the option of the company.

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

9 Sec. 33. (ULLCA 404) (a) Any distributions made by a
10 limited liability company before its dissolution and winding up
11 must be in equal shares among members and dissociated members,
12 except to the extent necessary to comply with any transfer
13 effective under section 41 of this act and any charging order
14 in effect under section 42 of this act.

15 (b) A person has a right to a distribution before the
16 dissolution and winding up of a limited liability company only if
17 the company decides to make an interim distribution. A person's
18 dissociation does not entitle the person to a distribution.

19 (c) A person does not have a right to demand or receive
20 a distribution from a limited liability company in any form other
21 than money. Except as otherwise provided in subsection (c) of
22 section 54 of this act, a limited liability company may distribute
23 an asset in kind if each part of the asset is fungible with each
24 other part and each person receives a percentage of the asset equal
25 in value to the person's share of distributions.

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

5 Sec. 34. (ULLCA 405) (a) A limited liability company may
6 not make a distribution if after the distribution:

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

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

17 (b) A limited liability company may base a determination
18 that a distribution is not prohibited under subsection (a) of this
19 section on financial statements prepared on the basis of accounting
20 practices and principles that are reasonable in the circumstances
21 or on a fair valuation or other method that is reasonable under the
22 circumstances.

23 (c) Except as otherwise provided in subsection (f) of
24 this section, the effect of a distribution under subsection (a) of
25 this section is measured:

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

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

6 (A) the distribution is authorized, if the payment occurs
7 within one hundred twenty days after that date; or

8 (B) the payment is made, if the payment occurs more than
9 one hundred twenty days after the distribution is authorized.

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

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

20 (f) If indebtedness is issued as a distribution, each
21 payment of principal or interest on the indebtedness is treated as
22 a distribution, the effect of which is measured on the date the
23 payment is made.

24 (g) In subsection (a) of this section, distribution
25 does not include amounts constituting reasonable compensation for

1 present or past services or reasonable payments made in the
2 ordinary course of business under a bona fide retirement plan or
3 other benefits program.

4 Sec. 35. (ULLCA 406) (a) Except as otherwise provided in
5 subsection (b) of this section, if a member of a member-managed
6 limited liability company or manager of a manager-managed limited
7 liability company consents to a distribution made in violation of
8 section 34 of this act and in consenting to the distribution fails
9 to comply with section 38 of this act, the member or manager is
10 personally liable to the company for the amount of the distribution
11 that exceeds the amount that could have been distributed without
12 the violation of section 34 of this act.

13 (b) To the extent the operating agreement of a
14 member-managed limited liability company expressly relieves
15 a member of the authority and responsibility to consent to
16 distributions and imposes that authority and responsibility on one
17 or more other members, the liability stated in subsection (a) of
18 this section applies to the other members and not the member that
19 the operating agreement relieves of authority and responsibility.

20 (c) A person that receives a distribution knowing that
21 the distribution to that person was made in violation of section 34
22 of this act is personally liable to the limited liability company
23 but only to the extent that the distribution received by the
24 person exceeded the amount that could have been properly paid under
25 section 34 of this act.

1 (d) A person against which an action is commenced because
2 the person is liable under subsection (a) of this section may:

3 (1) implead any other person that is subject to
4 liability under subsection (a) of this section and seek to compel
5 contribution from the person; and

6 (2) implead any person that received a distribution in
7 violation of subsection (c) of this section and seek to compel
8 contribution from the person in the amount the person received in
9 violation of subsection (c) of this section.

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

12 Sec. 36. (ULLCA 407) (a) A limited liability company is
13 a member-managed limited liability company unless the operating
14 agreement:

15 (1) expressly provides that:

16 (A) the company is or will be manager-managed;

17 (B) the company is or will be managed by managers; or

18 (C) management of the company is or will be vested in
19 managers; or

20 (2) includes words of similar import.

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

23 (1) The management and conduct of the company are vested
24 in the members.

25 (2) Each member has equal rights in the management and

1 conduct of the company's activities.

2 (3) A difference arising among members as to a matter in
3 the ordinary course of the activities of the company may be decided
4 by a majority of the members.

5 (4) An act outside the ordinary course of the activities
6 of the company may be undertaken only with the consent of all
7 members.

8 (5) The operating agreement may be amended only with the
9 consent of all members.

10 (c) In a manager-managed limited liability company, the
11 following rules apply:

12 (1) Except as otherwise expressly provided in the
13 Nebraska Uniform Limited Liability Company Act, any matter relating
14 to the activities of the company is decided exclusively by the
15 managers.

16 (2) Each manager has equal rights in the management and
17 conduct of the activities of the company.

18 (3) A difference arising among managers as to a matter in
19 the ordinary course of the activities of the company may be decided
20 by a majority of the managers.

21 (4) The consent of all members is required to:

22 (A) sell, lease, exchange, or otherwise dispose of
23 all, or substantially all, of the company's property, with or
24 without the goodwill, outside the ordinary course of the company's
25 activities;

1 (B) approve a merger, conversion, or domestication under
2 sections 70 to 84 of this act;

3 (C) undertake any other act outside the ordinary course
4 of the company's activities; and

5 (D) amend the operating agreement.

6 (5) A manager may be chosen at any time by the consent of
7 a majority of the members and remains a manager until a successor
8 has been chosen, unless the manager at an earlier time resigns,
9 is removed, or dies, or, in the case of a manager that is not an
10 individual, terminates. A manager may be removed at any time by the
11 consent of a majority of the members without notice or cause.

12 (6) A person need not be a member to be a manager, but
13 the dissociation of a member that is also a manager removes the
14 person as a manager. If a person that is both a manager and a
15 member ceases to be a manager, that cessation does not by itself
16 dissociate the person as a member.

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

20 (d) An action requiring the consent of members under the
21 Nebraska Uniform Limited Liability Company Act may be taken without
22 a meeting, and a member may appoint a proxy or other agent to
23 consent or otherwise act for the member by signing an appointing
24 record, personally or by the member's agent.

25 (e) The dissolution of a limited liability company does

1 not affect the applicability of this section. However, a person
2 that wrongfully causes dissolution of the company loses the right
3 to participate in management as a member and a manager.

4 (f) The Nebraska Uniform Limited Liability Company
5 Act does not entitle a member to remuneration for services
6 performed for a member-managed limited liability company, except
7 for reasonable compensation for services rendered in winding up the
8 activities of the company.

9 Sec. 37. (ULLCA 408) (a) A limited liability company
10 shall reimburse for any payment made and indemnify for any
11 debt, obligation, or other liability incurred by a member of a
12 member-managed company or the manager of a manager-managed company
13 in the course of the member's or manager's activities on behalf
14 of the company, if, in making the payment or incurring the debt,
15 obligation, or other liability, the member or manager complied with
16 the duties stated in sections 34 and 38 of this act.

17 (b) A limited liability company may purchase and maintain
18 insurance on behalf of a member or manager of the company against
19 liability asserted against or incurred by the member or manager in
20 that capacity or arising from that status even if, under subsection
21 (f) of section 10 of this act, the operating agreement could not
22 eliminate or limit the person's liability to the company for the
23 conduct giving rise to the liability.

24 Sec. 38. (ULLCA 409) (a) A member of a member-managed
25 limited liability company owes to the company and, subject to

1 subsection (b) of section 64 of this act, the other members the
2 fiduciary duties of loyalty and care stated in subsections (b) and
3 (c) of this section.

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

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

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

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

11 or

12 (C) from the appropriation of a limited liability company
13 opportunity;

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

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

20 (c) Subject to the business judgment rule, the duty of
21 care of a member of a member-managed limited liability company in
22 the conduct and winding up of the company's activities is to act
23 with the care that a person in a like position would reasonably
24 exercise under similar circumstances and in a manner the member
25 reasonably believes to be in the best interests of the company.

1 In discharging this duty, a member may rely in good faith upon
2 opinions, reports, statements, or other information provided by
3 another person that the member reasonably believes is a competent
4 and reliable source for the information.

5 (d) A member in a member-managed limited liability
6 company or a manager-managed limited liability company shall
7 discharge the duties under the Nebraska Uniform Limited Liability
8 Company Act or under the operating agreement and exercise any
9 rights consistently with the contractual obligation of good faith
10 and fair dealing.

11 (e) It is a defense to a claim under subdivision (b) (2)
12 of this section and any comparable claim in equity or at common law
13 that the transaction was fair to the limited liability company.

14 (f) All of the members of a member-managed limited
15 liability company or a manager-managed limited liability company
16 may authorize or ratify, after full disclosure of all material
17 facts, a specific act or transaction that otherwise would violate
18 the duty of loyalty.

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

21 (1) Subsections (a), (b), (c), and (e) of this section
22 apply to the manager or managers and not the members.

23 (2) The duty stated under subdivision (b) (3) of this
24 section continues until winding up is completed.

25 (3) Subsection (d) of this section applies to the members

1 and managers.

2 (4) Subsection (f) of this section applies only to the
3 members.

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

6 Sec. 39. (ULLCA 410) (a) In a member-managed limited
7 liability company, the following rules apply:

8 (1) On reasonable notice, a member may inspect and copy
9 during regular business hours, at a reasonable location specified
10 by the company, any record maintained by the company regarding the
11 company's activities, financial condition, and other circumstances,
12 to the extent the information is material to the member's rights
13 and duties under the operating agreement or the Nebraska Uniform
14 Limited Liability Company Act.

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

16 (A) without demand, any information concerning the
17 company's activities, financial condition, and other circumstances
18 which the company knows and is material to the proper exercise of
19 the member's rights and duties under the operating agreement or
20 the act, except to the extent the company can establish that it
21 reasonably believes the member already knows the information; and

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

1 (3) The duty to furnish information under subdivision
2 (a) (2) of this section also applies to each member to the
3 extent the member knows any of the information described in
4 such subdivision.

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

7 (1) The informational rights stated in subsection (a) of
8 this section and the duty stated in subdivision (a) (3) of this
9 section apply to the managers and not the members.

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

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

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

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

22 (3) Within ten days after receiving a demand pursuant
23 to subdivision (b) (2) (B) of this section, the company shall in a
24 record inform the member that made the demand:

25 (A) of the information that the company will provide in

1 response to the demand and when and where the company will provide
2 the information; and

3 (B) if the company declines to provide any demanded
4 information, the company's reasons for declining.

5 (c) On ten days' demand made in a record received by
6 a limited liability company, a dissociated member may have access
7 to information to which the person was entitled while a member
8 if the information pertains to the period during which the person
9 was a member, the person seeks the information in good faith,
10 and the person satisfies the requirements imposed on a member by
11 subdivision (b) (2) of this section. The company shall respond to a
12 demand made pursuant to this subsection in the manner provided in
13 subdivision (b) (3) of this section.

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

17 (e) A member or dissociated member may exercise rights
18 under this section through an agent or, in the case of an
19 individual under legal disability, a legal representative. Any
20 restriction or condition imposed by the operating agreement or
21 under subsection (g) of this section applies both to the agent or
22 legal representative and the member or dissociated member.

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

25 (g) In addition to any restriction or condition stated

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

9 Sec. 40. (ULLCA 501) A transferable interest is personal
10 property.

11 Sec. 41. (ULLCA 502) (a) A transfer, in whole or in part,
12 of a transferable interest:

13 (1) is permissible;

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

17 (3) subject to section 43 of this act, does not entitle
18 the transferee to:

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

21 (B) except as otherwise provided in subsection (c)
22 of this section, have access to records or other information
23 concerning the company's activities.

24 (b) A transferee has the right to receive, in accordance
25 with the transfer, distributions to which the transferor would

1 otherwise be entitled.

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

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

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

13 (f) A transfer of a transferable interest in violation of
14 a restriction on transfer contained in the operating agreement is
15 ineffective as to a person having notice of the restriction at the
16 time of transfer.

17 (g) Except as otherwise provided in subdivision (4)(B)
18 of section 45 of this act, when a member transfers a transferable
19 interest, the transferor retains the rights of a member other than
20 the interest in distributions transferred and retains all duties
21 and obligations of a member.

22 (h) When a member transfers a transferable interest to
23 a person that becomes a member with respect to the transferred
24 interest, the transferee is liable for the member's obligations
25 under section 32 of this act and subsection (c) of section 35 of

1 this act known to the transferee when the transferee becomes a
2 member.

3 Sec. 42. (ULLCA 503) (a) On application by a judgment
4 creditor of a member or transferee, a court may enter a charging
5 order against the transferable interest of the judgment debtor
6 for the unsatisfied amount of the judgment. A charging order
7 constitutes a lien on a judgment debtor's transferable interest and
8 requires the limited liability company to pay over to the person
9 to which the charging order was issued any distribution that would
10 otherwise be paid to the judgment debtor.

11 (b) To the extent necessary to effectuate the collection
12 of distributions pursuant to a charging order in effect under
13 subsection (a) of this section, the court may:

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

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

19 (c) Upon a showing that distributions under a charging
20 order will not pay the judgment debt within a reasonable time, the
21 court may foreclose the lien and order the sale of the transferable
22 interest. The purchaser at the foreclosure sale only obtains the
23 transferable interest, does not thereby become a member, and is
24 subject to section 41 of this act.

25 (d) At any time before foreclosure under subsection

1 (c) of this section, the member or transferee whose transferable
2 interest is subject to a charging order under subsection (a) of
3 this section may extinguish the charging order by satisfying the
4 judgment and filing a certified copy of the satisfaction with the
5 court that issued the charging order.

6 (e) At any time before foreclosure under subsection (c)
7 of this section, a limited liability company or one or more members
8 whose transferable interests are not subject to the charging
9 order may pay to the judgment creditor the full amount due under
10 the judgment and thereby succeed to the rights of the judgment
11 creditor, including the charging order.

12 (f) The Nebraska Uniform Limited Liability Company Act
13 does not deprive any member or transferee of the benefit of
14 any exemption laws applicable to the member's or transferee's
15 transferable interest.

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

20 Sec. 43. (ULLCA 504) If a member dies, the deceased
21 member's personal representative or other legal representative may
22 exercise the rights of a transferee provided in subsection (c)
23 of section 41 of this act and, for the purposes of settling the
24 estate, the rights of a current member under section 39 of this
25 act.

1 Sec. 44. (ULLCA 601) (a) A person has the power to
2 dissociate as a member at any time, rightfully or wrongfully, by
3 withdrawing as a member by express will under subdivision (1) of
4 section 45 of this act.

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

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

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

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

11 (B) the person is expelled as a member by judicial order
12 under subdivision (5) of section 45 of this act;

13 (C) the person is dissociated under subdivision (7) (A) of
14 section 45 of this act by becoming a debtor in bankruptcy; or

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

19 (c) A person that wrongfully dissociates as a member is
20 liable to the limited liability company and, subject to section
21 64 of this act, to the other members for damages caused by the
22 dissociation. The liability is in addition to any other debt,
23 obligation, or other liability of the member to the company or the
24 other members.

25 Sec. 45. (ULLCA 602) A person is dissociated as a member

1 from a limited liability company when:

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

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

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

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

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

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

16 (i) a transfer for security purposes; or

17 (ii) a charging order in effect under section 42 of this
18 act which has not been foreclosed;

19 (C) the person is a corporation and, within ninety days
20 after the company notifies the person that it will be expelled as
21 a member because the person has filed a certificate of dissolution
22 or the equivalent, its charter has been revoked, or its right
23 to conduct business has been suspended by the jurisdiction of
24 its incorporation, the certificate of dissolution has not been
25 revoked, or its charter or right to conduct business has not been

1 reinstated; or

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

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

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

10 (B) has willfully or persistently committed, or is
11 willfully and persistently committing, a material breach of the
12 operating agreement or the person's duties or obligations under
13 section 38 of this act; or

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

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

18 (A) the person dies; or

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

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

22 (ii) there is a judicial order that the person has
23 otherwise become incapable of performing the person's duties as a
24 member under the Nebraska Uniform Limited Liability Company Act or
25 the operating agreement;

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

3 (A) becomes a debtor in bankruptcy;

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

5 or

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

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

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

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

19 (11) the company participates in a merger under sections
20 70 to 84 of this act, if:

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

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

24 (12) the company participates in a conversion under
25 sections 70 to 84 of this act;

1 (13) the company participates in a domestication
 2 under sections 70 to 84 of this act, if, as a result of the
 3 domestication, the person ceases to be a member; or

4 (14) the company terminates.

5 Sec. 46. (ULLCA 603) (a) When a person is dissociated as
 6 a member of a limited liability company:

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

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

12 (3) subject to section 43 of this act and sections 70
 13 to 84 of this act, any transferable interest owned by the person
 14 immediately before dissociation in the person's capacity as a
 15 member is owned by the person solely as a transferee.

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

20 Sec. 47. (ULLCA 701) (a) A limited liability company is
 21 dissolved, and its activities must be wound up, upon the occurrence
 22 of any of the following:

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

25 (2) the consent of all the members;

1 (3) the passage of ninety consecutive days during which
2 the company has no members;

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

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

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

10 (5) on application by a member, the entry by the district
11 court of an order dissolving the company on the grounds that the
12 managers or those members in control of the company:

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

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

18 (b) In a proceeding brought under subdivision (a) (5) of
19 this section, the court may order a remedy other than dissolution.

20 Sec. 48. (ULLCA 702) (a) A dissolved limited liability
21 company shall wind up its activities, and the company continues
22 after dissolution only for the purpose of winding up.

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

25 (1) shall:

1 (A) discharge the company's debts, obligations, or other
2 liabilities, settle and close the company's activities, and marshal
3 and distribute the assets of the company; and

4 (B) deliver to the Secretary of State for filing a
5 statement of dissolution stating the name of the company and that
6 the company is dissolved; and

7 (2) may:

8 (A) preserve the company activities and property as a
9 going concern for a reasonable time;

10 (B) prosecute and defend actions and proceedings, whether
11 civil, criminal, or administrative;

12 (C) transfer the company's property;

13 (D) settle disputes by mediation or arbitration;

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

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

19 (c) If a dissolved limited liability company has no
20 members, the legal representative of the last person to have
21 been a member may wind up the activities of the company. If the
22 person does so, the person has the powers of a sole manager under
23 subsection (c) of section 36 of this act and is deemed to be a
24 manager for the purposes of subdivision (a)(2) of section 29 of
25 this act.

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

7 (1) has the powers of a sole manager under subsection (c)
8 of section 36 of this act and is deemed to be a manager for the
9 purposes of subdivision (a) (2) of section 29 of this act; and

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

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

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

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

18 (e) The district court may order judicial supervision of
19 the winding up of a dissolved limited liability company, including
20 the appointment of a person to wind up the company's activities:

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

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

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

25 (B) the legal representative of the last person to

1 have been a member declines or fails to wind up the company's
2 activities; and

3 (C) within a reasonable time following the dissolution a
4 person has not been appointed pursuant to subsection (c) of this
5 section; or

6 (3) in connection with a proceeding under subdivision
7 (a) (4) or (5) of section 47 of this act.

8 Sec. 49. (ULLCA 703) (a) Except as otherwise provided
9 in subsection (d) of this section, a dissolved limited liability
10 company may give notice of a known claim under subsection (b) of
11 this section, which has the effect as provided in subsection (c) of
12 this section.

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

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

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

19 (3) state the deadline for receipt of the claim, which
20 may not be less than one hundred twenty days after the date the
21 notice is received by the claimant; and

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

24 (c) A claim against a dissolved limited liability company
25 is barred if the requirements of subsection (b) of this section are

1 met and:

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

3 or

4 (2) if the claim is timely received but rejected by the

5 company:

6 (A) the company causes the claimant to receive a notice
7 in a record stating that the claim is rejected and will be barred
8 unless the claimant commences an action against the company to
9 enforce the claim within ninety days after the claimant receives
10 the notice; and

11 (B) the claimant does not commence the required action
12 within the ninety days.

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

16 Sec. 50. (ULLCA 704) (a) A dissolved limited liability
17 company shall publish notice of its dissolution and request persons
18 having claims against the company to present them in accordance
19 with the notice.

20 (b) The notice required by subsection (a) of this section
21 must:

22 (1) be published three successive weeks in some legal
23 newspaper of general circulation in the county in this state in
24 which the dissolved limited liability company's principal office is
25 located or, if it has none in this state, in the county in which

1 the company's designated office is or was last located;

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

5 (3) state that a claim against the company is barred
6 unless an action to enforce the claim is commenced within five
7 years after the publication date of the third required notice.

8 (c) If a dissolved limited liability company publishes a
9 notice in accordance with subsection (b) of this section, unless
10 the claimant commences an action to enforce the claim against the
11 company within five years after the publication date of the third
12 required notice, the claim of each of the following claimants is
13 barred:

14 (1) a claimant that did not receive notice in a record
15 under section 49 of this act;

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

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

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

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

24 (2) if assets of the company have been distributed
25 after dissolution, against a member or transferee to the extent

1 of that person's proportionate share of the claim or of the
2 assets distributed to the member or transferee after dissolution,
3 whichever is less, but a person's total liability for all claims
4 under this subdivision does not exceed the total amount of assets
5 distributed to the person after dissolution.

6 Sec. 51. (ULLCA 705) (a) The Secretary of State may
7 dissolve a limited liability company administratively if the
8 company does not:

9 (1) pay, within sixty days after the due date, any fee,
10 tax, or penalty due to the Secretary of State under the Nebraska
11 Uniform Limited Liability Company Act or law other than the act; or

12 (2) deliver, within sixty days after the due date, its
13 biennial report to the Secretary of State.

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

18 (c) If within sixty days after service of the copy
19 pursuant to subsection (b) of this section a limited liability
20 company does not correct each ground for dissolution or demonstrate
21 to the reasonable satisfaction of the Secretary of State that each
22 ground determined by the Secretary of State does not exist, the
23 Secretary of State shall dissolve the company administratively by
24 preparing, signing, and filing a declaration of dissolution that
25 states the grounds for dissolution. The Secretary of State shall

1 serve the company with a copy of the filed declaration.

2 (d) A limited liability company that has been
3 administratively dissolved continues in existence but, subject to
4 section 52 of this act, may carry on only activities necessary to
5 wind up its activities and liquidate its assets under sections 48
6 and 54 of this act and to notify claimants under sections 49 and
7 50 of this act.

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

11 Sec. 52. (ULLCA 706) (a) A limited liability company that
12 has been administratively dissolved may apply to the Secretary of
13 State for reinstatement at any time after the effective date of
14 dissolution. The application must be delivered to the Secretary of
15 State for filing and state:

16 (1) the name of the company and the effective date of its
17 dissolution;

18 (2) that the grounds for dissolution did not exist or
19 have been eliminated; and

20 (3) that the company's name satisfies the requirements of
21 section 8 of this act.

22 (b) If the Secretary of State determines that an
23 application under subsection (a) of this section contains the
24 required information and that the information is correct, the
25 Secretary of State shall prepare a declaration of reinstatement

1 that states this determination, sign and file the original of
2 the declaration of reinstatement, and serve the limited liability
3 company with a copy.

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

8 Sec. 53. (ULLCA 707) (a) If the Secretary of State
9 rejects a limited liability company's application for reinstatement
10 following administrative dissolution, the Secretary of State shall
11 prepare, sign, and file a notice that explains the reason for
12 rejection and serve the company with a copy of the notice.

13 (b) Within thirty days after service of a notice of
14 rejection of reinstatement under subsection (a) of this section,
15 a limited liability company may appeal from the rejection by
16 petitioning the district court of Lancaster County to set aside
17 the dissolution. The petition must be served on the Secretary of
18 State and contain a copy of the Secretary of State's declaration of
19 dissolution, the company's application for reinstatement, and the
20 Secretary of State's notice of rejection.

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

24 Sec. 54. (ULLCA 708) (a) In winding up its activities, a
25 limited liability company must apply its assets to discharge its

1 obligations to creditors, including members that are creditors.

2 (b) After a limited liability company complies with
3 subsection (a) of this section, any surplus must be distributed
4 in the manner set forth in the operating agreement or, if not so
5 set forth, in the following order, subject, in any case, to any
6 charging order in effect under section 42 of this act:

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

11 (2) in equal shares among members and dissociated
12 members, except to the extent necessary to comply with any transfer
13 effective under section 41 of this act.

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

19 (d) All distributions made under subsections (b) and (c)
20 of this section must be paid in money.

21 Sec. 55. (ULLCA 801) (a) The law of the state or other
22 jurisdiction under which a foreign limited liability company is
23 formed governs:

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

25 (2) the liability of a member as member and a manager

1 as manager for the debts, obligations, or other liabilities of the
2 company.

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

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

11 Sec. 56. (ULLCA 802) (a) A foreign limited liability
12 company may apply for a certificate of authority to transact
13 business in this state by delivering an application and, if
14 applicable, a current certificate of registration as provided in
15 sections 85 to 89 of this act and fees to the Secretary of State
16 for filing. The application must state:

17 (1) the name of the company and, if the name does not
18 comply with section 8 of this act, an alternate name adopted
19 pursuant to subsection (a) of section 59 of this act;

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

22 (3) the street and mailing addresses of the company's
23 principal office and, if the law of the jurisdiction under which
24 the company is formed requires the company to maintain an office in
25 that jurisdiction, the street and mailing addresses of the required

1 office; and

2 (4) the name and street and mailing addresses and post
3 office box number, if any, of the company's initial agent for
4 service of process in this state.

5 (b) A foreign limited liability company shall deliver
6 with a completed application under subsection (a) of this section
7 a certificate of existence or a record of similar import signed
8 by the Secretary of State or other official having custody of the
9 company's publicly filed records in the state or other jurisdiction
10 under whose law the company is formed.

11 Sec. 57. (ULLCA 803) (a) Activities of a foreign limited
12 liability company which do not constitute transacting business in
13 this state within the meaning of sections 55 to 63 of this act
14 include:

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

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

19 (3) maintaining accounts in financial institutions;

20 (4) maintaining offices or agencies for the transfer,
21 exchange, and registration of the company's own securities
22 or maintaining trustees or depositories with respect to those
23 securities;

24 (5) selling through independent contractors;

25 (6) soliciting or obtaining orders, whether by mail or

1 electronic means or through employees or agents or otherwise, if
2 the orders require acceptance outside this state before they become
3 contracts;

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

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

9 (9) conducting an isolated transaction that is completed
10 within thirty days and is not in the course of similar
11 transactions; and

12 (10) transacting business in interstate commerce.

13 (b) For purposes of sections 55 to 63 of this act,
14 the ownership in this state of income-producing real property or
15 tangible personal property, other than property excluded under
16 subsection (a) of this section, constitutes transacting business in
17 this state.

18 (c) This section does not apply in determining the
19 contacts or activities that may subject a foreign limited liability
20 company to service of process, taxation, or regulation under law
21 of this state other than the Nebraska Uniform Limited Liability
22 Company Act.

23 Sec. 58. (ULLCA 804) Unless the Secretary of State
24 determines that an application for a certificate of authority does
25 not comply with the filing requirements of the Nebraska Uniform

1 Limited Liability Company Act, the Secretary of State, upon payment
2 of all filing fees, shall file the application of a foreign
3 limited liability company, prepare, sign, and file a certificate of
4 authority to transact business in this state, and send a copy of
5 the filed certificate, together with a receipt for the fees, to the
6 company or its representative.

7 Sec. 59. (ULLCA 805) (a) A foreign limited liability
8 company whose name does not comply with section 8 of this act
9 may not obtain a certificate of authority until it adopts, for
10 the purpose of transacting business in this state, an alternate
11 name that complies with section 8 of this act. A foreign
12 limited liability company that adopts an alternate name under
13 this subsection and obtains a certificate of authority with the
14 alternate name need not comply with any fictitious or assumed
15 name statute. After obtaining a certificate of authority with an
16 alternate name, a foreign limited liability company shall transact
17 business in this state under the alternate name unless the company
18 is authorized under any fictitious or assumed name statute to
19 transact business in this state under another name.

20 (b) If a foreign limited liability company authorized
21 to transact business in this state changes its name to one
22 that does not comply with section 8 of this act, it may not
23 thereafter transact business in this state until it complies with
24 subsection (a) of this section and obtains an amended certificate
25 of authority.

1 Sec. 60. (ULLCA 806) (a) A certificate of authority of
2 a foreign limited liability company to transact business in this
3 state may be revoked by the Secretary of State in the manner
4 provided in subsections (b) and (c) of this section if the company
5 does not:

6 (1) pay, within sixty days after the due date, any fee,
7 tax, or penalty due to the Secretary of State under the Nebraska
8 Uniform Limited Liability Company Act or law other than the act;

9 (2) deliver, within sixty days after the due date, its
10 biennial report required under section 25 of this act;

11 (3) appoint and maintain an agent for service of process
12 as required by subsection (b) of section 13 of this act; or

13 (4) deliver for filing a statement of a change under
14 section 14 of this act within thirty days after a change has
15 occurred in the name or address of the agent.

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

22 (1) the revocation's effective date, which must be at
23 least sixty days after the date the Secretary of State sends the
24 copy; and

25 (2) the grounds for revocation under subsection (a) of

1 this section.

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

8 Sec. 61. (ULLCA 807) To cancel its certificate of
9 authority to transact business in this state, a foreign limited
10 liability company must deliver to the Secretary of State for filing
11 a notice of cancellation stating the name of the company and that
12 the company desires to cancel its certificate of authority. The
13 certificate is canceled when the notice becomes effective.

14 Sec. 62. (ULLCA 808) (a) A foreign limited liability
15 company transacting business in this state may not maintain an
16 action or proceeding in this state unless it has a certificate of
17 authority to transact business in this state.

18 (b) The failure of a foreign limited liability company to
19 have a certificate of authority to transact business in this state
20 does not impair the validity of a contract or act of the company or
21 prevent the company from defending an action or proceeding in this
22 state.

23 (c) A member or manager of a foreign limited liability
24 company is not liable for the debts, obligations, or other
25 liabilities of the company solely because the company transacted

1 business in this state without a certificate of authority.

2 Sec. 63. (ULLCA 809) The Attorney General may maintain
3 an action to enjoin a foreign limited liability company from
4 transacting business in this state in violation of sections 55 to
5 63 of this act.

6 Sec. 64. (ULLCA 901) (a) Subject to subsection (b) of
7 this section, a member may maintain a direct action against another
8 member, a manager, or the limited liability company to enforce
9 the member's rights and otherwise protect the member's interests,
10 including rights and interests under the operating agreement or
11 the Nebraska Uniform Limited Liability Company Act or arising
12 independently of the membership relationship.

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

17 Sec. 65. (ULLCA 902) A member may maintain a derivative
18 action to enforce a right of a limited liability company if:

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

25 (2) a demand under subdivision (1) of this section would

1 be futile.

2 Sec. 66. (ULLCA 903) (a) Except as otherwise provided in
3 subsection (b) of this section, a derivative action under section
4 65 of this act may be maintained only by a person that is a member
5 at the time the action is commenced and remains a member while the
6 action continues.

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

10 Sec. 67. (ULLCA 904) In a derivative action under section
11 65 of this act, the complaint must state with particularity:

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

14 (2) if a demand has not been made, the reasons a demand
15 under subdivision (1) of section 65 of this act would be futile.

16 Sec. 68. (ULLCA 905) (a) If a limited liability company
17 is named as or made a party in a derivative proceeding, the company
18 may appoint a special litigation committee to investigate the
19 claims asserted in the proceeding and determine whether pursuing
20 the action is in the best interests of the company. If the company
21 appoints a special litigation committee, on motion by the committee
22 made in the name of the company, except for good cause shown, the
23 court shall stay discovery for the time reasonably necessary to
24 permit the committee to make its investigation. This subsection
25 does not prevent the court from enforcing a person's right to

1 information under section 39 of this act or, for good cause
2 shown, granting extraordinary relief in the form of a temporary
3 restraining order or preliminary injunction.

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

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

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

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

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

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

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

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

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

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

24 (2) continue under the control of the committee;

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

1 (4) be dismissed.

2 (e) After making a determination under subsection (d)
3 of this section, a special litigation committee shall file
4 with the court a statement of its determination and its report
5 supporting its determination, giving notice to the plaintiff. The
6 court shall determine whether the members of the committee were
7 disinterested and independent and whether the committee conducted
8 its investigation and made its recommendation in good faith,
9 independently, and with reasonable care, with the committee having
10 the burden of proof. If the court finds that the members of the
11 committee were disinterested and independent and that the committee
12 acted in good faith, independently, and with reasonable care, the
13 court shall enforce the determination of the committee. Otherwise,
14 the court shall dissolve the stay of discovery entered under
15 subsection (a) of this section and allow the action to proceed
16 under the direction of the plaintiff.

17 Sec. 69. (ULLCA 906) (a) Except as otherwise provided in
18 subsection (b) of this section:

19 (1) any proceeds or other benefits of a derivative action
20 under section 65 of this act, whether by judgment, compromise, or
21 settlement, belong to the limited liability company and not to the
22 plaintiff; and

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

25 (b) If a derivative action under section 65 of this

1 act is successful in whole or in part, the court may award the
2 plaintiff reasonable expenses, including reasonable attorney's fees
3 and costs, from the recovery of the limited liability company.

4 Sec. 70. (ULLCA 1001) In sections 70 to 84 of this act:

5 (1) Constituent limited liability company means a
6 constituent organization that is a limited liability company.

7 (2) Constituent organization means an organization that
8 is party to a merger.

9 (3) Converted organization means the organization into
10 which a converting organization converts pursuant to sections 75 to
11 78 of this act.

12 (4) Converting limited liability company means a
13 converting organization that is a limited liability company.

14 (5) Converting organization means an organization that
15 converts into another organization pursuant to section 75 of this
16 act.

17 (6) Domesticated company means the company that exists
18 after a domesticating foreign limited liability company or limited
19 liability company effects a domestication pursuant to sections 79
20 to 82 of this act.

21 (7) Domesticating company means the company that effects
22 a domestication pursuant to sections 79 to 82 of this act.

23 (8) Governing statute means the statute that governs an
24 organization's internal affairs.

25 (9) Organization means a general partnership, including

1 a limited liability partnership, limited partnership, including a
2 limited liability limited partnership, limited liability company,
3 business trust, corporation, or any other person having a governing
4 statute. The term includes a domestic or foreign organization
5 regardless of whether organized for profit.

6 (10) Organizational documents means:

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

9 (B) for a limited partnership or foreign limited
10 partnership, its certificate of limited partnership and partnership
11 agreement;

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

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

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

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

1 (11) Personal liability means liability for a debt,
2 obligation, or other liability of an organization which is imposed
3 on a person that co-owns, has an interest in, or is a member of the
4 organization:

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

8 (B) by the organization's organizational documents under
9 a provision of the governing statute authorizing those documents
10 to make one or more specified persons liable for all or specified
11 debts, obligations, or other liabilities of the organization solely
12 by reason of the person or persons co-owning, having an interest
13 in, or being a member of the organization.

14 (12) Surviving organization means an organization into
15 which one or more other organizations are merged whether the
16 organization preexisted the merger or was created by the merger.

17 Sec. 71. (ULLCA 1002) (a) A limited liability company may
18 merge with one or more other constituent organizations pursuant to
19 this section, sections 72 to 74 of this act, and a plan of merger,
20 if:

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

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

25 (3) each of the other organizations complies with its

1 governing statute in effecting the merger.

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

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

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

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

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

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

19 Sec. 72. (ULLCA 1003) (a) Subject to section 83 of this
20 act, a plan of merger must be consented to by all the members of a
21 constituent limited liability company.

22 (b) Subject to section 83 of this act and any contractual
23 rights, after a merger is approved, and at any time before articles
24 of merger are delivered to the Secretary of State for filing under
25 section 73 of this act, a constituent limited liability company may

1 amend the plan or abandon the merger:

2 (1) as provided in the plan; or

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

5 Sec. 73. (ULLCA 1004) (a) After each constituent
6 organization has approved a merger, articles of merger must be
7 signed on behalf of:

8 (1) each constituent limited liability company, as
9 provided in subsection (a) of section 19 of this act; and

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

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

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

15 (2) the name and form of the surviving organization,
16 the jurisdiction of its governing statute, and, if the surviving
17 organization is created by the merger, a statement to that effect;

18 (3) the date the merger is effective under the governing
19 statute of the surviving organization;

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

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

24 (B) if it will be an organization other than a limited
25 liability company, the organizational document that creates the

1 organization that is in a public record;

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

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

9 (7) any additional information required by the governing
10 statute of any constituent organization.

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

14 (d) A merger becomes effective under sections 70 to 84 of
15 this act:

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

18 (A) compliance with subsection (c) of this section; or

19 (B) subject to subsection (c) of section 21 of this act,
20 as specified in the articles of merger; or

21 (2) if the surviving organization is not a limited
22 liability company, as provided by the governing statute of the
23 surviving organization.

24 Sec. 74. (ULLCA 1005) (a) When a merger becomes
25 effective:

- 1 (1) the surviving organization continues or comes into
2 existence;
- 3 (2) each constituent organization that merges into the
4 surviving organization ceases to exist as a separate entity;
- 5 (3) all property owned by each constituent organization
6 that ceases to exist vests in the surviving organization;
- 7 (4) all debts, obligations, or other liabilities of each
8 constituent organization that ceases to exist continue as debts,
9 obligations, or other liabilities of the surviving organization;
- 10 (5) an action or proceeding pending by or against any
11 constituent organization that ceases to exist may be continued as
12 if the merger had not occurred;
- 13 (6) except as prohibited by other law, all of the
14 rights, privileges, immunities, powers, and purposes of each
15 constituent organization that ceases to exist vest in the surviving
16 organization;
- 17 (7) except as otherwise provided in the plan of merger,
18 the terms and conditions of the plan of merger take effect; and
- 19 (8) except as otherwise agreed, if a constituent limited
20 liability company ceases to exist, the merger does not dissolve the
21 limited liability company for the purposes of sections 47 to 54 of
22 this act;
- 23 (9) if the surviving organization is created by the
24 merger:
- 25 (A) if it is a limited liability company, the certificate

1 of organization becomes effective; or

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

5 (10) if the surviving organization preexisted the merger,
6 any amendments provided for in the articles of merger for
7 the organizational document that created the organization become
8 effective.

9 (b) A surviving organization that is a foreign
10 organization consents to the jurisdiction of the courts of this
11 state to enforce any debt, obligation, or other liability owed by
12 a constituent organization, if before the merger the constituent
13 organization was subject to suit in this state on the debt,
14 obligation, or other liability.

15 Sec. 75. (ULLCA 1006) (a) An organization other than a
16 limited liability company or a foreign limited liability company
17 may convert to a limited liability company, and a limited liability
18 company may convert to an organization other than a foreign limited
19 liability company pursuant to this section, sections 76 to 78 of
20 this act, and a plan of conversion, if:

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

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

1 (3) the other organization complies with its governing
2 statute in effecting the conversion.

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

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

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

9 (3) the terms and conditions of the conversion, including
10 the manner and basis for converting interests in the converting
11 organization into any combination of money, interests in the
12 converted organization, and other consideration; and

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

15 Sec. 76. (ULLCA 1007) (a) Subject to section 83 of this
16 act, a plan of conversion must be consented to by all the members
17 of a converting limited liability company.

18 (b) Subject to section 83 of this act and any contractual
19 rights, after a conversion is approved, and at any time before
20 articles of conversion are delivered to the Secretary of State for
21 filing under section 77 of this act, a converting limited liability
22 company may amend the plan or abandon the conversion:

23 (1) as provided in the plan; or

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

1 Sec. 77. (ULLCA 1008) (a) After a plan of conversion is
2 approved:

3 (1) a converting limited liability company shall deliver
4 to the Secretary of State for filing articles of conversion, which
5 must be signed as provided in subsection (a) of section 19 of this
6 act and must include:

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

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

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

13 (D) a statement that the conversion was approved as
14 required by the Nebraska Uniform Limited Liability Company Act; and

15 (E) a statement that the conversion was approved as
16 required by the governing statute of the converted organization;
17 and

18 (2) if the converting organization is not a converting
19 limited liability company, the converting organization shall
20 deliver to the Secretary of State for filing a certificate of
21 organization, which must include, in addition to the information
22 required by subsection (b) of section 17 of this act:

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

25 (B) the name and form of that converting organization and

1 the jurisdiction of its governing statute; and

2 (C) a statement that the conversion was approved in a
3 manner that complied with the converting organization's governing
4 statute.

5 (b) A conversion becomes effective:

6 (1) if the converted organization is a limited liability
7 company, when the certificate of organization takes effect; and
8 (2) if the converted organization is not a limited
9 liability company, as provided by the governing statute of the
10 converted organization.

11 Sec. 78. (ULLCA 1009) (a) An organization that has been
12 converted pursuant to sections 70 to 84 of this act is for all
13 purposes the same entity that existed before the conversion.

14 (b) When a conversion takes effect:

15 (1) all property owned by the converting organization
16 remains vested in the converted organization;

17 (2) all debts, obligations, or other liabilities of the
18 converting organization continue as debts, obligations, or other
19 liabilities of the converted organization;

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

23 (4) except as prohibited by law other than the Nebraska
24 Uniform Limited Liability Company Act, all of the rights,
25 privileges, immunities, powers, and purposes of the converting

1 organization remain vested in the converted organization;

2 (5) except as otherwise provided in the plan of
3 conversion, the terms and conditions of the plan of conversion take
4 effect; and

5 (6) except as otherwise agreed, the conversion does not
6 dissolve a converting limited liability company for the purposes of
7 sections 47 to 54 of this act.

8 (c) A converted organization that is a foreign
9 organization consents to the jurisdiction of the courts of this
10 state to enforce any debt, obligation, or other liability for which
11 the converting limited liability company is liable if, before the
12 conversion, the converting limited liability company was subject to
13 suit in this state on the debt, obligation, or other liability.

14 Sec. 79. (ULLCA 1010) (a) A foreign limited liability
15 company may become a limited liability company pursuant to
16 this section, sections 80 to 82 of this act, and a plan of
17 domestication, if:

18 (1) the foreign limited liability company's governing
19 statute authorizes the domestication;

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

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

24 (b) A limited liability company may become a foreign
25 limited liability company pursuant to this section, sections 80 to

1 82 of this act, and a plan of domestication, if:

2 (1) the foreign limited liability company's governing
3 statute authorizes the domestication;

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

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

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

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

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

14 (3) the terms and conditions of the domestication,
15 including the manner and basis for converting interests in the
16 domesticating company into any combination of money, interests in
17 the domesticated company, and other consideration; and

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

20 Sec. 80. (ULLCA 1011) (a) A plan of domestication must be
21 consented to:

22 (1) by all the members, subject to section 83 of this
23 act, if the domesticating company is a limited liability company;
24 and

25 (2) as provided in the domesticating company's governing

1 statute, if the company is a foreign limited liability company.

2 (b) Subject to any contractual rights, after a
3 domestication is approved, and at any time before articles of
4 domestication are delivered to the Secretary of State for filing
5 under section 81 of this act, a domesticating limited liability
6 company may amend the plan or abandon the domestication:

7 (1) as provided in the plan; or

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

10 Sec. 81. (ULLCA 1012) (a) After a plan of domestication
11 is approved, a domesticating company shall deliver to the Secretary
12 of State for filing articles of domestication, which must include:

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

15 (2) the name of the domesticating company and the
16 jurisdiction of its governing statute;

17 (3) the name of the domesticated company and the
18 jurisdiction of its governing statute;

19 (4) the date the domestication is effective under the
20 governing statute of the domesticated company;

21 (5) if the domesticating company was a limited liability
22 company, a statement that the domestication was approved as
23 required by the Nebraska Uniform Limited Liability Company Act;
24 and

25 (6) if the domesticating company was a foreign limited

1 liability company, a statement that the domestication was approved
2 as required by the governing statute of the other jurisdiction.

3 (b) A domestication becomes effective:

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

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

9 Sec. 82. (ULLCA 1013) (a) When a domestication takes
10 effect:

11 (1) the domesticated company is for all purposes the
12 company that existed before the domestication;

13 (2) all property owned by the domesticating company
14 remains vested in the domesticated company;

15 (3) all debts, obligations, or other liabilities of the
16 domesticating company continue as debts, obligations, or other
17 liabilities of the domesticated company;

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

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

24 (6) except as otherwise provided in the plan of
25 domestication, the terms and conditions of the plan of

1 domestication take effect; and

2 (7) except as otherwise agreed, the domestication does
3 not dissolve a domesticating limited liability company for the
4 purposes of sections 47 to 54 of this act.

5 (b) A domesticated company that is a foreign limited
6 liability company consents to the jurisdiction of the courts of
7 this state to enforce any debt, obligation, or other liability
8 owed by the domesticating company, if, before the domestication,
9 the domesticating company was subject to suit in this state on the
10 debt, obligation, or other liability.

11 (c) If a limited liability company has adopted and
12 approved a plan of domestication under section 79 of this
13 act providing for the company to be domesticated in a foreign
14 jurisdiction, a statement surrendering the company's certificate of
15 organization must be delivered to the Secretary of State for filing
16 setting forth:

17 (1) the name of the company;

18 (2) a statement that the certificate of organization
19 is being surrendered in connection with the domestication of the
20 company in a foreign jurisdiction;

21 (3) a statement that the domestication was approved as
22 required by the Nebraska Uniform Limited Liability Company Act; and

23 (4) the jurisdiction of formation of the domesticated
24 foreign limited liability company.

25 Sec. 83. (ULLCA 1014) (a) If a member of a constituent,

1 converting, or domesticating limited liability company will have
2 personal liability with respect to a surviving, converted, or
3 domesticated organization, approval or amendment of a plan of
4 merger, conversion, or domestication are ineffective without the
5 consent of the member, unless:

6 (1) the company's operating agreement provides for
7 approval of a merger, conversion, or domestication with the consent
8 of fewer than all the members; and

9 (2) the member has consented to the provision of the
10 operating agreement.

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

15 Sec. 84. (ULLCA 1015) Sections 70 to 84 of this act
16 do not preclude an entity from being merged, converted, or
17 domesticated under law other than the Nebraska Uniform Limited
18 Liability Company Act.

19 Sec. 85. (1) Each member, manager, professional employee,
20 or agent of a limited liability company who renders a professional
21 service shall hold a valid license or otherwise be duly authorized
22 to render that professional service under the law of this state
23 if such member, manager, professional employee, or agent renders
24 a professional service within this state or under the law of
25 the state or other jurisdiction in which such person renders the

1 professional service.

2 (2) Before rendering a professional service, a limited
3 liability company shall (a)(i) deliver to the Secretary of State
4 for filing a certificate of registration issued to the limited
5 liability company by the regulatory body of the particular
6 profession for which the limited liability company is organized
7 to do business, which certificate sets forth the name and residence
8 address of every member, manager, professional employee, and agent
9 of the limited liability company who is required by law to be
10 licensed or otherwise authorized to render the professional service
11 for which the limited liability company is organized to do business
12 as of the last day of the month preceding the date of delivery
13 of the certificate, and (ii) certify that all members, managers,
14 professional employees, and agents of the limited liability company
15 who are required by law to do so are duly licensed or otherwise
16 authorized to render the professional service for which the limited
17 liability company is organized to do business or (b) comply with
18 and qualify under the procedures set forth in subsection (2) of
19 section 86 of this act.

20 (3) The registration certificate requirements of this
21 section and sections 86 to 88 of this act shall apply to
22 both limited liability companies and foreign limited liability
23 companies.

24 Sec. 86. (1)(a) An application for issuance of a
25 certificate of registration shall be made by the limited liability

1 company to the regulatory body in writing and shall contain the
2 names of all members, managers, professional employees, and agents
3 of the limited liability company who are required by law to
4 be licensed or otherwise authorized to render the professional
5 service for which the limited liability company is organized to
6 do business, the street address at which the applicant proposes
7 to render a professional service, and such other information as
8 may be required by the regulatory body. If it appears to the
9 regulatory body that each member, manager, professional employee,
10 and agent of the applicant required by law to be licensed is
11 licensed or otherwise authorized to practice the profession for
12 which the applicant is organized to do business and that each
13 member, manager, professional employee, or agent required by law
14 to be licensed or otherwise authorized to practice the profession
15 for which the applicant is organized to do business is not
16 otherwise disqualified from rendering the professional service of
17 the applicant, such regulatory body shall issue a certificate
18 in duplicate upon a form bearing its date of issuance and
19 prescribed by such regulatory body certifying that the proposed
20 or existing limited liability company complies with the provisions
21 of the Nebraska Uniform Limited Liability Company Act and of the
22 applicable rules and regulations of the regulatory body. Each
23 applicant for such certificate shall pay the regulatory body a fee
24 of twenty-five dollars for the issuance of the certificate.

25 (b) One copy of a certificate of registration issued

1 pursuant to this subsection shall be prominently displayed to
2 public view upon the premises of the principal place of business
3 of the limited liability company, and, except as provided in
4 subsection (2) of this section, one copy shall be delivered for
5 filing to the Secretary of State who shall charge a fee of
6 twenty-five dollars for filing the same. The certificate shall be
7 delivered to the Secretary of State for filing with the certificate
8 of organization. A certificate of registration bearing an issuance
9 date more than twelve months old shall not be eligible for filing
10 by the Secretary of State.

11 (2) When licensing records of regulating bodies are
12 electronically accessible to the Secretary of State, the Secretary
13 of State shall access the records. The access of the records shall
14 be made in lieu of a certificate of registration being prepared
15 and issued by the regulatory body for delivery to the Secretary
16 of State for filing. The limited liability company shall deliver
17 to the Secretary of State for filing an application setting forth
18 the names of all members, managers, professional employees, and
19 agents of such limited liability company who are required by law
20 to be licensed or otherwise authorized to render the professional
21 service for which the limited liability company is organized to do
22 business as of the last day of the month preceding the date of
23 application and shall deliver to the Secretary of State for filing
24 an annual update thereafter. The application shall be completed
25 on a form prescribed by the Secretary of State and shall contain

1 such other information as the Secretary of State may require. The
2 application shall be accompanied by a license verification fee of
3 fifty dollars.

4 The Secretary of State shall verify that all members,
5 managers, professional employees, and agents who are required by
6 law to do so are duly licensed or otherwise legally authorized
7 to render the professional service for which the applicant is
8 organized to do business or ancillary service as those which the
9 limited liability company renders through electronic accessing of
10 the regulatory body's records. If any member, manager, professional
11 employee, or agent who is required by law to be licensed or
12 otherwise authorized to render the professional service for which
13 the limited liability company is organized to do business is not
14 licensed or otherwise legally authorized to render the professional
15 service for which the limited liability company is organized to
16 do business, the limited liability company shall be suspended. The
17 suspension shall remain in effect and a biennial report shall not
18 be delivered to the Secretary of State for filing or filed by
19 the Secretary of State until the limited liability company attests
20 in writing that all members, managers, professional employees,
21 or agents who are required by law to be licensed or otherwise
22 authorized to render the professional service for which the limited
23 liability company is organized to do business are duly licensed or
24 otherwise legally authorized to render the professional service for
25 which the limited liability company is organized to do business

1 and that information is verified by the Secretary of State or
2 all unlicensed or unauthorized members, managers, professional
3 employees, or agents are no longer members, managers, professional
4 employees, or agents of the limited liability company.

5 Sec. 87. Each certificate of registration issued to a
6 limited liability company pursuant to section 86 of this act shall
7 expire by its own terms one year from the date of issuance and may
8 not be renewed. Each limited liability company shall annually apply
9 (1) to its regulatory body for a certificate in the manner provided
10 in subsection (1) of section 86 of this act or (2) to the Secretary
11 of State pursuant to subsection (2) of section 86 of this act if
12 the records of the regulatory body are electronically accessible
13 to the Secretary of State. A certificate or application shall be
14 delivered annually to the Secretary of State for filing within
15 thirty days before the expiration date of the last certificate or
16 application on file in the office of the Secretary of State or the
17 limited liability company shall be suspended. Certificates shall
18 not be transferable or assignable.

19 Sec. 88. A regulatory body may, upon a form prescribed
20 by it, suspend or revoke any certificate of registration issued
21 to any limited liability company pursuant to subsection (1) of
22 section 86 of this act upon the suspension or revocation of the
23 license or other authorization to render a professional service
24 by any member, manager, professional employee, or agent of the
25 limited liability company who is required by law to be licensed or

1 otherwise authorized to render the professional service for which
2 the limited liability company is organized to do business. Notice
3 of such suspension or revocation shall be provided to the limited
4 liability company affected by sending by certified or registered
5 mail a certified copy of such suspension or revocation to the
6 limited liability company at its principal place of business set
7 forth in the certificate so suspended or revoked. At the same time,
8 the regulatory body shall forward by regular mail a certified copy
9 of such suspension or revocation to the Secretary of State who
10 shall remove the suspended or revoked registration certificate from
11 his or her files and deliver it to the regulatory body.

12 Sec. 89. Nothing in the Limited Liability Company Act
13 is intended to restrict or limit in any manner the authority and
14 duty of any regulatory body licensing professionals within the
15 state to license such persons rendering a professional service or
16 to regulate the practice of any profession that is within the
17 jurisdiction of the regulatory body licensing such professionals
18 within the state notwithstanding that the person is a member,
19 manager, professional employee, or agent of a limited liability
20 company and rendering a professional service or engaging in the
21 practice of the profession through a limited liability company.

22 Sec. 90. (1) A limited liability company which renders
23 a professional service shall render only one type of professional
24 service and such services as may be ancillary thereto and shall
25 not render any other type of professional service or engage in

1 any other profession. No limited liability company may render
2 a professional service except through its members, managers,
3 professional employees, and agents who are duly licensed or
4 otherwise legally authorized to render such professional service
5 within this state.

6 (2) This section shall not be interpreted to include
7 in the term professional employee, as used in the act, clerks,
8 secretaries, bookkeepers, technicians, and other assistants who are
9 not usually and ordinarily considered by custom and practice to be
10 rendering a professional service to the public for which a license
11 or other legal authorization is required.

12 Sec. 91. The provisions of the Nebraska Uniform Limited
13 Liability Company Act shall be applicable to attorneys at law
14 only to the extent and under such terms and conditions as the
15 Nebraska Supreme Court determines to be necessary and appropriate.
16 Certificates of organization of limited liability companies
17 organized to practice law shall contain such provisions as may be
18 appropriate to comply with applicable rules of the court.

19 Sec. 92. (1) The filing fee for all filings under
20 the Nebraska Uniform Limited Liability Company Act, including
21 amendments and name reservation, shall be ten dollars plus the
22 recording fees set forth in subdivision (4) of section 33-101,
23 except that the filing fee for filing a certificate of organization
24 under section 17 of this act and for filing an application for
25 a certificate of authority to transact business in this state

1 as a foreign limited liability company under section 56 of this
2 act shall be one hundred dollars plus such recording fees and
3 ten dollars for a certificate. There shall be no recording fee
4 collected for the filing of a biennial report required by section
5 25 of this act or any corrections or amendments thereto.

6 (2) A fee of one dollar per page plus ten dollars per
7 certificate shall be paid for a certified copy of any document on
8 file under the act.

9 (3) The fees for filings under the act shall be paid to
10 the Secretary of State and remitted by him or her to the State
11 Treasurer. The State Treasurer shall credit two-thirds of the fees
12 to the General Fund and one-third of the fees to the Corporation
13 Cash Fund.

14 Sec. 93. (1) Notice of organization, amendment, merger,
15 conversion, or domestication must be published three successive
16 weeks in some legal newspaper of general circulation near the
17 designated office of the limited liability company. A notice of
18 organization must show (a) the name of the limited liability
19 company, (b) the address of the designated office, (c) the
20 general nature of the business to be transacted, (d) the time
21 of commencement and termination, if any, of the limited liability
22 company, and (e) by what members or managers the affairs of the
23 limited liability company are to be conducted. A brief resume of
24 any amendment, merger, conversion, or domestication of the limited
25 liability company shall be published in the same manner and for the

1 same period of time as notice of organization is required to be
2 published.

3 (2) Whenever any limited liability company is voluntarily
4 dissolved, notice of the dissolution shall be published as required
5 by section 50 of this act.

6 (3) Proof of publication of any of the notices shall be
7 filed in the office of the Secretary of State. In the event any
8 notice described in subsection (1) of this section and required to
9 be given pursuant to this section is not given, but is subsequently
10 published for the required time, and proof of the publication
11 thereof is filed in the office of the Secretary of State, the acts
12 of the limited liability company prior to, as well as after, such
13 publication shall be valid.

14 Sec. 94. (ULLCA 1101) In applying and construing this
15 uniform act, consideration must be given to the need to promote
16 uniformity of the law with respect to its subject matter among
17 states that enact it.

18 Sec. 95. (ULLCA 1102) The Nebraska Uniform Limited
19 Liability Company Act modifies, limits, and supersedes the federal
20 Electronic Signatures in Global and National Commerce Act, 15
21 U.S.C. 7001 et seq., but does not modify, limit, or supersede
22 section 101(c) of that act, 15 U.S.C. 7001(c), or authorize
23 electronic delivery of any of the notices described in section
24 103(b) of that act, 15 U.S.C. 7003(b).

25 Sec. 96. (ULLCA 1103) The Nebraska Uniform Limited

1 Liability Company Act does not affect an action commenced,
2 proceeding brought, or right accrued before January 1, 2011.

3 Sec. 97. (ULLCA 1104) (a) Before January 1, 2013, the
4 Nebraska Uniform Limited Liability Company Act governs only:

5 (1) a limited liability company formed on or after
6 January 1, 2011; and

7 (2) except as otherwise provided in subsection (c) of
8 this section, a limited liability company formed before January
9 1, 2011, which elects, in the manner provided in its operating
10 agreement or by law for amending the operating agreement, to be
11 subject to the act and which delivers to the Secretary of State for
12 filing a statement of election to be subject to the act pursuant to
13 this subdivision.

14 (b) Except as otherwise provided in subsection (c) of
15 this section, on and after January 1, 2013, the act governs all
16 limited liability companies.

17 (c) For the purposes of applying the act to a limited
18 liability company formed before January 1, 2011:

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

21 (2) for the purposes of applying subdivision (10) of
22 section 2 of this act and subject to subsection (d) of section 12
23 of this act, language in the company's articles of organization
24 designating the company's management structure operates as if that
25 language were in the operating agreement.

1 Sec. 98. Section 9-614, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 9-614 Lottery operator shall mean any individual,
4 sole proprietorship, partnership, limited liability company, or
5 corporation which operates a lottery on behalf of a county, city,
6 or village.

7 A lottery operator shall be a resident of Nebraska or,
8 if a partnership, limited liability company, or corporation, shall
9 be organized under the laws of this state as a partnership, formed
10 under the Limited Liability Company Act or the Nebraska Uniform
11 Limited Liability Company Act, or incorporated under the Business
12 Corporation Act.

13 Sec. 99. Section 21-2601, Revised Statutes Supplement,
14 2009, is amended to read:

15 21-2601 Sections 21-2601 to 21-2654 shall be known and
16 may be cited as the Limited Liability Company Act. The act
17 terminates on January 1, 2013.

18 Sec. 100. Section 67-248.02, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 67-248.02 (a) One or more domestic or foreign
21 partnerships or limited partnerships may merge or consolidate
22 with one or more domestic or foreign partnerships or limited
23 partnerships. Sections 67-446 to 67-453 shall govern the merger or
24 consolidation.

25 (b) Pursuant to an agreement, one or more domestic

1 or foreign limited partnerships, limited liability companies,
2 or corporations may merge into or consolidate with one or
3 more domestic or foreign limited partnerships, limited liability
4 companies, or corporations. If the resulting entity is a domestic
5 corporation, the Business Corporation Act shall govern the merger
6 or consolidation. If the surviving or resulting entity is a
7 corporation, the merger or consolidation shall be subject to
8 sections 21-20,128 to 21-20,134. If the surviving or resulting
9 entity is not a domestic corporation or a limited liability
10 company, the board of directors of each domestic corporation party
11 to such merger or consolidation shall, by resolution adopted by
12 each such board, approve a plan of merger or plan of consolidation
13 setting forth information substantially similar to that required
14 by sections 21-20,128 to 21-20,134. If the surviving or resulting
15 entity is a limited liability company, the Limited Liability
16 Company Act or the Nebraska Uniform Limited Liability Company
17 Act shall govern the merger or consolidation. Unless otherwise
18 provided in the partnership agreement, a plan of merger or
19 plan of consolidation shall be approved by each domestic limited
20 partnership which is to merge or consolidate (1) by all general
21 partners and (2) by limited partners or, if there is more than one
22 class or group of limited partners, then by limited partners of
23 each class or group of limited partners, in either case, who own
24 more than fifty percent of the then current percentage or other
25 interest in the profits of the domestic limited partnership owned

1 by all of the limited partners or by the limited partners in each
2 class or group, as appropriate. Notwithstanding prior approval, an
3 agreement or plan of merger or agreement or plan of consolidation
4 may be terminated or amended pursuant to a provision for such
5 termination or amendment contained in the agreement or plan of
6 merger or agreement or plan of consolidation.

7 (c) If the surviving or resulting entity of a merger
8 or consolidation pursuant to subsection (b) of this section is
9 not a domestic limited partnership, limited liability company, or
10 corporation following a merger or consolidation of one or more
11 domestic limited partnerships, limited liability companies, or
12 corporations and one or more foreign limited partnerships, limited
13 liability companies, or corporations, the surviving or resulting
14 entity shall comply with sections 21-20,128 to 21-20,134 and, for
15 each such domestic limited partnership, a certificate shall be
16 executed and filed in the office of the Secretary of State by
17 the surviving or resulting limited partnership, limited liability
18 company, or corporation stating that the surviving or resulting
19 limited partnership, limited liability company, or corporation
20 agrees that it may be served with process within or outside
21 this state in any proceeding in the courts of this state for
22 the enforcement of any obligation of such former domestic limited
23 partnership.

24 (d) A merger or consolidation pursuant to subsection (b)
25 of this section to which a domestic corporation is a party shall

1 become effective as provided in sections 21-20,128 to 21-20,134. A
2 merger, ~~or consolidation, or conversion~~ to which a domestic limited
3 liability company is a party shall become effective as provided in
4 sections 21-2647 to 21-2653 or sections 70 to 84 of this act. Any
5 other merger or consolidation provided for in the Nebraska Uniform
6 Limited Partnership Act shall become effective as provided in the
7 agreement or plan of merger or consolidation. When such merger,
8 ~~or consolidation, or conversion~~ has become effective, the terms of
9 sections 21-20,128 to 21-20,134 shall apply if the surviving or
10 resulting entity is a corporation, the terms of section 21-2651
11 or section 74 or 78 of this act shall apply if the surviving or
12 resulting entity is a limited liability company, and the following
13 provisions shall apply if the surviving or resulting entity is a
14 limited partnership:

15 (1) The several limited partnerships, limited liability
16 companies, or corporations which are parties to the merger or
17 consolidation agreement shall be a single limited partnership
18 which, in the case of a merger, shall be that limited partnership
19 designated in the merger agreement as the surviving limited
20 partnership and, in the case of a consolidation, shall be the new
21 limited partnership provided for in the consolidation agreement;

22 (2) The separate existence of all limited partnerships,
23 limited liability companies, and corporations which are parties to
24 the merger or consolidation agreement, except the surviving or new
25 limited partnership, shall cease;

1 (3) If the surviving or new limited partnership is
2 a domestic limited partnership, it shall have all the rights,
3 privileges, immunities, and powers and shall be subject to all the
4 duties and liabilities of a limited partnership organized under the
5 Nebraska Uniform Limited Partnership Act;

6 (4) The surviving or new limited partnership shall
7 possess all the rights, privileges, immunities, and powers, of
8 a public as well as of a private nature, of each of the
9 merging or consolidating limited partnerships and, subject to
10 the Nebraska Uniform Limited Partnership Act, each of the merging
11 or consolidating corporations. All property, real, personal, and
12 mixed, all debts due on whatever account, all other things and
13 causes of actions, and all and every other interest belonging
14 to or due to any of the limited partnerships, limited liability
15 companies, and corporations as merged or consolidated shall be
16 taken and deemed to be transferred to and vested in the surviving
17 or new limited partnership without further act and deed and
18 shall thereafter be the property of the surviving or new limited
19 partnership as they were of any of such merging or consolidating
20 entities. The title to any real property or any interest in such
21 property vested in any of such merging or consolidating entities
22 shall not revert or be in any way impaired by reason of such merger
23 or consolidation;

24 (5) Such surviving or new limited partnership shall be
25 responsible and liable for all the liabilities and obligations

1 of each of the limited partnerships, limited liability companies,
 2 or corporations so merged or consolidated. Any claim existing or
 3 action or proceeding pending by or against any of such limited
 4 partnerships, limited liability companies, or corporations may be
 5 prosecuted as if such merger or consolidation had not taken place
 6 or such surviving or new limited partnership may be substituted
 7 in its place. Neither the rights of creditors nor any liens upon
 8 the property of any such limited partnerships, limited liability
 9 companies, or corporations shall be impaired by such merger or
 10 consolidation; and

11 (6) The equity securities of the corporation or
 12 corporations, limited liability company or companies, and limited
 13 partnership or limited partnerships party to the merger or
 14 consolidation that are, under the terms of the merger or
 15 consolidation, to be converted or exchanged shall cease to exist,
 16 and the holders of such equity securities shall thereafter be
 17 entitled only to the cash, property, or securities into which
 18 they shall have been converted in accordance with the terms of
 19 the merger or consolidation, subject to any rights under sections
 20 21-20,137 to 21-20,150, ~~or~~ the Limited Liability Company Act, or
 21 the Nebraska Uniform Limited Liability Company Act.

22 Sec. 101. Section 70-1903, Reissue Revised Statutes of
 23 Nebraska, is amended to read:

24 70-1903 For purposes of the Rural Community-Based Energy
 25 Development Act:

1 (1) C-BED project or community-based energy development
2 project means a new wind energy project that:

3 (a) Has an ownership structure as follows:

4 (i) For a C-BED project that consists of more than
5 two turbines, has one or more qualified owners with no single
6 individual qualified owner owning directly or indirectly more than
7 fifteen percent of the project and with at least thirty-three
8 percent of the gross power purchase agreement payments flowing to
9 the qualified owner or owners or local community; or

10 (ii) For a C-BED project that consists of one or
11 two turbines, has one or more qualified owners with at least
12 thirty-three percent of the gross power purchase agreement payments
13 flowing to a qualified owner or owners or local community; and

14 (b) Has a resolution of support adopted:

15 (i) By the county board of each county in which the C-BED
16 project is to be located; or

17 (ii) By the tribal council for a C-BED project located
18 within the boundaries of an Indian reservation;

19 (2) Debt financing payments means principal, interest,
20 and other typical financing costs paid by the C-BED project company
21 to one or more third-party financial institutions for the financing
22 or refinancing of the construction of the C-BED project. Debt
23 financing payments does not include the repayment of principal at
24 the time of a refinancing;

25 (3) Electric utility means an electric supplier that:

1 (a) Owns more than one hundred miles of
2 one-hundred-fifteen-kilovolt or larger transmission lines in the
3 State of Nebraska;

4 (b) Owns more than two hundred megawatts of electric
5 generating facilities; and

6 (c) Has the obligation to directly serve more than two
7 hundred megawatts of wholesale or retail electric load in the State
8 of Nebraska;

9 (4) Gross power purchase agreement payments means the
10 total amount of payments during the life of the agreement. For
11 power purchase agreements entered into on or before December 31,
12 2011, if the qualified owners have a combined total of at least
13 thirty-three percent of the equity ownership in the C-BED project,
14 gross power purchase agreement payments shall be reduced by the
15 debt financing payments; and

16 (5) Qualified owner means:

17 (a) A Nebraska resident;

18 (b) A limited liability company that is organized under
19 the Limited Liability Company Act or the Nebraska Uniform Limited
20 Liability Company Act and that is made up of members who are
21 Nebraska residents;

22 (c) A Nebraska nonprofit corporation organized under the
23 Nebraska Nonprofit Corporation Act;

24 (d) An electric supplier as defined in section
25 70-1001.01, except that ownership in a single C-BED project is

1 limited to no more than:

2 (i) Fifteen percent either directly or indirectly by a
3 single electric supplier; and

4 (ii) A combined total of twenty-five percent ownership
5 either directly or indirectly by multiple electric suppliers; or

6 (e) A tribal council.

7 Sec. 102. Section 77-2704.57, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 77-2704.57 (1) Sales and use tax shall not be imposed
10 on the gross receipts from the sale, lease, or rental of personal
11 property for use in a C-BED project or community-based energy
12 development project. This exemption shall be conditioned upon
13 filing requirements for the exemption as imposed by the Tax
14 Commissioner. The requirements imposed by the Tax Commissioner
15 shall be related to ensuring that the property purchased qualifies
16 for the exemption. The Tax Commissioner may require the filing
17 of the documents showing compliance with section 70-1907, the
18 organization of the project, the distribution of the payments,
19 the power purchase agreements, the project pro forma, articles of
20 incorporation, operating agreements, and any amendments or changes
21 to these documents during the life of the power purchase agreement.

22 (2) The Tax Commissioner shall notify an electric utility
23 that has a power purchase agreement with a C-BED project if
24 there is a change in project ownership which makes the project no
25 longer eligible as a C-BED project. Purchase of a C-BED project

1 by an electric utility prior to the end of the power purchase
2 agreement disqualifies the C-BED project for the exemption, but the
3 Department of Revenue may not recover the amount of the sales and
4 use tax that was not paid by the project prior to the purchase.

5 (3) For purposes of this section:

6 (a) C-BED project or community-based energy development
7 project means a new wind energy project that:

8 (i) Has an ownership structure as follows:

9 (A) For a C-BED project that consists of more than
10 two turbines, has one or more qualified owners with no single
11 individual qualified owner owning directly or indirectly more than
12 fifteen percent of the project and with at least thirty-three
13 percent of the gross power purchase agreement payments flowing to
14 the qualified owner or owners or local community; or

15 (B) For a C-BED project that consists of one or
16 two turbines, has one or more qualified owners with at least
17 thirty-three percent of the gross power purchase agreement payments
18 flowing to a qualified owner or owners or local community; and

19 (ii) Has a resolution of support adopted:

20 (A) By the county board of each county in which the C-BED
21 project is to be located; or

22 (B) By the tribal council for a C-BED project located
23 within the boundaries of an Indian reservation;

24 (b) Debt financing payments means principal, interest,
25 and other typical financing costs paid by the C-BED project company

1 to one or more third-party financial institutions for the financing
2 or refinancing of the construction of the C-BED project. Debt
3 financing payments does not include the repayment of principal at
4 the time of a refinancing;

5 (c) New wind energy project means any tangible
6 personal property incorporated into the manufacture, installation,
7 construction, repair, or replacement of a device, such as a wind
8 charger, windmill, or wind turbine, which is used to convert wind
9 energy to electrical energy or for the transmission of electricity
10 to the purchaser; and

11 (d) Qualified owner means:

12 (i) A Nebraska resident;

13 (ii) A limited liability company that is organized under
14 the Limited Liability Company Act or the Nebraska Uniform Limited
15 Liability Company Act and that is entirely made up of members who
16 are Nebraska residents;

17 (iii) A Nebraska nonprofit corporation organized under
18 the Nebraska Nonprofit Corporation Act;

19 (iv) An electric supplier as defined in section
20 70-1001.01, except that ownership in a single C-BED project is
21 limited to no more than:

22 (A) Fifteen percent either directly or indirectly by a
23 single electric supplier; and

24 (B) A combined total of twenty-five percent ownership
25 either directly or indirectly by multiple electric suppliers; or

1 (v) A tribal council.

2 (4) Gross power purchase agreement payments are the
3 total amount of payments during the life of the agreement. For
4 power purchase agreements entered into on or before December 31,
5 2011, if the qualified owners have a combined total of at least
6 thirty-three percent of the equity ownership in the C-BED project,
7 gross power purchase agreement payments shall be reduced by the
8 debt financing payments. For the purpose of determining eligibility
9 of the project, an estimate of the payments and their recipients
10 shall be used.

11 (5) Payments to the local community include, but are not
12 limited to, lease payments to property owners on whose property a
13 turbine is located, wind energy easement payments, and real and
14 personal property tax receipts from the C-BED project.

15 (6) The Department of Revenue may examine the actual
16 payments and the distribution of the payments to determine if the
17 projected distributions were met. If the payment distributions to
18 qualified owners do not meet the requirements of this section, the
19 department may recover the amount of the sales or use tax that was
20 not paid by the project at any time up until the end of three years
21 after the end of the power purchase agreement.

22 (7) At any time prior to the end of the power purchase
23 agreements, the project may voluntarily surrender the exemption
24 granted by the Tax Commissioner and pay the amount of sales and use
25 tax that would ~~have~~ otherwise have been due.

1 (8) The amount of the tax due under either subsection
2 (6) or (7) of this section shall be increased by interest at the
3 rate specified in section 45-104.02, as such rate may from time to
4 time be adjusted, from the date the tax would have been due if no
5 exemption was granted until the date paid.

6 Sec. 103. Section 77-2716, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 77-2716 (1) The following adjustments to federal adjusted
9 gross income or, for corporations and fiduciaries, federal taxable
10 income shall be made for interest or dividends received:

11 (a) There shall be subtracted interest or dividends
12 received by the owner of obligations of the United States and its
13 territories and possessions or of any authority, commission, or
14 instrumentality of the United States to the extent includable in
15 gross income for federal income tax purposes but exempt from state
16 income taxes under the laws of the United States;

17 (b) There shall be subtracted that portion of the
18 total dividends and other income received from a regulated
19 investment company which is attributable to obligations described
20 in subdivision (a) of this subsection as reported to the recipient
21 by the regulated investment company;

22 (c) There shall be added interest or dividends received
23 by the owner of obligations of the District of Columbia, other
24 states of the United States, or their political subdivisions,
25 authorities, commissions, or instrumentalities to the extent

1 excluded in the computation of gross income for federal income
2 tax purposes except that such interest or dividends shall not be
3 added if received by a corporation which is a regulated investment
4 company;

5 (d) There shall be added that portion of the total
6 dividends and other income received from a regulated investment
7 company which is attributable to obligations described in
8 subdivision (c) of this subsection and excluded for federal
9 income tax purposes as reported to the recipient by the regulated
10 investment company; and

11 (e) (i) Any amount subtracted under this subsection shall
12 be reduced by any interest on indebtedness incurred to carry the
13 obligations or securities described in this subsection or the
14 investment in the regulated investment company and by any expenses
15 incurred in the production of interest or dividend income described
16 in this subsection to the extent that such expenses, including
17 amortizable bond premiums, are deductible in determining federal
18 taxable income.

19 (ii) Any amount added under this subsection shall be
20 reduced by any expenses incurred in the production of such income
21 to the extent disallowed in the computation of federal taxable
22 income.

23 (2) There shall be allowed a net operating loss derived
24 from or connected with Nebraska sources computed under rules
25 and regulations adopted and promulgated by the Tax Commissioner

1 consistent, to the extent possible under the Nebraska Revenue
2 Act of 1967, with the laws of the United States. For a resident
3 individual, estate, or trust, the net operating loss computed
4 on the federal income tax return shall be adjusted by the
5 modifications contained in this section. For a nonresident
6 individual, estate, or trust or for a partial-year resident
7 individual, the net operating loss computed on the federal return
8 shall be adjusted by the modifications contained in this section
9 and any carryovers or carrybacks shall be limited to the portion of
10 the loss derived from or connected with Nebraska sources.

11 (3) There shall be subtracted from federal adjusted gross
12 income for all taxable years beginning on or after January 1, 1987,
13 the amount of any state income tax refund to the extent such refund
14 was deducted under the Internal Revenue Code, was not allowed in
15 the computation of the tax due under the Nebraska Revenue Act of
16 1967, and is included in federal adjusted gross income.

17 (4) Federal adjusted gross income, or, for a fiduciary,
18 federal taxable income shall be modified to exclude the portion of
19 the income or loss received from a small business corporation with
20 an election in effect under subchapter S of the Internal Revenue
21 Code or from a limited liability company organized pursuant to
22 the Limited Liability Company Act or the Nebraska Uniform Limited
23 Liability Company Act that is not derived from or connected with
24 Nebraska sources as determined in section 77-2734.01.

25 (5) There shall be subtracted from federal adjusted gross

1 income or, for corporations and fiduciaries, federal taxable income
2 dividends received or deemed to be received from corporations which
3 are not subject to the Internal Revenue Code.

4 (6) There shall be subtracted from federal taxable income
5 a portion of the income earned by a corporation subject to the
6 Internal Revenue Code of 1986 that is actually taxed by a foreign
7 country or one of its political subdivisions at a rate in excess
8 of the maximum federal tax rate for corporations. The taxpayer may
9 make the computation for each foreign country or for groups of
10 foreign countries. The portion of the taxes that may be deducted
11 shall be computed in the following manner:

12 (a) The amount of federal taxable income from operations
13 within a foreign taxing jurisdiction shall be reduced by the amount
14 of taxes actually paid to the foreign jurisdiction that are not
15 deductible solely because the foreign tax credit was elected on the
16 federal income tax return;

17 (b) The amount of after-tax income shall be divided by
18 one minus the maximum tax rate for corporations in the Internal
19 Revenue Code; and

20 (c) The result of the calculation in subdivision (b) of
21 this subsection shall be subtracted from the amount of federal
22 taxable income used in subdivision (a) of this subsection. The
23 result of such calculation, if greater than zero, shall be
24 subtracted from federal taxable income.

25 (7) Federal adjusted gross income shall be modified to

1 exclude any amount repaid by the taxpayer for which a reduction
2 in federal tax is allowed under section 1341(a)(5) of the Internal
3 Revenue Code.

4 (8)(a) Federal adjusted gross income or, for corporations
5 and fiduciaries, federal taxable income shall be reduced, to the
6 extent included, by income from interest, earnings, and state
7 contributions received from the Nebraska educational savings plan
8 trust created in sections 85-1801 to 85-1814.

9 (b) Federal adjusted gross income or, for corporations
10 and fiduciaries, federal taxable income shall be reduced, to the
11 extent not deducted for federal income tax purposes, by the amount
12 of any gift, grant, or donation made to the Nebraska educational
13 savings plan trust for deposit in the endowment fund of the trust.

14 (c) Federal adjusted gross income or, for corporations
15 and fiduciaries, federal taxable income shall be reduced by any
16 contributions as a participant in the Nebraska educational savings
17 plan trust, to the extent not deducted for federal income tax
18 purposes, but not to exceed two thousand five hundred dollars per
19 married filing separate return or five thousand dollars for any
20 other return.

21 (d) Federal adjusted gross income or, for corporations
22 and fiduciaries, federal taxable income shall be increased by
23 the amount resulting from the cancellation of a participation
24 agreement refunded to the taxpayer as a participant in the Nebraska
25 educational savings plan trust to the extent previously deducted as

1 a contribution to the trust.

2 (9) (a) For income tax returns filed after September 10,
3 2001, for taxable years beginning or deemed to begin before January
4 1, 2006, under the Internal Revenue Code of 1986, as amended,
5 federal adjusted gross income or, for corporations and fiduciaries,
6 federal taxable income shall be increased by eighty-five percent
7 of any amount of any federal bonus depreciation received under
8 the federal Job Creation and Worker Assistance Act of 2002 or the
9 federal Jobs and Growth Tax Act of 2003, under section 168(k) or
10 section 1400L of the Internal Revenue Code of 1986, as amended,
11 for assets placed in service after September 10, 2001, and before
12 December 31, 2005.

13 (b) For a partnership, limited liability company,
14 cooperative, including any cooperative exempt from income taxes
15 under section 521 of the Internal Revenue Code of 1986, as amended,
16 limited cooperative association, subchapter S corporation, or
17 joint venture, the increase shall be distributed to the partners,
18 members, shareholders, patrons, or beneficiaries in the same
19 manner as income is distributed for use against their income tax
20 liabilities.

21 (c) For a corporation with a unitary business having
22 activity both inside and outside the state, the increase shall be
23 apportioned to Nebraska in the same manner as income is apportioned
24 to the state by section 77-2734.05.

25 (d) The amount of bonus depreciation added to federal

1 adjusted gross income or, for corporations and fiduciaries, federal
2 taxable income by this subsection shall be subtracted in a
3 later taxable year. Twenty percent of the total amount of bonus
4 depreciation added back by this subsection for tax years beginning
5 or deemed to begin before January 1, 2003, under the Internal
6 Revenue Code of 1986, as amended, may be subtracted in the first
7 taxable year beginning or deemed to begin on or after January 1,
8 2005, under the Internal Revenue Code of 1986, as amended, and
9 twenty percent in each of the next four following taxable years.
10 Twenty percent of the total amount of bonus depreciation added back
11 by this subsection for tax years beginning or deemed to begin on or
12 after January 1, 2003, may be subtracted in the first taxable year
13 beginning or deemed to begin on or after January 1, 2006, under the
14 Internal Revenue Code of 1986, as amended, and twenty percent in
15 each of the next four following taxable years.

16 (10) For taxable years beginning or deemed to begin on
17 or after January 1, 2003, and before January 1, 2006, under the
18 Internal Revenue Code of 1986, as amended, federal adjusted gross
19 income or, for corporations and fiduciaries, federal taxable income
20 shall be increased by the amount of any capital investment that is
21 expensed under section 179 of the Internal Revenue Code of 1986,
22 as amended, that is in excess of twenty-five thousand dollars that
23 is allowed under the federal Jobs and Growth Tax Act of 2003.
24 Twenty percent of the total amount of expensing added back by
25 this subsection for tax years beginning or deemed to begin on or

1 after January 1, 2003, may be subtracted in the first taxable year
2 beginning or deemed to begin on or after January 1, 2006, under the
3 Internal Revenue Code of 1986, as amended, and twenty percent in
4 each of the next four following tax years.

5 (11)(a) Federal adjusted gross income shall be reduced
6 by contributions, up to two thousand dollars per married filing
7 jointly return or one thousand dollars for any other return, and
8 any investment earnings made as a participant in the Nebraska
9 long-term care savings plan under the Long-Term Care Savings Plan
10 Act, to the extent not deducted for federal income tax purposes.

11 (b) Federal adjusted gross income shall be increased by
12 the withdrawals made as a participant in the Nebraska long-term
13 care savings plan under the act by a person who is not a qualified
14 individual or for any reason other than transfer of funds to a
15 spouse, long-term care expenses, long-term care insurance premiums,
16 or death of the participant, including withdrawals made by reason
17 of cancellation of the participation agreement or termination of
18 the plan, to the extent previously deducted as a contribution or as
19 investment earnings.

20 (12) There shall be added to federal adjusted gross
21 income for individuals, estates, and trusts any amount taken as
22 a credit for franchise tax paid by a financial institution under
23 sections 77-3801 to 77-3807 as allowed by subsection (5) of section
24 77-2715.07.

25 Sec. 104. Section 77-2734.01, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 77-2734.01 (1) Residents of Nebraska who are shareholders
3 of a small business corporation having an election in effect under
4 subchapter S of the Internal Revenue Code or who are members
5 of a limited liability company organized pursuant to the Limited
6 Liability Company Act or the Nebraska Uniform Limited Liability
7 Company Act shall include in their Nebraska taxable income, to
8 the extent includable in federal gross income, their proportionate
9 share of such corporation's or limited liability company's federal
10 income adjusted pursuant to this section. Income or loss from such
11 corporation or limited liability company conducting a business,
12 trade, profession, or occupation shall be included in the Nebraska
13 taxable income of a shareholder or member who is a resident of this
14 state to the extent of such shareholder's or member's proportionate
15 share of the net income or loss from the conduct of such business,
16 trade, profession, or occupation within this state, determined
17 under subsection (2) of this section. A resident of Nebraska
18 shall include in Nebraska taxable income fair compensation for
19 services rendered to such corporation or limited liability company.
20 Compensation actually paid shall be presumed to be fair unless
21 it is apparent to the Tax Commissioner that such compensation is
22 materially different from fair value for the services rendered or
23 has been manipulated for tax avoidance purposes.

24 (2) The income of any small business corporation having
25 an election in effect under subchapter S of the Internal Revenue

1 Code or limited liability company organized pursuant to the Limited
2 Liability Company Act or the Nebraska Uniform Limited Liability
3 Company Act that is derived from or connected with Nebraska sources
4 shall be determined in the following manner:

5 (a) If the small business corporation is a member of a
6 unitary group, the small business corporation shall be deemed to
7 be doing business within this state if any part of its income
8 is derived from transactions with other members of the unitary
9 group doing business within this state, and such corporation
10 shall apportion its income by using the apportionment factor
11 determined for the entire unitary group, including the small
12 business corporation, under sections 77-2734.05 to 77-2734.15;

13 (b) If the small business corporation or limited
14 liability company is not a member of a unitary group and is subject
15 to tax in another state, it shall apportion its income under
16 sections 77-2734.05 to 77-2734.15; and

17 (c) If the small business corporation or limited
18 liability company is not subject to tax in another state, all of
19 its income is derived from or connected with Nebraska sources.

20 (3) Nonresidents of Nebraska who are shareholders of
21 such corporations or members of such limited liability companies
22 shall file a Nebraska income tax return and shall include in
23 Nebraska adjusted gross income their proportionate share of the
24 corporation's or limited liability company's Nebraska income as
25 determined under subsection (2) of this section.

1 (4) The nonresident shareholder or member shall execute
2 and forward to the corporation or limited liability company before
3 the filing of the corporation's or limited liability company's
4 return an agreement which states he or she will file a Nebraska
5 income tax return and pay the tax on the income derived from or
6 connected with sources in this state, and such agreement shall
7 be attached to the corporation's or limited liability company's
8 Nebraska return for such taxable year.

9 (5) In the absence of the nonresident shareholder's or
10 member's executed agreement being attached to the Nebraska return,
11 the corporation or limited liability company shall remit with the
12 return an amount equal to the highest individual income tax rate
13 determined under section 77-2715.02 multiplied by the nonresident
14 shareholder's or member's share of the corporation's or limited
15 liability company's income which was derived from or attributable
16 to this state. The amount remitted shall be allowed as a credit
17 against the Nebraska income tax liability of the shareholder or
18 member.

19 (6) The Tax Commissioner may allow a nonresident
20 individual shareholder or member to not file a Nebraska income
21 tax return if the nonresident individual shareholder's or member's
22 only source of Nebraska income was his or her share of the small
23 business corporation's or limited liability company's income which
24 was derived from or attributable to sources within this state, the
25 nonresident did not file an agreement to file a Nebraska income

1 tax return, and the small business corporation or limited liability
2 company has remitted the amount required by subsection (5) of this
3 section on behalf of such nonresident individual shareholder or
4 member. The amount remitted shall be retained in satisfaction of
5 the Nebraska income tax liability of the nonresident individual
6 shareholder or member.

7 (7) A small business corporation or limited liability
8 company return shall be filed only if one or more of the
9 shareholders of the corporation or members of the limited liability
10 company are not residents of the State of Nebraska or if such
11 corporation or limited liability company has income derived from
12 sources outside this state.

13 (8) For purposes of this section, any shareholder or
14 member of the corporation or limited liability company that is
15 a grantor trust of a nonresident shall be disregarded and this
16 section shall apply as though the nonresident grantor was the
17 shareholder or member.

18 Sec. 105. This act becomes operative on January 1, 2011.

19 Sec. 106. If any section in this act or any part of any
20 section is declared invalid or unconstitutional, the declaration
21 shall not affect the validity or constitutionality of the remaining
22 portions.

23 Sec. 107. Original sections 9-614, 67-248.02, 70-1903,
24 77-2704.57, 77-2716, and 77-2734.01, Reissue Revised Statutes of
25 Nebraska, and section 21-2601, Revised Statutes Supplement, 2009,

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1 are repealed.