

**SENATE BILL NO. 17**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SIXTH LEGISLATURE - FIRST SESSION

**BY SENATOR THERRIAULT**

**Introduced: 1/21/09**

**Referred: Labor and Commerce, Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the Revised Uniform Limited Liability Company Act and to limited**  
2 **liability companies; amending Rules 8, 19, 22, 26, 79, and 82, Alaska Rules of Civil**  
3 **Procedure, and Rule 602, Alaska Rules of Appellate Procedure; and providing for an**  
4 **effective date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 \* **Section 1.** AS 04.21.035 is amended to read:

7 **Sec. 04.21.035. Responsibility of limited liability organization members.**

8 Notwithstanding any other provision of **former** AS 10.50, **AS 10.55**, or AS 32.06, a  
9 member of a limited liability organization holding a license under this title is not  
10 relieved of the obligation or the liability otherwise imposed upon a holder of a liquor  
11 license under this title solely because the license is held by a limited liability  
12 organization.

13 \* **Sec. 2.** AS 04.21.035, as amended by sec. 1 of this Act, is amended to read:

14 **Sec. 04.21.035. Responsibility of limited liability organization members.**

1 Notwithstanding any other provision of [FORMER AS 10.50,] AS 10.55 [,] or  
 2 AS 32.06, a member of a limited liability organization holding a license under this title  
 3 is not relieved of the obligation or the liability otherwise imposed upon a holder of a  
 4 liquor license under this title solely because the license is held by a limited liability  
 5 organization.

6 \* **Sec. 3.** AS 04.21.080(b)(10) is amended to read:

7 (10) "foreign limited liability company" **means a foreign limited**  
 8 **liability company subject to former** [HAS THE MEANING GIVEN IN]  
 9 AS 10.50.990 **or AS 10.55.990**;

10 \* **Sec. 4.** AS 04.21.080(b)(10), as amended by sec. 3 of this Act, is amended to read:

11 (10) "foreign limited liability company" means a foreign limited  
 12 liability company subject to [FORMER AS 10.50.990 OR] AS 10.55.990;

13 \* **Sec. 5.** AS 04.21.080(b)(13) is amended to read:

14 (13) "limited liability company" means an organization **organized**  
 15 under **former** AS 10.50 **or formed under or subject to AS 10.55**;

16 \* **Sec. 6.** AS 04.21.080(b)(13), as amended by sec. 5 of this Act, is amended to read:

17 (13) "limited liability company" means an organization [ORGANIZED  
 18 UNDER FORMER AS 10.50 OR] formed under or subject to AS 10.55;

19 \* **Sec. 7.** AS 06.26.200(c) is amended to read:

20 (c) To qualify as a private trust company, a person shall be a corporation  
 21 organized under AS 10.06, a limited liability company organized under **former**  
 22 **AS 10.50, a limited liability company formed under or subject to AS 10.55**, or a  
 23 limited partnership formed under AS 32.11, and the person's

24 (1) articles of incorporation, articles of organization, **certificate of**  
 25 **organization**, or partnership agreement must prohibit the person from acting as a  
 26 fiduciary of a trust, except for a trust created during the lifetime or upon the death of

27 (A) one named individual;

28 (B) a child, grandchild, or greatgrandchild of the individual  
 29 identified in (A) of this paragraph, but not including a stepchild,  
 30 stepgrandchild, or stepgreatgrandchild;

31 (C) a spouse or former spouse, including a person divorced

1 from the individual, of an individual identified in (A) and (B) of this  
2 paragraph; and

3 (2) headquarters must be located in this state, or the person must have  
4 in force a contract with a qualified entity to represent the person on an exclusive or  
5 nonexclusive basis in this state, including maintaining a set of records for each trust  
6 for which the person acts as a fiduciary and receiving legal process on behalf of the  
7 person; in this paragraph, "qualified entity" has the meaning given to "qualified  
8 person" in AS 13.36.390(2)(B) and (C).

9 \* **Sec. 8.** AS 06.26.200(c), as amended by sec. 7 of this Act, is amended to read:

10 (c) To qualify as a private trust company, a person shall be a corporation  
11 organized under AS 10.06, a limited liability company [ORGANIZED UNDER  
12 FORMER AS 10.50, A LIMITED LIABILITY COMPANY] formed under or subject  
13 to AS 10.55, or a limited partnership formed under AS 32.11, and the person's

14 (1) articles of incorporation, articles of organization, certificate of  
15 organization, or partnership agreement must prohibit the person from acting as a  
16 fiduciary of a trust, except for a trust created during the lifetime or upon the death of

17 (A) one named individual;

18 (B) a child, grandchild, or greatgrandchild of the individual  
19 identified in (A) of this paragraph, but not including a stepchild,  
20 stepgrandchild, or stepgreatgrandchild;

21 (C) a spouse or former spouse, including a person divorced  
22 from the individual, of an individual identified in (A) and (B) of this  
23 paragraph; and

24 (2) headquarters must be located in this state, or the person must have  
25 in force a contract with a qualified entity to represent the person on an exclusive or  
26 nonexclusive basis in this state, including maintaining a set of records for each trust  
27 for which the person acts as a fiduciary and receiving legal process on behalf of the  
28 person; in this paragraph, "qualified entity" has the meaning given to "qualified  
29 person" in AS 13.36.390(2)(B) and (C).

30 \* **Sec. 9.** AS 06.50.020(a) is amended to read:

31 (a) To qualify for a license, an applicant shall

1 (1) have cash assets of at least \$25,000, as determined under generally  
 2 accepted accounting principles, except that an applicant who wants to engage in the  
 3 business of making advances at more than one location in the state shall have cash  
 4 assets of at least \$25,000 for each location;

5 (2) demonstrate the financial responsibility, financial condition,  
 6 business experience, character, and general fitness that reasonably warrant the  
 7 department's belief that the applicant's business will be conducted lawfully and fairly;  
 8 when determining whether this qualification has been met, and for the purpose of  
 9 investigating compliance with this chapter, the department may review

10 (A) the relevant business records of the applicant and the  
 11 adequacy of the capital of the applicant;

12 (B) the competence, experience, integrity, and financial ability  
 13 of the applicant, and, if the applicant is an entity, of any person who is a  
 14 member, partner, director, senior officer, or owner of 10 percent or more of the  
 15 equity of the applicant; and

16 (C) a record, on the part of the applicant or a person described  
 17 in (B) of this paragraph, of

18 (i) a conviction for criminal activity, fraud, or other act  
 19 of personal dishonesty;

20 (ii) an act, an omission, or a practice that constitutes a  
 21 breach of a fiduciary duty; or

22 (iii) a suspension, a revocation, a removal, or an  
 23 administrative act by an agency or a department of the United States or  
 24 a state limiting the applicant's or person's participation in the conduct of  
 25 a business;

26 (3) if the person has a physical business location in the state, have a  
 27 physical business location that is accessible by and convenient to the public;

28 (4) have a current business license issued under AS 43.70; and

29 (5) if applicable,

30 (A) have a certificate of incorporation under AS 10.06.218;

31 (B) [,] have a certificate of authority under AS 10.06.705;

- 1                    **(C)** [,] have a copy of
- 2                                    **(i)** articles of organization that **satisfy former**
- 3                    [SATISFIES] AS 10.50.090 **if the organization was organized before**
- 4                    **January 1, 2010; or**
- 5                                    **(ii)** **a certificate of organization that satisfies**
- 6                    **AS 10.55.201 if the organization was formed on or after January 1,**
- 7                    **2010;**
- 8                                    **(D)** **have a certificate of authority** [, BE REGISTERED]
- 9                    under **former** AS 10.50.605 **if the organization was organized before**
- 10                   **January 1, 2010, or AS 10.55.804 if the organization was formed on or**
- 11                   **after January 1, 2010;**
- 12                                    **(E)** [,] have a statement of foreign qualification filed under
- 13                   AS 32.06.922;
- 14                                    **(F)** [,] have a certificate of limited partnership filed under
- 15                   AS 32.11.060; [,] or
- 16                                    **(G)** be registered under AS 32.11.420.

17 \* **Sec. 10.** AS 06.50.020(a), as amended by sec. 9 of this Act, is amended to read:

18                    (a) To qualify for a license, an applicant shall

19                                    (1) have cash assets of at least \$25,000, as determined under generally

20                    accepted accounting principles, except that an applicant who wants to engage in the

21                    business of making advances at more than one location in the state shall have cash

22                    assets of at least \$25,000 for each location;

23                                    (2) demonstrate the financial responsibility, financial condition,

24                    business experience, character, and general fitness that reasonably warrant the

25                    department's belief that the applicant's business will be conducted lawfully and fairly;

26                    when determining whether this qualification has been met, and for the purpose of

27                    investigating compliance with this chapter, the department may review

28                                    (A) the relevant business records of the applicant and the

29                    adequacy of the capital of the applicant;

30                                    (B) the competence, experience, integrity, and financial ability

31                    of the applicant, and, if the applicant is an entity, of any person who is a

1 member, partner, director, senior officer, or owner of 10 percent or more of the  
2 equity of the applicant; and

3 (C) a record, on the part of the applicant or a person described  
4 in (B) of this paragraph, of

5 (i) a conviction for criminal activity, fraud, or other act  
6 of personal dishonesty;

7 (ii) an act, an omission, or a practice that constitutes a  
8 breach of a fiduciary duty; or

9 (iii) a suspension, a revocation, a removal, or an  
10 administrative act by an agency or a department of the United States or  
11 a state limiting the applicant's or person's participation in the conduct of  
12 a business;

13 (3) if the person has a physical business location in the state, have a  
14 physical business location that is accessible by and convenient to the public;

15 (4) have a current business license issued under AS 43.70; and

16 (5) if applicable,

17 (A) have a certificate of incorporation under AS 10.06.218;

18 (B) have a certificate of authority under AS 10.06.705;

19 (C) have a copy of

20 [(i) ARTICLES OF ORGANIZATION THAT  
21 SATISFY FORMER AS 10.50.090 IF THE ORGANIZATION WAS  
22 ORGANIZED BEFORE JANUARY 1, 2010; OR

23 (ii)] a certificate of organization **under AS 10.55**  
24 [THAT SATISFIES AS 10.55.201 IF THE ORGANIZATION WAS  
25 FORMED ON OR AFTER JANUARY 1, 2010];

26 (D) have a certificate of authority under [FORMER  
27 AS 10.50.605 IF THE ORGANIZATION WAS ORGANIZED BEFORE  
28 JANUARY 1, 2010, OR] AS 10.55.804 [IF THE ORGANIZATION WAS  
29 FORMED ON OR AFTER JANUARY 1, 2010];

30 (E) have a statement of foreign qualification filed under  
31 AS 32.06.922;

1 (F) have a certificate of limited partnership filed under  
2 AS 32.11.060; or

3 (G) be registered under AS 32.11.420.

4 \* **Sec. 11.** AS 08.04.680(6) is amended to read:

5 (6) "limited liability company" means an organization organized under  
6 **former** AS 10.50 **or formed under or subject to AS 10.55** or a foreign limited  
7 liability company; in this paragraph, "foreign limited liability company" has the  
8 meaning given in **former** AS 10.50.990 **if the foreign limited liability company was**  
9 **subject to former AS 10.50.990, or AS 10.55.990 if it is subject to AS 10.55.990;**

10 \* **Sec. 12.** AS 08.04.680(6), as amended by sec. 11 of this Act, is amended to read:

11 (6) "limited liability company" means an organization [ORGANIZED  
12 UNDER FORMER AS 10.50 OR] formed under or subject to AS 10.55, or a foreign  
13 limited liability company; in this paragraph, "foreign limited liability company" has  
14 the meaning given in [FORMER AS 10.50.990 IF THE FOREIGN LIMITED  
15 LIABILITY COMPANY WAS SUBJECT TO FORMER AS 10.50.990, OR]  
16 AS 10.55.990 [IF IT IS SUBJECT TO AS 10.55.990];

17 \* **Sec. 13.** AS 08.48.241(f) is amended to read:

18 (f) A corporation, limited liability company, or a limited liability partnership  
19 authorized to offer architectural, engineering, land surveying, or landscape  
20 architectural services under this chapter, together with its directors, officers, managing  
21 members, **members of a member-managed limited liability company,** manager, and  
22 partners for their own individual acts, is responsible to the same degree as the  
23 designated individual registered architect, engineer, land surveyor, or landscape  
24 architect, and shall conduct its business without misconduct or malpractice in the  
25 practice of architecture, engineering, land surveying, or landscape architecture as  
26 defined in this chapter.

27 \* **Sec. 14.** AS 08.48.241(f), as amended by sec. 13 of this Act, is amended to read:

28 (f) A corporation, limited liability company, or a limited liability partnership  
29 authorized to offer architectural, engineering, land surveying, or landscape  
30 architectural services under this chapter, together with its directors, officers,  
31 [MANAGING MEMBERS,] members of a member-managed limited liability

1 company, manager, and partners for their own individual acts, is responsible to the  
 2 same degree as the designated individual registered architect, engineer, land surveyor,  
 3 or landscape architect, and shall conduct its business without misconduct or  
 4 malpractice in the practice of architecture, engineering, land surveying, or landscape  
 5 architecture as defined in this chapter.

6 \* **Sec. 15.** AS 08.48.241(j) is amended to read:

7 (j) In this section,

8 (1) "manager" has the meaning given in **former** AS 10.50.990 **if the**  
 9 **limited liability company was organized before January 1, 2010, or AS 10.55.990**  
 10 **if the limited liability company was formed on or after January 1, 2010;**

11 (2) "managing member" has the meaning given in **former**  
 12 AS 10.50.990.

13 \* **Sec. 16.** AS 08.48.241(j)(1), as amended by sec. 15 of this Act, is amended to read:

14 (1) "manager" has the meaning given in [FORMER AS 10.50.990 IF  
 15 THE LIMITED LIABILITY COMPANY WAS ORGANIZED BEFORE JANUARY  
 16 1, 2010, OR] AS 10.55.990 [IF THE LIMITED LIABILITY COMPANY WAS  
 17 FORMED ON OR AFTER JANUARY 1, 2010];

18 \* **Sec. 17.** AS 08.48.241(j) is amended by adding new paragraphs to read:

19 (3) "member" has the meaning given in AS 10.55.990;

20 (4) "member-managed limited liability company" has the meaning  
 21 given in AS 10.55.990.

22 \* **Sec. 18.** AS 08.48.341(9) is amended to read:

23 (9) "limited liability company" means

24 (A) an organization organized under **former** AS 10.50 **if the**  
 25 **organization was organized before January 1, 2010,** or **AS 10.55, if the**  
 26 **organization was formed under or subject to AS 10.55;**

27 (B) a foreign limited liability company; in this paragraph,  
 28 "foreign limited liability company" has the meaning given in **former**  
 29 AS 10.50.990 **if the organization was organized before January 1, 2010, or**  
 30 **AS 10.55.990 if the organization was formed under or subject to AS 10.55;**

31 \* **Sec. 19.** AS 08.48.341(9), as amended by sec. 18 of this Act, is amended to read:



1 (9) "limited liability company" means

2 (A) an organization organized under [FORMER AS 10.50 IF  
3 THE ORGANIZATION WAS ORGANIZED BEFORE JANUARY 1, 2010,  
4 OR] AS 10.55 [, IF THE ORGANIZATION WAS FORMED UNDER OR  
5 SUBJECT TO AS 10.55];

6 (B) a foreign limited liability company; in this paragraph,  
7 "foreign limited liability company" has the meaning given in [FORMER  
8 AS 10.50.990 IF THE ORGANIZATION WAS ORGANIZED BEFORE  
9 JANUARY 1, 2010, OR] AS 10.55.990 [IF THE ORGANIZATION WAS  
10 FORMED UNDER OR SUBJECT TO AS 10.55];

11 \* **Sec. 20.** AS 10.06.590 is amended to read:

12 **Sec. 10.06.590. Conversion to limited liability company.** A domestic  
13 corporation or foreign corporation may convert to a limited liability company under  
14 and as allowed in AS 10.55.916 - 10.55.919 [AS 10.50.570].

15 \* **Sec. 21.** AS 10.35.040(a) is amended to read:

16 (a) A person conducting a business may register its name if the name is  
17 distinguishable on the records of the department from the name of any other organized  
18 entity and from a reserved or registered name. In this subsection,

19 (1) "organized entity" means

20 (A) a corporation under AS 10.06;

21 (B) a foreign corporation authorized under AS 10.06 to transact  
22 business in this state;

23 (C) a BIDCO licensed under AS 10.13;

24 (D) a cooperative organized under AS 10.15;

25 (E) a foreign cooperative under AS 10.15 that is authorized  
26 under AS 10.06 to do business in this state;

27 (F) a nonprofit corporation organized under AS 10.20;

28 (G) a nonprofit foreign corporation authorized under AS 10.20  
29 to transact business in this state;

30 (H) a cooperative organized under AS 10.25;

31 (I) a religious corporation formed under AS 10.40;

1 (J) a professional corporation organized under AS 10.45;

2 (K) a limited liability company organized under **former**  
3 AS 10.50 **or formed under or subject to AS 10.55;**

4 (L) a foreign limited liability company registered under **former**  
5 AS 10.50 **or having a certificate of authority under AS 10.55;**

6 (M) a registered limited liability partnership under AS 32.06;

7 (N) a foreign limited liability partnership registered under  
8 AS 32.06;

9 (O) a limited partnership formed under AS 32.11; or

10 (P) a foreign limited partnership registered under AS 32.11;

11 (2) "reserved or registered name" means a name reserved or registered  
12 under this chapter, AS 10.06, **former** AS 10.50, **AS 10.55**, AS 32.06, or AS 32.11.

13 \* **Sec. 22.** AS 10.35.040(a), as amended by sec. 21 of this Act, is amended to read:

14 (a) A person conducting a business may register its name if the name is  
15 distinguishable on the records of the department from the name of any other organized  
16 entity and from a reserved or registered name. In this subsection,

17 (1) "organized entity" means

18 (A) a corporation under AS 10.06;

19 (B) a foreign corporation authorized under AS 10.06 to transact  
20 business in this state;

21 (C) a BIDCO licensed under AS 10.13;

22 (D) a cooperative organized under AS 10.15;

23 (E) a foreign cooperative under AS 10.15 that is authorized  
24 under AS 10.06 to do business in this state;

25 (F) a nonprofit corporation organized under AS 10.20;

26 (G) a nonprofit foreign corporation authorized under AS 10.20  
27 to transact business in this state;

28 (H) a cooperative organized under AS 10.25;

29 (I) a religious corporation formed under AS 10.40;

30 (J) a professional corporation organized under AS 10.45;

31 (K) a limited liability company organized under former

1 AS 10.50 or formed under or subject to AS 10.55;

2 (L) a foreign limited liability company [REGISTERED  
3 UNDER FORMER AS 10.50 OR] having a certificate of authority under  
4 AS 10.55;

5 (M) a registered limited liability partnership under AS 32.06;

6 (N) a foreign limited liability partnership registered under  
7 AS 32.06;

8 (O) a limited partnership formed under AS 32.11; or

9 (P) a foreign limited partnership registered under AS 32.11;

10 (2) "reserved or registered name" means a name reserved or registered  
11 under this chapter, AS 10.06, [FORMER AS 10.50,] AS 10.55, AS 32.06, or  
12 AS 32.11.

13 \* **Sec. 23.** AS 10 is amended by adding a new chapter to read:

14 **Chapter 55. Alaska Uniform Limited Liability Company Act.**

15 **Article 1. Nature, Purpose, Duration, Powers, and Related Law.**

16 **Sec. 10.55.104. Nature, purpose, and duration of limited liability company.**

17 (a) A limited liability company is an entity distinct from its members.

18 (b) A limited liability company may have any lawful purpose, regardless of  
19 whether a purpose is for profit.

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

21 **Sec. 10.55.105. Powers.** A limited liability company has the capacity to sue  
22 and be sued in its own name and the power to do all things necessary or convenient to  
23 carry on its activities.

24 **Sec. 10.55.106. Governing law.** The law of this state governs

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

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

28 **Sec. 10.55.107. Supplemental principles of law.** Unless displaced by  
29 particular provisions of this chapter, the principles of law and equity supplement this  
30 chapter.

31 **Article 2. Name.**

1           **Sec. 10.55.108. Name.** (a) The name of a limited liability company must  
2 contain the words "limited liability company" or "limited company" or the  
3 abbreviation "L.L.C.," "LLC," "L.C.," or "LC." "Limited" may be abbreviated as  
4 "Ltd.," and "company" may be abbreviated as "Co."

5           (b) Unless authorized by (c) of this section, the name of a limited liability  
6 company must be distinguishable in the records of the department from

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

9                   (2) the limited liability company name stated in each certificate of  
10 organization that contains the statement as provided in AS 10.55.201(b)(3) and that  
11 has not lapsed; and

12                   (3) each name reserved under AS 10.35.010, 10.35.020, and  
13 AS 10.55.109.

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

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

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

25           (d) Subject to AS 10.55.805, this section applies to a foreign limited liability  
26 company transacting business in this state that has a certificate of authority to transact  
27 business in this state or that has applied for a certificate of authority.

28           **Sec. 10.55.109. Reservation of name.** (a) A person may reserve the exclusive  
29 use of the name of a limited liability company, including a fictitious or assumed name  
30 for a foreign limited liability company whose name is not available, by delivering an  
31 application to the department for filing. The application must state the name and

1 address of the applicant and the name proposed to be reserved. If the department finds  
 2 that the name applied for is available, it must be reserved for the applicant's exclusive  
 3 use for a 120-day period.

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

7 (c) A person may reserve a name under this section or as allowed by  
 8 AS 10.35.

### 9 **Article 3. Operating Agreement.**

#### 10 **Sec. 10.55.110. Operating agreement; scope, function, and limitations.** (a)

11 Except as otherwise provided in (b) and (c) of this section, the operating agreement  
 12 governs

13 (1) relations among the members as members and between the  
 14 members and the limited liability company;

15 (2) the rights and duties under this chapter of a person in the capacity  
 16 of manager;

17 (3) the activities of the company and the conduct of those activities;  
 18 and

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

20 (b) To the extent the operating agreement does not otherwise provide for a  
 21 matter described in (a) of this section, this chapter governs the matter.

22 (c) An operating agreement may not

23 (1) vary a limited liability company's capacity under AS 10.55.105 to  
 24 sue and be sued in its own name;

25 (2) vary the law applicable under AS 10.55.106;

26 (3) vary the power of the court under AS 10.55.204;

27 (4) subject to (d) - (g) of this section, eliminate the duty of loyalty, the  
 28 duty of care, or another fiduciary duty;

29 (5) subject to (d) - (g) of this section, eliminate the contractual  
 30 obligation of good faith and fair dealing under AS 10.55.409(d);

31 (6) unreasonably restrict the duties and rights stated in AS 10.55.410;

1 (7) vary the power of a court to decree dissolution in the circumstances  
2 specified in AS 10.55.701(a)(4) and (5);

3 (8) vary the requirement to wind up a limited liability company's  
4 activities as specified in AS 10.55.702(a) and (b)(1);

5 (9) unreasonably restrict the right of a member to maintain an action  
6 under AS 10.55.901 - 10.55.906;

7 (10) restrict the right to approve a merger, conversion, or  
8 domestication under AS 10.55.924 to a member who will have personal liability with  
9 respect to a surviving, converted, or domesticated organization; or

10 (11) except as otherwise provided in AS 10.55.112(b), restrict the  
11 rights under this chapter of a person other than a member or manager.

12 (d) If not manifestly unreasonable, the operating agreement may

13 (1) restrict or eliminate the duty,

14 (A) as required in AS 10.55.409(b)(1) and (g), to account to the  
15 limited liability company and to hold as trustee for it any property, profit, or  
16 benefit derived by the member in the conduct or winding up of the company's  
17 activities, from a use by the member of the company's property, or from the  
18 appropriation of a limited liability company opportunity;

19 (B) as required in AS 10.55.409(b)(2) and (g), to refrain from  
20 dealing with the company in the conduct or winding up of the company's  
21 activities as or on behalf of a party having an interest adverse to the company;  
22 and

23 (C) as required by AS 10.55.409(b)(3) and (g), to refrain from  
24 competing with the company in the conduct of the company's activities before  
25 the dissolution of the company;

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

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

30 (4) alter another fiduciary duty, including eliminating particular  
31 aspects of that duty; and

1 (5) prescribe the standards by which to measure the performance of the  
2 contractual obligation of good faith and fair dealing under AS 10.55.409(d).

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

7 (f) To the extent the operating agreement of a member-managed limited  
8 liability company expressly relieves a member of a responsibility that the member  
9 would otherwise have under this chapter and imposes the responsibility on one or  
10 more other members, the operating agreement may, to the benefit of the member that  
11 the operating agreement relieves of the responsibility, also eliminate or limit any  
12 fiduciary duty that would have pertained to the responsibility.

13 (g) The operating agreement may alter or eliminate the indemnification for a  
14 member or manager provided by AS 10.55.408(a) and may eliminate or limit a  
15 member's or manager's liability to the limited liability company and members for  
16 money damages, except for

17 (1) breach of the duty of loyalty;

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

20 (3) a breach of a duty under AS 10.55.406;

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

22 (5) an intentional violation of criminal law.

23 (h) The court shall decide any claim under (d) of this section that a term of an  
24 operating agreement is manifestly unreasonable. The court

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

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

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

31 (B) the term is an unreasonable means to achieve the

1 provision's objective.

2 **Sec. 10.55.111. Operating agreement; effect on limited liability company**  
3 **and persons becoming members; preformation agreement.** (a) A limited liability  
4 company is bound by and may enforce the operating agreement, whether or not the  
5 company has itself manifested assent to the operating agreement.

6 (b) A person who becomes a member of a limited liability company is  
7 considered to have assented to the operating agreement.

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

14 **Sec. 10.55.112. Operating agreement; effect on third parties and**  
15 **relationship to records effective on behalf of limited liability company.** (a) An  
16 operating agreement may specify that its amendment requires the approval of a person  
17 who is not a party to the operating agreement or the satisfaction of a condition. An  
18 amendment is ineffective if its adoption does not include the required approval or  
19 satisfy the specified condition.

20 (b) The obligations of a limited liability company and its members to a person  
21 in the person's capacity as a transferee or dissociated member are governed by the  
22 operating agreement. Subject only to a court order issued under AS 10.55.503(b)(2) to  
23 carry out a charging order, an amendment to the operating agreement made after a  
24 person becomes a transferee or dissociated member is effective with regard to a debt,  
25 obligation, or other liability of the limited liability company or its members to the  
26 person in the person's capacity as a transferee or dissociated member.

27 (c) If a record that has been delivered by a limited liability company to the  
28 department for filing and has become effective under this chapter contains a provision  
29 that would be ineffective under AS 10.55.110(c) if contained in the operating  
30 agreement, the provision is likewise ineffective in the record.

31 (d) Subject to (c) of this section, if a record that has been delivered by a



1 limited liability company to the department for filing and has become effective under  
2 this chapter conflicts with a provision of the operating agreement,

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

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

7 **Article 4. Registered Office and Agent; Service of Process.**

8 **Sec. 10.55.113. Office and agent for service of process.** (a) A limited liability  
9 company shall designate and continuously maintain in this state

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

12 (2) an agent for service of process.

13 (b) A foreign limited liability company that has a certificate of authority under  
14 AS 10.55.802 shall designate and continuously maintain in this state an agent for  
15 service of process.

16 (c) An agent for service of process of a limited liability company or foreign  
17 limited liability company shall be an individual who is a resident of this state or  
18 another person with authority to transact business in this state.

19 **Sec. 10.55.114. Change of designated office or agent for service of process.**

20 (a) A limited liability company or foreign limited liability company may change its  
21 designated office, its agent for service of process, or the address of its agent for service  
22 of process by delivering to the department for filing a statement of change containing

23 (1) the name of the company;

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

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

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

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

31 (b) Subject to AS 10.55.205(c), a statement of change is effective when filed

1 by the department.

2 **Sec. 10.55.115. Resignation of agent for service of process.** (a) To resign as  
3 an agent for service of process of a limited liability company or foreign limited  
4 liability company, the agent shall deliver to the department for filing a statement of  
5 resignation containing the company name and stating that the agent is resigning.

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

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

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

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

17 **Sec. 10.55.116. Service of process.** (a) An agent for service of process  
18 appointed by a limited liability company or foreign limited liability company is an  
19 agent of the company for service of a process, notice, or demand required or permitted  
20 by law to be served on the company.

21 (b) If a limited liability company or foreign limited liability company does not  
22 appoint or maintain an agent for service of process in this state or the agent for service  
23 of process cannot with reasonable diligence be found at the agent's street address, the  
24 department is an agent of the company upon whom process, notice, or demand may be  
25 served.

26 (c) Service of a process, notice, or demand on the department as agent for a  
27 limited liability company or foreign limited liability company may be made by  
28 delivering to the department duplicate copies of the process, notice, or demand. If a  
29 process, notice, or demand is served on the department, the department shall forward  
30 one of the copies by registered or certified mail, return receipt requested, to the  
31 company at its designated office.

1 (d) Service is effected under (c) of this section at the earliest of

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

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

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

8 (e) The department shall keep a record of each process, notice, and demand  
9 served under this section and record the time of, and the action taken regarding, the  
10 service.

11 (f) This section does not affect the right to serve process, notice, or demand in  
12 another manner provided by law.

13 **Article 5. Formation; Certificate of Organization and Other Filings.**

14 **Sec. 10.55.201. Formation of limited liability company; certificate of**  
15 **organization.** (a) One or more persons may act as organizers to form a limited  
16 liability company by signing and delivering to the department for filing a certificate of  
17 organization.

18 (b) A certificate of organization must state

19 (1) the name of the limited liability company, which must comply with  
20 AS 10.55.108;

21 (2) the street and mailing addresses of the initial designated office and  
22 the name and the street and mailing addresses of the initial agent for service of process  
23 of the company; and

24 (3) if the company will not have members when the department files  
25 the certificate, a statement to that effect.

26 (c) Subject to AS 10.55.112(c), a certificate of organization may also contain  
27 statements as to matters other than those required by (b) of this section. However, a  
28 statement in a certificate of organization is not effective as a statement of authority.

29 (d) Unless the filed certificate of organization contains the statement as  
30 provided in (b)(3) of this section, the following rules apply:

31 (1) a limited liability company is formed when the department has

1 filed the certificate of organization and the company has at least one member, unless  
2 the certificate states a delayed effective date under AS 10.55.205(c);

3 (2) if the certificate states a delayed effective date, a limited liability  
4 company is not formed if, before the certificate takes effect, a statement of  
5 cancellation is signed and delivered to the department for filing and the department  
6 files the certificate;

7 (3) subject to a delayed effective date and except in a proceeding by  
8 this state to dissolve a limited liability company, the filing of the certificate of  
9 organization by the department is conclusive proof that the organizer satisfied all  
10 conditions to the formation of a limited liability company.

11 (e) If a filed certificate of organization contains a statement as provided in  
12 (b)(3) of this section, the following rules apply:

13 (1) the certificate lapses and is void unless, within 90 days after the  
14 date the department files the certificate, an organizer signs and delivers to the  
15 department for filing a notice stating

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

17 and

18 (B) the date on which a person or persons became the  
19 company's initial member or members;

20 (2) if an organizer complies with (1) of this subsection, a limited  
21 liability company is considered to be formed as of the date of initial membership  
22 stated in the notice delivered under (1) of this subsection;

23 (3) except in a proceeding by this state to dissolve a limited liability  
24 company, the filing of the notice described in (1) of this subsection by the department  
25 is conclusive proof that the organizer satisfied all conditions to the formation of a  
26 limited liability company.

27 **Sec. 10.55.202. Amendment or restatement of certificate of organization.**

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

29 (b) To amend its certificate of organization, a limited liability company shall  
30 deliver to the department for filing an amendment stating

31 (1) the name of the company;

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

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

4 (c) To restate its certificate of organization, a limited liability company shall  
5 deliver to the department for filing a restatement, designated as a restatement in its  
6 heading, stating

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

9 (2) if the company's name has been changed since the company's  
10 formation, each of the company's former names; and

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

13 (d) Subject to AS 10.55.112(c) and 10.55.205(c), an amendment to or  
14 restatement of a certificate of organization is effective when filed by the department.

15 (e) If a member of a member-managed limited liability company or a manager  
16 of a manager-managed limited liability company knows that information in a filed  
17 certificate of organization was inaccurate when the certificate was filed or has become  
18 inaccurate owing to changed circumstances, the member or manager shall promptly

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

20 (2) if appropriate, deliver to the department for filing a statement of  
21 change under AS 10.55.114 or a statement of correction under AS 10.55.206.

22 **Sec. 10.55.203. Signing of records to be delivered to department for filing.**

23 (a) A record delivered to the department for filing under this chapter shall be signed as  
24 follows:

25 (1) except as otherwise provided in (2) - (4) of this subsection, a record  
26 signed on behalf of a limited liability company shall be signed by a person authorized  
27 by the company;

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

30 (3) a notice under AS 10.55.201(e)(1) shall be signed by an organizer;

31 (4) a record filed on behalf of a dissolved limited liability company

1 that does not have members shall be signed by the person winding up the company's  
 2 activities under AS 10.55.702(c) or a person appointed under AS 10.55.702(d) to wind  
 3 up those activities;

4 (5) a statement of cancellation under AS 10.55.201(d)(2) shall be  
 5 signed by each organizer who signed the initial certificate of organization, but a  
 6 personal representative of a deceased or incompetent organizer may sign in the place  
 7 of the deceased or incompetent organizer;

8 (6) a statement of denial by a person under AS 10.55.303 shall be  
 9 signed by that person;

10 (7) another record shall be signed by the person on whose behalf the  
 11 record is delivered to the department.

12 (b) A record filed under this chapter may be signed by an agent.

13 **Sec. 10.55.204. Signing and filing under judicial order.** (a) If a person  
 14 required by this chapter to sign a record or deliver a record to the department for filing  
 15 under this chapter does not sign or deliver the record to the department for filing under  
 16 this chapter, another person who is aggrieved may petition the court to order

17 (1) the person to sign the record;

18 (2) the person to deliver the record to the department for filing; or

19 (3) the department to file the record unsigned.

20 (b) If a petitioner under (a) of this section is not the limited liability company  
 21 or foreign limited liability company to whom the record pertains, the petitioner shall  
 22 make the company a party to the action.

23 **Sec. 10.55.205. Delivery to and filing of records by department; effective**  
 24 **time and date.** (a) A record authorized or required to be delivered to the department  
 25 for filing under this chapter must be captioned to describe the record's purpose, be in a  
 26 medium permitted by the department, and be delivered to the department. If the filing  
 27 fees have been paid, unless the department determines that a record does not comply  
 28 with the filing requirements of this chapter, the department shall file the record and

29 (1) for a statement of denial under AS 10.55.303, send a copy of the  
 30 filed statement and a receipt for the fees to the person on whose behalf the statement  
 31 was delivered for filing and to the limited liability company; and

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

3 (b) Upon request and payment of the requisite fee, the department shall send  
4 to the requester a certified copy of a requested record.

5 (c) Except as otherwise provided in AS 10.55.115 and 10.55.206 and except  
6 for a certificate of organization that contains a statement as provided in  
7 AS 10.55.201(b)(3), a record delivered to the department for filing under this chapter  
8 may specify an effective time and a delayed effective date. Subject to AS 10.55.115,  
9 10.55.201(d)(1), and 10.55.206, a record filed by the department is effective

10 (1) if the record does not specify either an effective time or a delayed  
11 effective date, on the date and at the time the record is filed as evidenced by the  
12 department's endorsement of the date and time on the record;

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

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

17 (A) the specified date; or

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

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

21 (A) the specified date; or

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

23 **Sec. 10.55.206. Correcting filed record.** (a) A limited liability company or  
24 foreign limited liability company may deliver to the department for filing a statement  
25 of correction to correct a record previously delivered by the company to the  
26 department and filed by the department if, at the time of filing, the record contained  
27 inaccurate information or was defectively signed.

28 (b) A statement of correction under (a) of this section may not state a delayed  
29 effective date and must

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

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

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

4 (c) When filed by the department, a statement of correction under (a) of this  
5 section is effective retroactively as of the effective date of the record the statement  
6 corrects, but the statement is effective when filed

7 (1) for the purposes of AS 10.55.943(d); and

8 (2) as to persons who previously relied on the uncorrected record and  
9 would be adversely affected by the retroactive effect.

10 **Sec. 10.55.207. Liability for inaccurate information in filed record.** (a) If a  
11 record delivered to the department for filing under this chapter and filed by the  
12 department contains inaccurate information, a person who suffers a loss by reliance on  
13 the information may recover damages for the loss from

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

17 (2) subject to (b) of this section, a member of a member-managed  
18 limited liability company or the manager of a manager-managed limited liability  
19 company, if

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

22 (B) the member or manager had notice of the inaccuracy for a  
23 reasonably sufficient time before the information was relied upon so that,  
24 before the reliance, the member or manager reasonably could have

25 (i) effected an amendment under AS 10.55.202;

26 (ii) filed a petition under AS 10.55.204; or

27 (iii) delivered to the department for filing a statement of  
28 change under AS 10.55.114 or a statement of correction under  
29 AS 10.55.206.

30 (b) To the extent that the operating agreement of a member-managed limited  
31 liability company expressly relieves a member of responsibility for maintaining the



1 accuracy of information contained in records delivered on behalf of the company to  
2 the department for filing under this chapter and imposes that responsibility on one or  
3 more other members, the liability stated in (a)(2) of this section applies to those other  
4 members and not to the member that the operating agreement relieves of the  
5 responsibility.

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

9 **Sec. 10.55.208. Certificate of existence or authorization.** (a) The department,  
10 upon request and payment of the requisite fee, shall furnish to any person a certificate  
11 of existence for a limited liability company if the records filed with the department  
12 show that the company has been formed under AS 10.55.201 and the department has  
13 not filed a statement of termination pertaining to the company. A certificate of  
14 existence must state

15 (1) the company's name;

16 (2) that the company was formed under the laws of this state and the  
17 date of formation;

18 (3) whether all fees, taxes, and penalties due under this chapter or  
19 another law to the department have been paid;

20 (4) whether the company's most recent annual report required by  
21 AS 10.55.209 has been filed by the department;

22 (5) whether the department has administratively dissolved the  
23 company;

24 (6) whether the company has delivered to the department for filing a  
25 statement of dissolution;

26 (7) that a statement of termination has not been filed by the  
27 department; and

28 (8) other facts of record in the department that are specified by the  
29 person requesting the certificate.

30 (b) The department, upon request and payment of the requisite fee, shall  
31 furnish to any person a certificate of authorization for a foreign limited liability

1 company if the records filed with the department show that the department has filed a  
2 certificate of authority, has not revoked the certificate of authority, and has not filed a  
3 notice of cancellation. A certificate of authorization must state

4 (1) the company's name and any alternate name adopted under  
5 AS 10.55.805(a) for use in this state;

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

7 (3) whether all fees, taxes, and penalties due under this chapter or  
8 another law to the department have been paid;

9 (4) whether the company's most recent annual report required by  
10 AS 10.55.209 has been filed by the department;

11 (5) that the department has not revoked the company's certificate of  
12 authority and has not filed a notice of cancellation; and

13 (6) other facts of record in the department that are specified by the  
14 person requesting the certificate.

15 (c) Subject to any qualification stated in the certificate, a certificate of  
16 existence or certificate of authorization issued by the department is conclusive  
17 evidence that the limited liability company is in existence or the foreign limited  
18 liability company is authorized to transact business in this state.

19 **Sec. 10.55.209. Annual report for department.** (a) Each year, a limited  
20 liability company or a foreign limited liability company authorized to transact business  
21 in this state shall deliver to the department for filing a report that states

22 (1) the name of the company;

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

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

27 (4) in the case of a foreign limited liability company, the state or other  
28 jurisdiction under whose law the company is formed and any alternate name adopted  
29 under AS 10.55.805(a).

30 (b) Information in an annual report under this section must be current as of the  
31 date the report is delivered to the department for filing.

1 (c) The first annual report under this section shall be delivered to the  
 2 department between January 1 and April 1 of the year following the calendar year in  
 3 which a limited liability company was formed or a foreign limited liability company  
 4 was authorized to transact business. A report shall be delivered to the department  
 5 between January 1 and April 1 of each subsequent calendar year.

6 (d) If an annual report under this section does not contain the information  
 7 required in (a) of this section, the department shall promptly notify the reporting  
 8 limited liability company or foreign limited liability company and return the report to  
 9 it for correction. If the report is corrected to contain the information required in (a) of  
 10 this section and delivered to the department within 30 days after the effective date of  
 11 the notice, it is timely delivered.

12 (e) If an annual report under this section contains an address of a designated  
 13 office or the name or address of an agent for service of process that differs from the  
 14 information shown in the records of the department immediately before the annual  
 15 report becomes effective, the differing information in the annual report is considered a  
 16 statement of change under AS 10.55.114.

17 **Article 6. Relations of Members and Managers to Persons Dealing with Limited**  
 18 **Liability Company.**

19 **Sec. 10.55.301. No agency power of member as member.** (a) A member is  
 20 not an agent of a limited liability company solely by reason of being a member.

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

24 **Sec. 10.55.302. Statement of authority.** (a) A limited liability company may  
 25 deliver to the department for filing a statement of authority. The statement

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

28 (2) with respect to a position that exists in or with respect to the  
 29 company, may state the authority, or limitations on the authority, of all persons  
 30 holding the position to

31 (A) execute an instrument transferring real property held in the

1 name of the company; or

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

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

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

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

10 (b) To amend or cancel a statement of authority filed by the department under  
11 AS 10.55.205(a), a limited liability company shall deliver to the department for filing  
12 an amendment or cancellation stating

13 (1) the name of the company;

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

16 (3) the caption of the statement being amended or cancelled and the  
17 date the statement being affected became effective; and

18 (4) the contents of the amendment or a declaration that the statement  
19 being affected is cancelled.

20 (c) A statement of authority affects only the power of a person to bind a  
21 limited liability company to persons who are not members.

22 (d) Subject to (c) of this section and AS 10.55.943(d) and except as otherwise  
23 provided in (f) - (h) of this section, a limitation on the authority of a person or a  
24 position contained in an effective statement of authority is not by itself evidence of  
25 knowledge or notice of the limitation by a person.

26 (e) Subject to (c) of this section, a grant of authority not pertaining to transfers  
27 of real property and contained in an effective statement of authority is conclusive in  
28 favor of a person who gives value in reliance on the grant, except to the extent that,  
29 when the person gives value,

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

31 (2) the statement has been cancelled or restrictively amended under (b)

1 of this section; or

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

5 (f) Subject to (c) of this section, an effective statement of authority that grants  
6 authority to transfer real property held in the name of the limited liability company  
7 and that is recorded by certified copy in the office for recording transfers of the real  
8 property is conclusive in favor of a person who gives value in reliance on the grant  
9 without knowledge to the contrary, except to the extent that, when the person gives  
10 value,

11 (1) the statement has been cancelled or restrictively amended under (b)  
12 of this section and a certified copy of the cancellation or restrictive amendment has  
13 been recorded in the office for recording transfers of the real property; or

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

18 (g) Subject to (c) of this section, if a certified copy of an effective statement  
19 containing a limitation on the authority to transfer real property held in the name of a  
20 limited liability company is recorded in the office for recording transfers of that real  
21 property, all persons are considered to know of the limitation.

22 (h) Subject to (i) of this section, an effective statement of dissolution or  
23 termination is a cancellation of a filed statement of authority for the purposes of (f) of  
24 this section and is a limitation on authority for the purposes of (g) of this section.

25 (i) After a statement of dissolution becomes effective, a limited liability  
26 company may deliver to the department for filing and, if appropriate, may record a  
27 statement of authority that is designated as a postdissolution statement of authority.  
28 The statement operates as provided in (f) and (g) of this section.

29 (j) Unless earlier cancelled, an effective statement of authority is cancelled by  
30 operation of law five years after the date on which the statement, or its most recent  
31 amendment, becomes effective. This cancellation operates without need for recording

1 under (f) or (g) of this section.

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

5 **Sec. 10.55.303. Statement of denial.** A person named in a filed statement of  
6 authority granting that person authority may deliver to the department for filing a  
7 statement of denial that

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

10 (2) denies the grant of authority.

11 **Sec. 10.55.304. Liability of members and managers.** (a) The debts,  
12 obligations, or other liabilities of a limited liability company, whether arising in  
13 contract, tort, or otherwise,

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

16 (2) do not become the debts, obligations, or other liabilities of a  
17 member or manager solely by reason of the member's acting as a member or the  
18 manager's acting as a manager.

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

23 **Article 7. Relations of Members to Each Other and to Limited Liability Company.**

24 **Sec. 10.55.401. Becoming member.** (a) If a limited liability company is to  
25 have only one member upon formation, the person becomes a member as agreed by  
26 that person and the organizer of the company. That person and the organizer may be,  
27 but do not need to be, different persons. If different, the organizer acts on behalf of the  
28 initial member.

29 (b) If a limited liability company is to have more than one member upon  
30 formation, those persons become members as agreed by the persons before the  
31 formation of the company. The organizer acts on behalf of the persons in forming the

1 company and may be, but does not need to be, one of the persons.

2 (c) If a filed certificate of organization contains the statement required by  
3 AS 10.55.201(b)(3), a person becomes an initial member of the limited liability  
4 company with the consent of a majority of the organizers. The organizers may consent  
5 to more than one person simultaneously becoming the company's initial members.

6 (d) After formation of a limited liability company, a person becomes a  
7 member

8 (1) as provided in the operating agreement;

9 (2) as the result of a transaction effective under AS 10.55.912 -  
10 10.55.931;

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

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

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

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

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

20 **Sec. 10.55.402. Form of contribution.** A contribution may consist of tangible  
21 or intangible property or another benefit to a limited liability company, including  
22 money, services performed, promissory notes, other agreements to contribute money  
23 or property, and contracts for services to be performed.

24 **Sec. 10.55.403. Liability for contributions.** (a) A person's obligation to make  
25 a contribution to a limited liability company is not excused by the person's death,  
26 disability, or other inability to perform personally. If a person does not make a  
27 required contribution, the person or the person's estate is obligated to contribute  
28 money equal to the value of the part of the contribution that has not been made, at the  
29 option of the company.

30 (b) A creditor of a limited liability company that extends credit or otherwise  
31 acts in reliance on an obligation described in (a) of this section may enforce the

1 obligation.

2 **Sec. 10.55.404. Sharing of and right to distributions before dissolution.** (a)

3 A distribution made by a limited liability company before its dissolution and winding  
4 up must be in equal shares among members and dissociated members, except to the  
5 extent necessary to comply with a transfer effective under AS 10.55.502 and a  
6 charging order in effect under AS 10.55.503.

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

10 (c) A person does not have a right to demand or receive a distribution from a  
11 limited liability company in a form other than money. Except as otherwise provided in  
12 AS 10.55.708(c), a limited liability company may distribute an asset in kind if each  
13 part of the asset is fungible with each other part and each person receives a percentage  
14 of the asset equal in value to the person's share of distributions.

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

18 **Sec. 10.55.405. Limitations on distribution.** (a) A limited liability company  
19 may not make a distribution if, after the distribution,

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

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

27 (b) A limited liability company may base a determination that a distribution is  
28 not prohibited under (a) of this section on financial statements prepared on the basis of  
29 accounting practices and principles that are reasonable in the circumstances or on a  
30 fair valuation or other method that is reasonable under the circumstances.

31 (c) Except as otherwise provided in (f) of this section, the effect of a



1 distribution under (a) of this section is measured,

2 (1) in the case of a distribution by purchase, redemption, or other  
3 acquisition of a transferable interest in the company, as of the date money or other  
4 property is transferred or 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 within  
7 120 days after that date; or

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

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

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

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

21 (g) In (a) of this section, "distribution" does not include amounts constituting  
22 reasonable compensation for present or past services or reasonable payments made in  
23 the ordinary course of business under a bona fide retirement plan or other benefits  
24 program.

25 **Sec. 10.55.406. Liability for improper distributions.** (a) Except as otherwise  
26 provided in (b) of this section, if a member of a member-managed limited liability  
27 company or manager of a manager-managed limited liability company consents to a  
28 distribution made in violation of AS 10.55.405 and, in consenting to the distribution,  
29 fails to comply with AS 10.55.409, the member or manager is personally liable to the  
30 company for the amount of the distribution that exceeds the amount that could have  
31 been distributed without the violation of AS 10.55.405.

1 (b) To the extent the operating agreement of a member-managed limited  
 2 liability company expressly relieves a member of the authority and responsibility to  
 3 consent to distributions and imposes that authority and responsibility on one or more  
 4 other members, the liability stated in (a) of this section applies to the other members  
 5 and not the member that the operating agreement relieves of authority and  
 6 responsibility.

7 (c) A person who receives a distribution knowing that the distribution to that  
 8 person was made in violation of AS 10.55.405 is personally liable to the limited  
 9 liability company but only to the extent that the distribution received by the person  
 10 exceeded the amount that could have been properly paid under AS 10.55.405.

11 (d) A person against whom an action is commenced because the person is  
 12 liable under (a) of this section may implead

13 (1) another person who is subject to liability under (a) of this section  
 14 and seek to compel contribution from the person; and

15 (2) a person who received a distribution in violation of (c) of this  
 16 section and seek to compel contribution from the person in the amount the person  
 17 received in violation of (c) of this section.

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

20 **Sec. 10.55.407. Management of limited liability company.** (a) A limited  
 21 liability company is a member-managed limited liability company unless the operating  
 22 agreement

23 (1) expressly provides that

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

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

26 (C) management of the company is or will be "vested in  
 27 managers"; or

28 (2) includes words of similar import.

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

31 (1) the management and conduct of the company are vested in the

1 members;

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

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

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

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

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

12 (1) except as otherwise expressly provided in this chapter, a matter  
13 relating to the activities of the company is decided exclusively by the managers;

14 (2) each manager has equal rights in the management and conduct of  
15 the activities of the company;

16 (3) a difference arising among managers as to a matter in the ordinary  
17 course of the activities of the company may be decided by a majority of the managers;

18 (4) the consent of all members is required to

19 (A) sell, lease, exchange, or otherwise dispose of all, or  
20 substantially all, of the company's property, with or without the good will,  
21 outside the ordinary course of the company's activities;

22 (B) approve a merger, conversion, or domestication under  
23 AS 10.55.912 - 10.55.931;

24 (C) undertake another act outside the ordinary course of the  
25 company's activities; and

26 (D) amend the operating agreement;

27 (5) a manager may be chosen by the consent of a majority of the  
28 members and remains a manager until a successor has been chosen, unless the  
29 manager at an earlier time resigns, is removed, or dies, or, in the case of a manager  
30 who is not an individual, terminates; a manager may be removed by the consent of a  
31 majority of the members without notice or cause;

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

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

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

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

15 (f) This chapter does not entitle a member to remuneration for services  
16 performed for a member-managed limited liability company, except for reasonable  
17 compensation for services rendered in winding up the activities of the company.

18 **Sec. 10.55.408. Indemnification and insurance.** (a) A limited liability  
19 company shall reimburse for a payment made and indemnify for a debt, obligation, or  
20 other liability incurred by a member of a member-managed company or the manager  
21 of a manager-managed company in the course of the member's or manager's activities  
22 on behalf of the company, if, in making the payment or incurring the debt, obligation,  
23 or other liability, the member or manager complied with the duties stated in  
24 AS 10.55.405 and 10.55.409.

25 (b) A limited liability company may purchase and maintain insurance on  
26 behalf of a member or manager of the company against liability asserted against or  
27 incurred by the member or manager in that capacity or arising from that status even if,  
28 under AS 10.55.110(g), the operating agreement could not eliminate or limit the  
29 person's liability to the company for the conduct giving rise to the liability.

30 **Sec. 10.55.409. Standards of conduct for members and managers.** (a) A  
31 member of a member-managed limited liability company owes to the company and,

1 subject to AS 10.55.901(b), the other members the fiduciary duties of loyalty and care  
2 stated in (b) and (c) of this section.

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

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

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

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

9 (C) from the appropriation of a limited liability company  
10 opportunity;

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

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

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

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

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

31 (f) All of the members of a member-managed limited liability company or a

1 manager-managed limited liability company may authorize or ratify, after full  
2 disclosure of all material facts, a specific act or transaction that otherwise would  
3 violate the duty of loyalty.

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

6 (1) the provisions of (a) - (c) and (e) of this section apply to the  
7 manager or managers and not the members;

8 (2) the duty stated under (b)(3) of this section continues until winding  
9 up is completed;

10 (3) the provisions of (d) of this section apply to the members and  
11 manager;

12 (4) the provisions of (f) of this section apply only to the members;

13 (5) a member does not have a fiduciary duty to the company or to  
14 another member solely by reason of being a member.

15 **Sec. 10.55.410. Right of members, managers, and dissociated members to**  
16 **information.** (a) In a member-managed limited liability company, the following rules  
17 apply:

18 (1) on reasonable notice, a member may inspect and copy, during  
19 regular business hours, at a reasonable location specified by the company, a record  
20 maintained by the company regarding the company's activities, financial condition,  
21 and other circumstances, to the extent the information is material to the member's  
22 rights and duties under the operating agreement or this chapter;

23 (2) the company shall furnish to each member

24 (A) without demand, information concerning the company's  
25 activities, financial condition, and other circumstances that the company knows  
26 and is material to the proper exercise of the member's rights and duties under  
27 the operating agreement or this chapter, except to the extent the company can  
28 establish that it reasonably believes the member already knows the  
29 information; and

30 (B) on demand, other information concerning the company's  
31 activities, financial condition, and other circumstances, except to the extent the

1 demand or information demanded is unreasonable or otherwise improper under  
2 the circumstances;

3 (3) the duty to furnish information under (2) of this subsection also  
4 applies to each member to the extent the member knows any of the information  
5 described in (2) of this subsection.

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

8 (1) the informational rights stated in (a) of this section and the duty  
9 stated in (a)(3) of this section apply to the managers and not the members;

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

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

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

19 (C) the information sought is directly connected to the  
20 member's purpose;

21 (3) within 10 days after receiving a demand under (2)(B) of this  
22 subsection, the company shall in a record inform the member that made the demand

23 (A) of the information that the company will provide in  
24 response to the demand and when and where the company will provide the  
25 information; and

26 (B) if the company declines to provide any demanded  
27 information, the company's reasons for declining;

28 (4) whenever this chapter or an operating agreement provides for a  
29 member to give or withhold consent to a matter, before the consent is given or  
30 withheld, the company shall, without demand, provide the member with all  
31 information that is known to the company and is material to the member's decision.

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

8 (d) A limited liability company may charge a person who makes a demand  
 9 under this section the reasonable costs of copying, limited to the costs of labor and  
 10 material.

11 (e) A member or dissociated member may exercise rights under this section  
 12 through an agent or, in the case of an individual under legal disability, a legal  
 13 representative. A restriction or condition imposed by the operating agreement or under  
 14 (g) of this section applies both to the agent or legal representative and the member or  
 15 dissociated member.

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

17 (g) In addition to a restriction or condition stated in its operating agreement, a  
 18 limited liability company, as a matter within the ordinary course of its activities, may  
 19 impose reasonable restrictions and conditions on access to and use of information to  
 20 be furnished under this section, including designating information confidential and  
 21 imposing nondisclosure and safeguarding obligations on the recipient. In a dispute  
 22 concerning the reasonableness of a restriction under this subsection, the company has  
 23 the burden of proving reasonableness.

24 **Article 8. Transferable Interests and Rights of Transferees and Creditors.**

25 **Sec. 10.55.501. Nature of transferable interest.** A transferable interest is  
 26 personal property.

27 **Sec. 10.55.502. Transfer of transferable interest.** (a) A transfer, in whole or  
 28 in part, of a transferable interest

29 (1) is permissible;

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



1 (3) subject to AS 10.55.504, does not entitle the transferee

2 (A) to participate in the management or conduct of the  
3 company's activities; or

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

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

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

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

15 (e) A limited liability company does not have to give effect to a transferee's  
16 rights under this section until the company has notice of the transfer.

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

20 (g) Except as otherwise provided in AS 10.55.602(4)(B), when a member  
21 transfers a transferable interest, the transferor retains the rights of a member other than  
22 the interest in distributions transferred and retains all duties and obligations of a  
23 member.

24 (h) When a member transfers a transferable interest to a person who becomes  
25 a member with respect to the transferred interest, the transferee is liable for the  
26 member's obligations under AS 10.55.403 and 10.55.406(c) known to the transferee  
27 when the transferee becomes a member.

28 **Sec. 10.55.503. Charging order.** (a) On application by a judgment creditor of  
29 a member or transferee, a court may enter a charging order against the transferable  
30 interest of the judgment debtor for the unsatisfied amount of the judgment. A charging  
31 order constitutes a lien on a judgment debtor's transferable interest and requires the

1 limited liability company to pay over to the person to whom the charging order was  
2 issued a distribution that would otherwise be paid to the judgment debtor.

3 (b) To the extent necessary to carry out the collection of distributions under a  
4 charging order in effect under (a) of this section, the court may

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

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

8 (c) Upon a showing that distributions under a charging order will not pay the  
9 judgment debt within a reasonable time, the court may foreclose the lien and order the  
10 sale of the transferable interest. The purchaser at the foreclosure sale only obtains the  
11 transferable interest, does not become a member because of the purchase at the  
12 foreclosure sale, and is subject to AS 10.55.502.

13 (d) At any time before foreclosure under (c) of this section, the member or  
14 transferee whose transferable interest is subject to a charging order under (a) of this  
15 section may extinguish the charging order by satisfying the judgment and filing a  
16 certified copy of the satisfaction with the court that issued the charging order.

17 (e) At any time before foreclosure under (c) of this section, a limited liability  
18 company or one or more members whose transferable interests are not subject to the  
19 charging order may pay to the judgment creditor the full amount due under the  
20 judgment and, by the payment, succeed to the rights of the judgment creditor,  
21 including the charging order.

22 (f) This chapter does not deprive a member or transferee of the benefit of an  
23 exemption law applicable to the member's or transferee's transferable interest.

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

27 **Sec. 10.55.504. Power of personal representative of deceased member.** If a  
28 member dies, the deceased member's personal representative or other legal  
29 representative may exercise the rights of a transferee provided in AS 10.55.502(c) and,  
30 for the purposes of settling the estate, the rights of a current member under  
31 AS 10.55.410.

1 **Article 9. Member's Dissociation.**

2 **Sec. 10.55.601. Member's power to dissociate; wrongful dissociation.** (a) A  
3 person has the power to dissociate as a member at any time, rightfully or wrongfully,  
4 by withdrawing as a member by express will under AS 10.55.602(1).

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

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

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

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

10 (B) the person is expelled as a member by judicial order under  
11 AS 10.55.602(5);

12 (C) the person is dissociated under AS 10.55.602(7)(A) by  
13 becoming a debtor in bankruptcy; or

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

17 (c) A person who wrongfully dissociates as a member is liable to the limited  
18 liability company and, subject to AS 10.55.901, to the other members for damages  
19 caused by the dissociation. The liability is in addition to another debt, obligation, or  
20 other liability of the member to the company or the other members.

21 **Sec. 10.55.602. Events causing dissociation.** A person is dissociated as a  
22 member from a limited liability company when

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

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

28 (3) the person is expelled as a member under the operating agreement;

29 (4) the person is expelled as a member by the unanimous consent of  
30 the other members if

31 (A) it is unlawful to carry on the company's activities with the

1 person as a member;

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

4 (i) a transfer for security purposes; or

5 (ii) a charging order in effect under AS 10.55.503 that  
6 has not been foreclosed;

7 (C) the person is a corporation and, within 90 days after the  
8 company notifies the person that it will be expelled as a member because the  
9 person has filed a certificate of dissolution or the equivalent, its charter has  
10 been revoked, or its right to conduct business has been suspended by the  
11 jurisdiction of its incorporation, the certificate of dissolution has not been  
12 revoked or its charter or right to conduct business has not been reinstated; or

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

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

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

20 (B) has wilfully or persistently committed, or is wilfully and  
21 persistently committing, a material breach of the operating agreement or the  
22 person's duties or obligations under AS 10.55.409; or

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

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

27 (A) the person dies; or

28 (B) in a member-managed limited liability company

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

31 (ii) there is a judicial order that the person has otherwise

1 become incapable of performing the person's duties as a member under  
2 this chapter or the operating agreement;

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

4 (A) becomes a debtor in bankruptcy;

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

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

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

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

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

17 (11) the company participates in a merger under AS 10.55.912 -  
18 10.55.931, if

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

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

22 (12) the company participates in a conversion under AS 10.55.912 -  
23 10.55.931;

24 (13) the company participates in a domestication under AS 10.55.912 -  
25 10.55.931, if, as a result of the domestication, the person ceases to be a member; or

26 (14) the company terminates.

27 **Sec. 10.55.603. Effect of person's dissociation as member.** (a) When a  
28 person is dissociated as a member of a limited liability company,

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

31 (2) if the company is member-managed, the person's fiduciary duties

1 as a member end with regard to matters arising and events occurring after the person's  
2 dissociation; and

3 (3) subject to AS 10.55.504 and 10.55.912 - 10.55.931, a transferable  
4 interest owned by the person immediately before dissociation in the person's capacity  
5 as a member is owned by the person solely as a transferee.

6 (b) A person's dissociation as a member of a limited liability company does  
7 not of itself discharge the person from a debt, obligation, or other liability to the  
8 company or the other members that the person incurred while a member.

9 **Article 10. Dissolution and Winding Up.**

10 **Sec. 10.55.701. Events causing dissolution.** (a) A limited liability company is  
11 dissolved, and its activities must be wound up, upon the occurrence of any of the  
12 following:

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

15 (2) the consent of all the members;

16 (3) the passage of 90 consecutive days during which the company does  
17 not have members;

18 (4) on application by a member, the entry by the court of an order  
19 dissolving the company on the grounds that

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

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

25 (5) on application by a member, the entry by the court of an order  
26 dissolving the company on the grounds that the managers or those members in control  
27 of the company

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

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

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

3 **Sec. 10.55.702. Winding up.** (a) A dissolved limited liability company shall  
4 wind up its activities, and the company continues after dissolution only for the purpose  
5 of winding up.

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

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

10 (2) may

11 (A) deliver to the department for filing a statement of  
12 dissolution stating the name of the company and that the company is dissolved;

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

15 (C) prosecute and defend actions and proceedings, whether  
16 civil, criminal, or administrative;

17 (D) transfer the company's property;

18 (E) settle disputes by mediation or arbitration;

19 (F) deliver to the department for filing a statement of  
20 termination stating the name of the company and that the company is  
21 terminated; and

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

24 (c) If a dissolved limited liability company does not have members, the legal  
25 representative of the last person to have been a member may wind up the activities of  
26 the company. If the person winds up the activities of the company, the person has the  
27 powers of a sole manager under AS 10.55.407(c) and is considered to be a manager  
28 for the purposes of AS 10.55.304(a)(2).

29 (d) If the legal representative under (c) of the section declines or fails to wind  
30 up the company's activities, a person may be appointed to do so by the consent of  
31 transferees owning a majority of the rights to receive distributions as transferees at the

1 time the consent is to be effective. A person appointed under this subsection

2 (1) has the powers of a sole manager under AS 10.55.407(c) and is  
3 considered to be a manager for the purposes of AS 10.55.304(a)(2); and

4 (2) shall promptly deliver to the department for filing an amendment to  
5 the company's certificate of organization to

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

7 (B) state that the person has been appointed under this  
8 subsection to wind up the company; and

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

10 (e) The court may order judicial supervision of the winding up of a dissolved  
11 limited liability company, including the appointment of a person to wind up the  
12 company's activities,

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

14 (2) on the application of a transferee, if

15 (A) the company does not have members;

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

18 (C) within a reasonable time following the dissolution, a person  
19 has not been appointed under (c) of this section; or

20 (3) in connection with a proceeding under AS 10.55.701(a)(4) or (5).

21 **Sec. 10.55.703. Known claims against dissolved limited liability company.**

22 (a) Except as otherwise provided in (d) of this section, a dissolved limited liability  
23 company may give notice of a known claim under (b) of this section, which has the  
24 effect as provided in (c) of this section.

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

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

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

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

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



1 (c) A claim against a dissolved limited liability company is barred if the  
2 requirements of (b) of this section are met and

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

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

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

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

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

13 **Sec. 10.55.704. Other claims against dissolved limited liability company.**

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

17 (b) The notice authorized by (a) of this section must

18 (1) be published at least once in a newspaper of general circulation in  
19 the judicial district of this state in which the dissolved limited liability company's  
20 principal office is located or, if it does not have its principal office in this state, in the  
21 judicial district in which the company's designated office is or was last located;

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

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

26 (c) If a dissolved limited liability company publishes a notice in accordance  
27 with (b) of this section, unless the claimant commences an action to enforce the claim  
28 against the company within five years after the publication date of the notice, the  
29 claim of each of the following claimants is barred:

30 (1) a claimant who did not receive notice in a record under  
31 AS 10.55.703;

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

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

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

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

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

13 **Sec. 10.55.705. Administrative dissolution.** (a) The department may dissolve  
14 a limited liability company administratively if the company does not

15 (1) pay, within 60 days after the due date, a fee, tax, or penalty due to  
16 the department under this chapter or law other than this chapter; or

17 (2) deliver, within 60 days after the due date, its annual report to the  
18 department.

19 (b) If the department determines that a ground exists for administratively  
20 dissolving a limited liability company, the department shall file a record of the  
21 determination and serve the company with a copy of the filed record.

22 (c) If, within 60 days after service of the copy under (b) of this section, a  
23 limited liability company does not correct each ground for dissolution or demonstrate  
24 to the reasonable satisfaction of the department that each ground determined by the  
25 department does not exist, the department shall dissolve the company administratively  
26 by preparing, signing, and filing a declaration of dissolution that states the grounds for  
27 dissolution. The department shall serve the company with a copy of the filed  
28 declaration.

29 (d) A limited liability company that has been administratively dissolved  
30 continues in existence but, subject to AS 10.55.706, may carry on only activities  
31 necessary to wind up its activities and liquidate its assets under AS 10.55.702 and

1 10.55.708 and to notify claimants under AS 10.55.703 and 10.55.704.

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

4 **Sec. 10.55.706. Reinstatement following administrative dissolution.** (a) A  
5 limited liability company that has been administratively dissolved may apply to the  
6 department for reinstatement within two years after the effective date of dissolution.  
7 The application shall be delivered to the department for filing and state

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

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

11 (3) that the company's name satisfies the requirements of  
12 AS 10.55.108.

13 (b) If the department determines that an application under (a) of this section  
14 contains the required information and that the information is correct, the department  
15 shall prepare a declaration of reinstatement that states this determination, sign and file  
16 the original of the declaration of reinstatement, and serve the limited liability company  
17 with a copy.

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

21 **Sec. 10.55.707. Appeal from rejection of reinstatement.** (a) If the  
22 department rejects a limited liability company's application for reinstatement  
23 following administrative dissolution, the department shall prepare, sign, and file a  
24 notice that explains the reason for rejection and serve the company with a copy of the  
25 notice.

26 (b) Within 30 days after service of a notice of rejection of reinstatement under  
27 (a) of this section, a limited liability company may appeal from the rejection by  
28 petitioning the court to set aside the dissolution. The petition must be served on the  
29 department and contain a copy of the department's declaration of dissolution, the  
30 company's application for reinstatement, and the department's notice of rejection.

31 (c) The court may order the department to reinstate a dissolved limited

1 liability company or take other action the court considers appropriate.

2 **Sec. 10.55.708. Distribution of assets in winding up limited liability**  
3 **company's activities.** (a) In winding up its activities, a limited liability company shall  
4 apply its assets to discharge its obligations to creditors, including members who are  
5 creditors.

6 (b) After a limited liability company complies with (a) of this section, a  
7 surplus shall be distributed in the following order, subject to a charging order in effect  
8 under AS 10.55.503:

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

12 (2) in equal shares among members and dissociated members, except  
13 to the extent necessary to comply with a transfer effective under AS 10.55.502.

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

18 (d) All distributions made under (b) and (c) of this section shall be paid in  
19 money.

## 20 **Article 11. Foreign Limited Liability Companies.**

21 **Sec. 10.55.801. Governing law.** (a) The law of the state or other jurisdiction  
22 under which a foreign limited liability company is formed governs

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

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

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

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

1           **Sec. 10.55.802. Application for certificate of authority.** (a) A foreign limited  
2 liability company may apply for a certificate of authority to transact business in this  
3 state by delivering an application to the department for filing. The application must  
4 state

5                   (1) the name of the company and, if the name does not comply with  
6 AS 10.55.108, an alternate name adopted under AS 10.55.805(a);

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

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

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

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

20           **Sec. 10.55.803. Activities not constituting transacting business.** (a)  
21 Activities of a foreign limited liability company that do not constitute transacting  
22 business in this state within the meaning of AS 10.55.801 - 10.55.809 include

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

24                   (2) carrying on an activity concerning its internal affairs, including  
25 holding meetings of its members or managers;

26                   (3) maintaining accounts in financial institutions;

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

30                   (5) selling through independent contractors;

31                   (6) soliciting or obtaining orders, whether by mail or electronic means

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

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

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

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

10 (10) transacting business in interstate commerce.

11 (b) For purposes of AS 10.55.801 - 10.55.809, the ownership in this state of  
12 income-producing real property or tangible personal property, other than property  
13 excluded under (a) of this section, constitutes transacting business in this state.

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

17 **Sec. 10.55.804. Filing of certificate of authority.** Unless the department  
18 determines that an application for a certificate of authority does not comply with the  
19 filing requirements of this chapter, the department, upon payment of all filing fees,  
20 shall file the application of a foreign limited liability company, prepare, sign, and file a  
21 certificate of authority to transact business in this state, and send a copy of the filed  
22 certificate, together with a receipt for the fees, to the company or its representative.

23 **Sec. 10.55.805. Noncomplying name of foreign limited liability company.**

24 (a) A foreign limited liability company whose name does not comply with  
25 AS 10.55.108 may not obtain a certificate of authority until it adopts, for the purpose  
26 of transacting business in this state, an alternate name that complies with  
27 AS 10.55.108. After obtaining a certificate of authority with an alternate name, a  
28 foreign limited liability company shall transact business in this state under the  
29 alternate name.

30 (b) If a foreign limited liability company authorized to transact business in this  
31 state changes its name to one that does not comply with AS 10.55.108, it may not,

1 after the change, transact business in this state until it complies with (a) of this section  
2 and obtains an amended certificate of authority.

3 **Sec. 10.55.806. Revocation of certificate of authority.** (a) A certificate of  
4 authority of a foreign limited liability company to transact business in this state may  
5 be revoked by the department in the manner provided in (b) and (c) of this section if  
6 the company does not

7 (1) pay, within 60 days after the due date, a fee, tax, or penalty due to  
8 the department under this chapter or law other than this chapter;

9 (2) deliver, within 60 days after the due date, its annual report required  
10 under AS 10.55.209;

11 (3) appoint and maintain an agent for service of process as required by  
12 AS 10.55.113(b); or

13 (4) deliver for filing a statement of a change under AS 10.55.114  
14 within 30 days after a change has occurred in the name or address of the agent.

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

20 (1) the effective date of the revocation, which must be at least 60 days  
21 after the date the department sends the copy; and

22 (2) the grounds for revocation under (a) of this section.

23 (c) The authority of a foreign limited liability company to transact business in  
24 this state ceases on the effective date of the notice of revocation unless, before that  
25 date, the company cures each ground for revocation stated in the notice filed under (b)  
26 of this section. If the company cures each ground, the department shall file a record  
27 stating that the company has cured each ground.

28 **Sec. 10.55.807. Cancellation of certificate of authority.** To cancel its  
29 certificate of authority to transact business in this state, a foreign limited liability  
30 company shall deliver to the department for filing a notice of cancellation stating the  
31 name of the company and that the company desires to cancel its certificate of

1 authority. The certificate is cancelled when the notice becomes effective.

2 **Sec. 10.55.808. Effect of failure to have certificate of authority.** (a) A  
3 foreign limited liability company transacting business in this state may not maintain an  
4 action or proceeding in this state unless it has a certificate of authority to transact  
5 business in this state.

6 (b) The failure of a foreign limited liability company to have a certificate of  
7 authority to transact business in this state does not impair the validity of a contract or  
8 act of the company or prevent the company from defending an action or proceeding in  
9 this state.

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

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

17 **Sec. 10.55.809. Action by attorney general.** The attorney general may  
18 maintain an action to enjoin a foreign limited liability company from transacting  
19 business in this state in violation of AS 10.55.801 - 10.55.809.

## 20 **Article 12. Actions by Members.**

21 **Sec. 10.55.901. Direct action by member.** (a) Subject to (b) of this section, a  
22 member may maintain a direct action against another member, a manager, or the  
23 limited liability company to enforce the member's rights and otherwise protect the  
24 member's interests, including rights and interests under the operating agreement or this  
25 chapter or arising independently of the membership relationship.

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

29 **Sec. 10.55.902. Derivative action.** A member may maintain a derivative  
30 action to enforce a right of a limited liability company if

31 (1) the member first makes a demand on the other members in a



1 member-managed limited liability company, or the managers of a manager-managed  
2 limited liability company, requesting that they cause the company to bring an action to  
3 enforce the right, and the managers or other members do not bring the action within a  
4 reasonable time; or

5 (2) a demand under (1) of this section would be futile.

6 **Sec. 10.55.903. Proper plaintiff.** (a) Except as otherwise provided in (b) of  
7 this section, a derivative action under AS 10.55.902 may be maintained only by a  
8 person who is a member at the time the action is commenced and remains a member  
9 while the action continues.

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

13 **Sec. 10.55.904. Pleading.** In a derivative action under AS 10.55.902, the  
14 complaint must state with particularity

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

17 (2) if a demand has not been made, the reasons a demand under  
18 AS 10.55.902(1) would be futile.

19 **Sec. 10.55.905. Special litigation committee.** (a) If a limited liability  
20 company is named as or made a party in a derivative proceeding, the company may  
21 appoint a special litigation committee to investigate the claims asserted in the  
22 proceeding and determine whether pursuing the action is in the best interests of the  
23 company.

24 (b) If the company appoints a special litigation committee, on motion by the  
25 committee made in the name of the company, except for good cause shown, the court  
26 shall stay discovery for the time reasonably necessary to permit the committee to make  
27 its investigation.

28 (c) The provisions of (a) and (b) of this section do not prevent a court from  
29 enforcing a person's right to information under AS 10.55.410 or, for good cause  
30 shown, granting extraordinary relief in the form of a temporary restraining order or  
31 preliminary injunction.

1 (d) A special litigation committee may be composed of one or more  
2 disinterested and independent individuals, who may be members.

3 (e) A special litigation committee may be appointed

4 (1) in a member-managed limited liability company

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

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

9 (2) in a manager-managed limited liability company

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

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

14 (f) After appropriate investigation, a special litigation committee may  
15 determine that it is in the best interests of the limited liability company that the  
16 proceeding

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

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

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

20 (4) be dismissed.

21 (g) After making a determination under (f) of this section, a special litigation  
22 committee shall file with the court a statement of its determination and its report  
23 supporting its determination, giving notice to the plaintiff.

24 (h) After the special litigation committee files its statement under (g) of this  
25 section, the court shall determine whether the members of the committee were  
26 disinterested and independent and whether the committee conducted its investigation  
27 and made its recommendation in good faith, independently, and with reasonable care,  
28 with the committee having the burden of proof.

29 (i) If the court finds under (h) of this section that the members of the  
30 committee were disinterested and independent and that the committee acted in good  
31 faith, independently, and with reasonable care, the court shall enforce the

1 determination of the committee.

2 (j) If the court does not find under (h) of this section that the members of the  
3 committee were disinterested and independent and that the committee acted in good  
4 faith, independently, and with reasonable care, the court shall dissolve the stay of  
5 discovery entered under (b) of this section and allow the action to proceed under the  
6 direction of the plaintiff.

7 **Sec. 10.55.906. Proceeds and expenses.** (a) Except as otherwise provided in  
8 (b) of this section,

9 (1) the proceeds or other benefits of a derivative action under  
10 AS 10.55.902, whether by judgment, compromise, or settlement, belong to the limited  
11 liability company and not to the plaintiff; and

12 (2) if the plaintiff receives proceeds, the plaintiff shall remit them  
13 immediately to the company.

14 (b) If a derivative action under AS 10.55.902 is successful in whole or in part,  
15 the court may award the plaintiff reasonable expenses, including reasonable attorney  
16 fees and costs, from the recovery of the limited liability company.

17 **Article 13. Merger, Conversion, and Domestication.**

18 **Sec. 10.55.912. Merger.** (a) A limited liability company may merge with one  
19 or more other constituent organizations under this section, AS 10.55.913 - 10.55.915,  
20 and a plan of merger, if

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

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

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

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

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

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

31 (3) the terms and conditions of the merger, including the manner and

1 basis for converting the interests in each constituent organization into any combination  
2 of money, interests in the surviving organization, and other consideration;

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

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

9 **Sec. 10.55.913. Action on plan of merger by constituent limited liability**  
10 **company.** (a) Subject to AS 10.55.924, a plan of merger must be consented to by all  
11 the members of a constituent limited liability company.

12 (b) Subject to AS 10.55.924 and any contractual rights, after a merger is  
13 approved, and at any time before articles of merger are delivered to the department for  
14 filing under AS 10.55.914, a constituent limited liability company may amend the plan  
15 or abandon the merger

16 (1) as provided in the plan; or

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

19 **Sec. 10.55.914. Filings required for merger; effective date.** (a) After each  
20 constituent organization has approved a merger, articles of merger must be signed on  
21 behalf of

22 (1) each constituent limited liability company, as provided in  
23 AS 10.55.203(a); and

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

26 (b) Articles of merger under this section must include

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

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

1 (3) the date the merger is effective under the governing statute of the  
2 surviving organization;

3 (4) if the surviving organization is to be created by the merger,

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

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

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

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

14 (7) if the surviving organization is a foreign organization not  
15 authorized to transact business in this state, the street and mailing addresses of an  
16 office that the department may use for the purposes of AS 10.55.915(b); and

17 (8) additional information required by the governing statute of a  
18 constituent organization.

19 (c) Each constituent limited liability company shall deliver the articles of  
20 merger for filing with the department.

21 (d) A merger becomes effective under AS 10.55.912 - 10.55.931

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

24 (A) compliance with (c) of this section; or

25 (B) subject to AS 10.55.205(c), as specified in the articles of  
26 merger; or

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

29 **Sec. 10.55.915. Effect of merger.** (a) When a merger becomes effective,

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

31 (2) each constituent organization that merges into the surviving

1 organization ceases to exist as a separate entity;

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

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

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

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

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

14 (8) except as otherwise agreed, if a constituent limited liability  
15 company ceases to exist, the merger does not dissolve the limited liability company  
16 for the purposes of AS 10.55.701 - 10.55.708;

17 (9) if the surviving organization is created by the merger,

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

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

23 (10) if the surviving organization preexisted the merger, amendments  
24 provided for in the articles of merger for the organizational document that created the  
25 organization become effective.

26 (b) A surviving organization that is a foreign organization consents to the  
27 jurisdiction of the courts of this state to enforce a debt, obligation, or other liability  
28 owed by a constituent organization if, before the merger, the constituent organization  
29 was subject to suit in this state on the debt, obligation, or other liability. A surviving  
30 organization that is a foreign organization and not authorized to transact business in  
31 this state appoints the department as its agent for service of process for the purposes of

1 enforcing a debt, obligation, or other liability under this subsection. Service on the  
 2 department under this subsection shall be made in the same manner and has the same  
 3 consequences as in AS 10.55.116(c) and (d).

4 **Sec. 10.55.916. Conversion.** (a) An organization other than a limited liability  
 5 company or a foreign limited liability company may convert to a limited liability  
 6 company, and a limited liability company may convert to an organization other than a  
 7 foreign limited liability company under this section, AS 10.55.917 - 10.55.919, and a  
 8 plan of conversion, if

9 (1) the governing statute of the other organization authorizes the  
 10 conversion;

11 (2) the conversion is not prohibited by the law of the jurisdiction that  
 12 enacted the governing statute of the other organization; and

13 (3) the other organization complies with its governing statute in  
 14 effecting the conversion.

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

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

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

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

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

23 **Sec. 10.55.917. Action on plan of conversion by converting limited liability**  
 24 **company.** (a) Subject to AS 10.55.924, a plan of conversion must be consented to by  
 25 all the members of a converting limited liability company.

26 (b) Subject to AS 10.55.924 and contractual rights, after a conversion is  
 27 approved, and at any time before articles of conversion are delivered to the department  
 28 for filing under AS 10.55.918, a converting limited liability company may amend the  
 29 plan or abandon the conversion

30 (1) as provided in the plan; or

31 (2) except as otherwise prohibited in the plan, by the same consent as

1 was required to approve the plan.

2 **Sec. 10.55.918. Filings required for conversion; effective date.** (a) After a  
3 plan of conversion is approved,

4 (1) a converting limited liability company shall deliver to the  
5 department for filing articles of conversion, which must be signed as provided in  
6 AS 10.55.203(a) and must include

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

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

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

13 (D) a statement that the conversion was approved as required  
14 by this chapter;

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

17 (F) if the converted organization is a foreign organization not  
18 authorized to transact business in this state, the street and mailing addresses of  
19 an office that the department may use for the purposes of AS 10.55.919(c); and

20 (2) if the converting organization is not a converting limited liability  
21 company, the converting organization shall deliver to the department for filing a  
22 certificate of organization, which must include, in addition to the information required  
23 by AS 10.55.201(b),

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

26 (B) the name and form of that converting organization and the  
27 jurisdiction of its governing statute; and

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

30 (b) A conversion becomes effective,

31 (1) if the converted organization is a limited liability company, when



1 the certificate of organization takes effect; and

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

4 **Sec. 10.55.919. Effect of conversion.** (a) An organization that has been  
5 converted under AS 10.55.912 - 10.55.931 is, for all purposes, the same entity that  
6 existed before the conversion.

7 (b) When a conversion takes effect,

8 (1) all property owned by the converting organization remains vested  
9 in the converted organization;

10 (2) all debts, obligations, or other liabilities of the converting  
11 organization continue as debts, obligations, or other liabilities of the converted  
12 organization;

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

15 (4) except as prohibited by law other than this chapter, all of the rights,  
16 privileges, immunities, powers, and purposes of the converting organization remain  
17 vested in the converted organization;

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

20 (6) except as otherwise agreed, the conversion does not dissolve a  
21 converting limited liability company for the purposes of AS 10.55.701 - 10.55.708.

22 (c) A converted organization that is a foreign organization consents to the  
23 jurisdiction of the courts of this state to enforce a debt, obligation, or other liability for  
24 which the converting limited liability company is liable if, before the conversion, the  
25 converting limited liability company was subject to suit in this state on the debt,  
26 obligation, or other liability. A converted organization that is a foreign organization  
27 and not authorized to transact business in this state appoints the department as its  
28 agent for service of process for purposes of enforcing a debt, obligation, or other  
29 liability under this subsection. Service on the department under this subsection must  
30 be made in the same manner and has the same consequences as in AS 10.55.116(c)  
31 and (d).

1           **Sec. 10.55.920. Domestication.** (a) A foreign limited liability company may  
2 become a limited liability company under this section, AS 10.55.921 - 10.55.923, and  
3 a plan of domestication, if

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

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

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

10           (b) A limited liability company may become a foreign limited liability  
11 company under this section, AS 10.55.921 - 10.55.923, and a plan of domestication, if

12                   (1) the foreign limited liability company's governing statute authorizes  
13 the domestication;

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

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

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

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

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

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

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

29           **Sec. 10.55.921. Action on plan of domestication by domesticating limited**  
30 **liability company.** (a) A plan of domestication must be consented to

31                   (1) by all the members, subject to AS 10.55.924, if the domesticating

1 company is a limited liability company; and

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

4 (b) Subject to contractual rights, after a domestication is approved, and at any  
5 time before articles of domestication are delivered to the department for filing under  
6 AS 10.55.922, a domesticating limited liability company may amend the plan or  
7 abandon the domestication

8 (1) as provided in the plan; or

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

11 **Sec. 10.55.922. Filings required for domestication; effective date.** (a) After  
12 a plan of domestication is approved, a domesticating company shall deliver to the  
13 department for filing articles of domestication, which must include

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

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

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

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

22 (5) if the domesticating company was a limited liability company, a  
23 statement that the domestication was approved as required by this chapter;

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

27 (7) if the domesticated company was a foreign limited liability  
28 company not authorized to transact business in this state, the street and mailing  
29 addresses of an office that the department may use for the purposes of  
30 AS 10.55.923(b).

31 (b) A domestication becomes effective

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

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

5 **Sec. 10.55.923. Effect of domestication.** (a) When a domestication takes  
6 effect,

7 (1) the domesticated company is, for all purposes, the company that  
8 existed before the domestication;

9 (2) all property owned by the domesticating company remains vested  
10 in the domesticated company;

11 (3) all debts, obligations, or other liabilities of the domesticating  
12 company continue as debts, obligations, or other liabilities of the domesticated  
13 company;

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

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

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

21 (7) except as otherwise agreed, the domestication does not dissolve a  
22 domesticating limited liability company for the purposes of AS 10.55.701 - 10.55.708.

23 (b) A domesticated company that is a foreign limited liability company  
24 consents to the jurisdiction of the courts of this state to enforce a debt, obligation, or  
25 other liability owed by the domesticating company, if, before the domestication, the  
26 domesticating company was subject to suit in this state on the debt, obligation, or  
27 other liability. A domesticated company that is a foreign limited liability company and  
28 not authorized to transact business in this state appoints the department as its agent for  
29 service of process for purposes of enforcing a debt, obligation, or other liability under  
30 this subsection. Service on the department under this subsection shall be made in the  
31 same manner and has the same consequences as in AS 10.55.116(c) and (d).

1 (c) If a limited liability company has adopted and approved a plan of  
 2 domestication under AS 10.55.920 providing for the company to be domesticated in a  
 3 foreign jurisdiction, a statement surrendering the company's certificate of organization  
 4 shall be delivered to the department for filing setting out

5 (1) the name of the company;

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

8 (3) a statement that the domestication was approved as required by this  
 9 chapter; and

10 (4) the jurisdiction of formation of the domesticated foreign limited  
 11 liability company.

12 **Sec. 10.55.924. Restrictions on approval of mergers, conversions, and**  
 13 **domestications.** (a) If a member of a constituent, converting, or domesticating limited  
 14 liability company will have personal liability with respect to a surviving, converted, or  
 15 domesticated organization, approval or amendment of a plan of merger, conversion, or  
 16 domestication are ineffective without the consent of the member, unless

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

20 (2) the member has consented to the provision of the operating  
 21 agreement.

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

25 **Sec. 10.55.925. Provisions not exclusive.** The provisions of AS 10.55.912 -  
 26 10.55.931 do not preclude an entity from being merged, converted, or domesticated  
 27 under law other than this chapter.

28 **Sec. 10.55.931. Definitions.** In AS 10.55.912 - 10.55.931,

29 (1) "constituent limited liability company" means a constituent  
 30 organization that is a limited liability company;

31 (2) "constituent organization" means an organization that is party to a

1 merger;

2 (3) "converted organization" means the organization into which a  
3 converting organization converts under AS 10.55.916 - 10.55.919;

4 (4) "converting limited liability company" means a converting  
5 organization that is a limited liability company;

6 (5) "converting organization" means an organization that converts into  
7 another organization under AS 10.55.916;

8 (6) "domesticated company" means the company that exists after a  
9 domesticating foreign limited liability company or limited liability company effects a  
10 domestication under AS 10.55.920 - 10.55.923;

11 (7) "domesticating company" means the company that effects a  
12 domestication under AS 10.55.920 - 10.55.923;

13 (8) "governing statute" means the statute that governs an organization's  
14 internal affairs;

15 (9) "organization" means a general partnership, including a limited  
16 liability partnership, limited partnership, including a limited liability limited  
17 partnership, limited liability company, business trust, corporation, or another person  
18 having a governing statute; the term includes a domestic or foreign organization  
19 regardless of whether organized for profit;

20 (10) "organizational documents" means

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

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

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

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

30 (E) for a domestic or foreign corporation for profit, its articles  
31 of incorporation, bylaws, and other agreements among its shareholders that are

1 authorized by its governing statute, or comparable records as provided in its  
2 governing statute; and

3 (F) for another organization, the basic records that create the  
4 organization and determine its internal governance and the relations among the  
5 persons that own it, have an interest in it, or are members of it;

6 (11) "personal liability" means liability for a debt, obligation, or other  
7 liability of an organization that is imposed on a person who co-owns, has an interest  
8 in, or is a member of the organization

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

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

16 (12) "surviving organization" means an organization into which one or  
17 more other organizations are merged, whether the organization preexisted the merger  
18 or was created by the merger.

19 **Article 14. Miscellaneous Provisions.**

20 **Sec. 10.55.941. Uniformity of application and construction.** In applying and  
21 construing this chapter, consideration shall be given to the need to promote uniformity  
22 of the law with respect to its subject matter among states that enact it.

23 **Sec. 10.55.942. Relation to Electronic Signatures in Global and National**  
24 **Commerce Act.** This chapter modifies, limits, and supersedes 15 U.S.C. 7001 - 7031  
25 (Electronic Signatures in Global and National Commerce Act) but does not modify,  
26 limit, or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of a notice  
27 described in 15 U.S.C. 7003(b).

28 **Sec. 10.55.943. Knowledge; notice.** (a) For the purposes of this chapter, a  
29 person knows a fact when the person

30 (1) has actual knowledge of it; or

31 (2) is considered to know it under (d)(1) of this section or law other

1 than this chapter.

2 (b) For the purposes of this chapter, a person has notice of a fact when the  
3 person

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

6 (2) is considered to have notice of the fact under (d)(2) of this section.

7 (c) For the purposes of this chapter, a person notifies another of a fact by  
8 taking steps reasonably required to inform the other person in ordinary course,  
9 whether or not the other person knows the fact.

10 (d) For the purposes of this chapter, a person who is not a member is  
11 considered

12 (1) to know of a limitation on authority to transfer real property as  
13 provided in AS 10.55.302(g); and

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

15 (A) dissolution 90 days after a statement of dissolution under  
16 AS 10.55.702(b)(2)(A) becomes effective;

17 (B) termination 90 days after a statement of termination under  
18 AS 10.55.702(b)(2)(F) becomes effective; and

19 (C) merger, conversion, or domestication 90 days after articles  
20 of merger, conversion, or domestication under AS 10.55.912 - 10.55.920  
21 become effective.

22 **Article 15. Definitions and Short Title.**

23 **Sec. 10.55.990. Definitions.** In this chapter,

24 (1) "certificate of organization" means the certificate required by  
25 AS 10.55.201; the term includes the certificate as amended or restated;

26 (2) "contribution" means a benefit provided by a person to a limited  
27 liability company in

28 (A) order to become a member upon formation of the company  
29 and in accordance with an agreement between or among the persons who have  
30 agreed to become the initial members of the company;

31 (B) order to become a member after formation of the company



1 and in accordance with an agreement between the person and the company; or

2 (C) the person's capacity as a member and in accordance with  
3 the operating agreement or an agreement between the member and the  
4 company;

5 (3) "debtor in bankruptcy" means a person who is the subject of

6 (A) an order for relief under 11 U.S.C. (Bankruptcy Code) or a  
7 successor statute of general application; or

8 (B) a comparable order under federal, state, or foreign law  
9 governing insolvency;

10 (4) "designated office" means

11 (A) the office that a limited liability company is required to  
12 designate and maintain under AS 10.55.113; or

13 (B) the principal office of a foreign limited liability company;

14 (5) "department" means the Department of Commerce, Community,  
15 and Economic Development;

16 (6) "distribution," except as otherwise provided in AS 10.55.405(g),  
17 means a transfer of money or other property from a limited liability company to  
18 another person on account of a transferable interest;

19 (7) "effective," with respect to a record required or permitted to be  
20 delivered to the department for filing under this chapter, means effective under  
21 AS 10.55.205(c);

22 (8) "foreign limited liability company" means an unincorporated entity  
23 formed under the law of a jurisdiction other than this state and denominated by that  
24 law as a limited liability company;

25 (9) "limited liability company," except in the phrase "foreign limited  
26 liability company," means an entity formed under this chapter;

27 (10) "manager" means a person who, under the operating agreement of  
28 a manager-managed limited liability company, is responsible, alone or in concert with  
29 others, for performing the management functions stated in AS 10.55.407(c);

30 (11) "manager-managed limited liability company" means a limited  
31 liability company that qualifies under AS 10.55.407(a);

1 (12) "member" means a person who has become a member of a limited  
2 liability company under AS 10.55.401 and has not dissociated under AS 10.55.602;

3 (13) "member-managed limited liability company" means a limited  
4 liability company that is not a manager-managed limited liability company;

5 (14) "operating agreement" means the agreement, whether or not  
6 referred to as an operating agreement, and whether oral, in a record, implied, or in a  
7 combination of being oral, in a record, or implied, of all the members of a limited  
8 liability company, including a sole member, concerning the matters described in  
9 AS 10.55.110(a); the term includes the agreement as amended or restated;

10 (15) "organizer" means a person who acts under AS 10.55.201 to form  
11 a limited liability company;

12 (16) "person" means an individual, corporation, business trust, estate,  
13 trust, partnership, limited liability company, association, joint venture, public  
14 corporation, government or governmental subdivision, agency, or instrumentality, or  
15 another legal or commercial entity;

16 (17) "principal office" means the principal executive office of a limited  
17 liability company or foreign limited liability company, whether or not the office is  
18 located in this state;

19 (18) "record" means information that is inscribed on a tangible  
20 medium or that is stored in an electronic or other medium and is retrievable in  
21 perceivable form;

22 (19) "sign" means, with the present intent to authenticate or adopt a  
23 record,

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

25 (B) to attach to or logically associate with the record an  
26 electronic symbol, sound, or process;

27 (20) "state" means a state of the United States, the District of  
28 Columbia, Puerto Rico, the United States Virgin Islands, or a territory or insular  
29 possession subject to the jurisdiction of the United States;

30 (21) "transfer" includes an assignment, conveyance, deed, bill of sale,  
31 lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law;

1 (22) "transferable interest" means the right, as originally associated  
2 with a person's capacity as a member, to receive distributions from a limited liability  
3 company in accordance with the operating agreement, whether or not the person  
4 remains a member or continues to own a part of the right;

5 (23) "transferee" means a person to whom all or part of a transferable  
6 interest has been transferred, whether or not the transferor is a member.

7 **Sec. 10.55.995. Short title.** This chapter may be cited as the Revised Uniform  
8 Limited Liability Company Act.

9 \* **Sec. 24.** AS 23.30.240(b) is amended to read:

10 (b) Except as provided in this subsection, a member of a limited liability  
11 company organized under **former** AS 10.50 **or formed under or subject to AS 10.55**  
12 is not an employee of the company under this chapter. Notwithstanding any other  
13 provision of this chapter, a limited liability company may bring a member of the  
14 company within the coverage of the company's insurance contract by specifically  
15 including the member in the contract of insurance. The election to bring the member  
16 within the company's coverage continues in force for the period the contract of  
17 insurance is in effect. During that period, a member brought within the coverage of the  
18 insurance contract is an employee of the company under this chapter.

19 \* **Sec. 25.** AS 23.30.240(b), as amended by sec. 24 of this Act, is amended to read:

20 (b) Except as provided in this subsection, a member of a limited liability  
21 company [ORGANIZED UNDER FORMER AS 10.50 OR] formed under or subject  
22 to AS 10.55 is not an employee of the company under this chapter. Notwithstanding  
23 any other provision of this chapter, a limited liability company may bring a member of  
24 the company within the coverage of the company's insurance contract by specifically  
25 including the member in the contract of insurance. The election to bring the member  
26 within the company's coverage continues in force for the period the contract of  
27 insurance is in effect. During that period, a member brought within the coverage of the  
28 insurance contract is an employee of the company under this chapter.

29 \* **Sec. 26.** AS 36.30.170(b) is amended to read:

30 (b) The procurement officer shall award a contract based on solicited bids to  
31 the lowest responsive and responsible bidder after an Alaska bidder preference of five

1 percent, an Alaska products preference as described in AS 36.30.322 - 36.30.338, and  
 2 a recycled products preference under AS 36.30.337 have been applied. In this  
 3 subsection, "Alaska bidder" means a person who

4 (1) holds a current Alaska business license;

5 (2) submits a bid for goods, services, or construction under the name as  
 6 appearing on the person's current Alaska business license;

7 (3) has maintained a place of business within the state staffed by the  
 8 bidder or an employee of the bidder for a period of six months immediately preceding  
 9 the date of the bid;

10 (4) is incorporated or qualified to do business under the laws of the  
 11 state, is a sole proprietorship and the proprietor is a resident of the state, is a limited  
 12 liability company organized under former AS 10.50 or formed under or subject to  
 13 AS 10.55 and all members are residents of the state, or is a partnership under  
 14 [FORMER AS 32.05,] AS 32.06 [,] or AS 32.11 and all partners are residents of the  
 15 state; and

16 (5) if a joint venture, is composed entirely of ventures that qualify  
 17 under (1) - (4) of this subsection.

18 \* **Sec. 27.** AS 36.30.170(b), as amended by sec. 26 of this Act, is amended to read:

19 (b) The procurement officer shall award a contract based on solicited bids to  
 20 the lowest responsive and responsible bidder after an Alaska bidder preference of five  
 21 percent, an Alaska products preference as described in AS 36.30.322 - 36.30.338, and  
 22 a recycled products preference under AS 36.30.337 have been applied. In this  
 23 subsection, "Alaska bidder" means a person who

24 (1) holds a current Alaska business license;

25 (2) submits a bid for goods, services, or construction under the name as  
 26 appearing on the person's current Alaska business license;

27 (3) has maintained a place of business within the state staffed by the  
 28 bidder or an employee of the bidder for a period of six months immediately preceding  
 29 the date of the bid;

30 (4) is incorporated or qualified to do business under the laws of the  
 31 state, is a sole proprietorship and the proprietor is a resident of the state, is a limited

1 liability company [ORGANIZED UNDER FORMER AS 10.50 OR] formed under or  
 2 subject to AS 10.55 and all members are residents of the state, or is a partnership  
 3 under AS 32.06 or AS 32.11 and all partners are residents of the state; and

4 (5) if a joint venture, is composed entirely of ventures that qualify  
 5 under (1) - (4) of this subsection.

6 \* **Sec. 28.** AS 36.30.170(e) is amended to read:

7 (e) If a bidder qualifies under (b) of this section as an Alaska bidder, is a  
 8 qualifying entity, and is the lowest responsible and responsive bidder with a bid that is  
 9 not more than 10 percent higher than the lowest bid, the procurement officer shall  
 10 award the contract to that bidder. This subsection does not give a bidder who would  
 11 otherwise qualify for a preference under this subsection a preference over another  
 12 bidder who would otherwise qualify for a preference under this subsection or (f) of  
 13 this section. In this subsection, "qualifying entity" means a

14 (1) sole proprietorship owned by a person with a disability;

15 (2) partnership under [FORMER AS 32.05,] AS 32.06 [,] or AS 32.11  
 16 if each of the partners is a person with a disability;

17 (3) limited liability company organized under **former AS 10.50 or**  
 18 **formed under or subject to AS 10.55** if each of the members is a person with a  
 19 disability; or

20 (4) corporation that is wholly owned by individuals and each of the  
 21 individuals is a person with a disability.

22 \* **Sec. 29.** AS 36.30.170(e), as amended by sec. 28 of this Act, is amended to read:

23 (e) If a bidder qualifies under (b) of this section as an Alaska bidder, is a  
 24 qualifying entity, and is the lowest responsible and responsive bidder with a bid that is  
 25 not more than 10 percent higher than the lowest bid, the procurement officer shall  
 26 award the contract to that bidder. This subsection does not give a bidder who would  
 27 otherwise qualify for a preference under this subsection a preference over another  
 28 bidder who would otherwise qualify for a preference under this subsection or (f) of  
 29 this section. In this subsection, "qualifying entity" means a

30 (1) sole proprietorship owned by a person with a disability;

31 (2) partnership under AS 32.06 or AS 32.11 if each of the partners is a

1 person with a disability;

2 (3) limited liability company [ORGANIZED UNDER FORMER  
3 AS 10.50 OR] formed under or subject to AS 10.55 if each of the members is a person  
4 with a disability; or

5 (4) corporation that is wholly owned by individuals and each of the  
6 individuals is a person with a disability.

7 \* **Sec. 30.** AS 44.64.030(a)(10) is amended to read:

8 (10) **former** AS 10.50.408 **and AS 10.55.705 and 10.55.706** (limited  
9 liability companies);

10 \* **Sec. 31.** AS 44.64.030(a)(10), as amended by sec. 30 of this Act, is amended to read:

11 (10) [FORMER AS 10.50.408 AND] AS 10.55.705 and 10.55.706  
12 (limited liability companies);

13 \* **Sec. 32.** AS 45.55.990(32) is amended to read:

14 (32) "security" means a note; stock; treasury stock; bond; debenture;  
15 evidence of indebtedness; certificate of interest or participation in any profit-sharing  
16 agreement; limited liability company interest under **former** AS 10.50 **or AS 10.55**,  
17 notwithstanding the limitations of AS 45.08.103(c); collateral-trust certificate;  
18 preorganization certificate or subscription; transferable share; investment contract;  
19 voting-trust certificate; certificate of deposit for a security; viatical settlement interest;  
20 certificate of interest or participation in an oil, gas, or mining title or lease or in  
21 payments out of production under the title or lease or in any sale of or indenture or  
22 bond or contract for the conveyance of land or any interest in land; an option on a  
23 contract for the future delivery of agricultural or mineral commodities or any other  
24 commodity offered or sold to the public and not regulated by the Commodity Futures  
25 Trading Commission; however, the contract or option is not subject to the provisions  
26 of AS 45.55.070 if it is sold or purchased on the floor of a bona fide exchange or  
27 board of trade and offered or sold to the public by a broker-dealer or agent registered  
28 under this chapter; investment of money or money's worth including goods furnished  
29 or services performed in the risk capital of a venture with the expectation of some  
30 benefit to the investor where the investor has no direct control over the investment or  
31 policy decision of the venture; or, in general, any interest or instrument commonly

1 known as a "security," or any certificate of interest or participation in, temporary or  
 2 interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or  
 3 purchase, any of the foregoing; "security" does not include a participation agreement  
 4 entered into under AS 14.40.802 or an insurance or endowment policy or annuity  
 5 contract under which an insurance company promises to pay a fixed or variable sum of  
 6 money either in a lump sum or periodically for life or for some other specified period;

7 \* **Sec. 33.** AS 45.55.990(32), as amended by sec. 32 of this Act, is amended to read:

8 (32) "security" means a note; stock; treasury stock; bond; debenture;  
 9 evidence of indebtedness; certificate of interest or participation in any profit-sharing  
 10 agreement; limited liability company interest under [FORMER AS 10.50 OR]  
 11 AS 10.55, notwithstanding the limitations of AS 45.08.103(c); collateral-trust  
 12 certificate; preorganization certificate or subscription; transferable share; investment  
 13 contract; voting-trust certificate; certificate of deposit for a security; viatical settlement  
 14 interest; certificate of interest or participation in an oil, gas, or mining title or lease or  
 15 in payments out of production under the title or lease or in any sale of or indenture or  
 16 bond or contract for the conveyance of land or any interest in land; an option on a  
 17 contract for the future delivery of agricultural or mineral commodities or any other  
 18 commodity offered or sold to the public and not regulated by the Commodity Futures  
 19 Trading Commission; however, the contract or option is not subject to the provisions  
 20 of AS 45.55.070 if it is sold or purchased on the floor of a bona fide exchange or  
 21 board of trade and offered or sold to the public by a broker-dealer or agent registered  
 22 under this chapter; investment of money or money's worth including goods furnished  
 23 or services performed in the risk capital of a venture with the expectation of some  
 24 benefit to the investor where the investor has no direct control over the investment or  
 25 policy decision of the venture; or, in general, any interest or instrument commonly  
 26 known as a "security," or any certificate of interest or participation in, temporary or  
 27 interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or  
 28 purchase, any of the foregoing; "security" does not include a participation agreement  
 29 entered into under AS 14.40.802 or an insurance or endowment policy or annuity  
 30 contract under which an insurance company promises to pay a fixed or variable sum of  
 31 money either in a lump sum or periodically for life or for some other specified period;

1     \* **Sec. 34.** AS 10.50.010, 10.50.015, 10.50.020, 10.50.025, 10.50.030, 10.50.035, 10.50.038,  
 2     10.50.040, 10.50.043, 10.50.048, 10.50.050, 10.50.053, 10.50.055, 10.50.060, 10.50.063,  
 3     10.50.065, 10.50.070, 10.50.075, 10.50.078, 10.50.080, 10.50.090, 10.50.095, 10.50.100,  
 4     10.50.105, 10.50.110, 10.50.115, 10.50.120, 10.50.125, 10.50.130, 10.50.135, 10.50.140,  
 5     10.50.145, 10.50.148, 10.50.150, 10.50.155, 10.50.160, 10.50.165, 10.50.170, 10.50.180,  
 6     10.50.185, 10.50.205, 10.50.210, 10.50.215, 10.50.220, 10.50.225, 10.50.250, 10.50.255,  
 7     10.50.260, 10.50.265, 10.50.275, 10.50.280, 10.50.285, 10.50.290, 10.50.295, 10.50.300,  
 8     10.50.305, 10.50.315, 10.50.320, 10.50.330, 10.50.340, 10.50.345, 10.50.348, 10.50.350,  
 9     10.50.355, 10.50.360, 10.50.370, 10.50.375, 10.50.380, 10.50.385, 10.50.390, 10.50.400,  
 10    10.50.405, 10.50.408, 10.50.410, 10.50.415, 10.50.420, 10.50.425, 10.50.430, 10.50.435,  
 11    10.50.440, 10.50.500, 10.50.505, 10.50.510, 10.50.515, 10.50.520, 10.50.525, 10.50.530,  
 12    10.50.535, 10.50.540, 10.50.545, 10.50.550, 10.50.555, 10.50.560, 10.50.565, 10.50.570,  
 13    10.50.590, 10.50.600, 10.50.605, 10.50.610, 10.50.615, 10.50.620, 10.50.623, 10.50.625,  
 14    10.50.630, 10.50.635, 10.50.637, 10.50.638, 10.50.640, 10.50.645, 10.50.650, 10.50.653,  
 15    10.50.655, 10.50.660, 10.50.665, 10.50.670, 10.50.675, 10.50.690, 10.50.700, 10.50.710,  
 16    10.50.715, 10.50.720, 10.50.730, 10.50.735, 10.50.750, 10.50.755, 10.50.760, 10.50.765,  
 17    10.50.800, 10.50.810, 10.50.820, 10.50.830, 10.50.840, 10.50.850, 10.50.860, 10.50.870,  
 18    10.50.880, 10.50.890, 10.50.900, 10.50.910, 10.50.990, and 10.50.995 are repealed.

19    \* **Sec. 35.** AS 08.48.241(j)(2) is repealed.

20    \* **Sec. 36.** The uncodified law of the State of Alaska is amended by adding a new section to  
 21    read:

22           INDIRECT COURT RULE CHANGES. (a) The provisions of AS 10.55.204(b),  
 23    enacted by sec. 23 of this Act, have the effect of amending Rule 19, Alaska Rules of Civil  
 24    Procedure, by requiring a petitioner to make a limited liability company or a foreign limited  
 25    liability company a party to an action in certain cases.

26           (b) The provisions of AS 10.55.406(d), enacted by sec. 23 of this Act, have the effect  
 27    of amending Rule 22, Alaska Rules of Civil Procedure, by establishing specific situations  
 28    where a person may implead another person in an action.

29           (c) The provisions of AS 10.55.707(b), enacted by sec. 23 of this Act, have the effect  
 30    of amending Rule 602, Alaska Rules of Appellate Procedure, by altering the requirements for  
 31    the notice of appeal when appealing from a rejection of reinstatement.



1 (d) The provisions of AS 10.55.904, enacted by sec. 23 of this Act, have the effect of  
2 amending Rule 8, Alaska Rules of Civil Procedure, by requiring that certain information be  
3 set out in the complaint for a derivative action.

4 (e) The provisions of AS 10.55.905(b), enacted by sec. 23 of this Act, have the effect  
5 of amending Rule 26, Alaska Rules of Civil Procedure, by requiring that the court order a stay  
6 of discovery under certain conditions.

7 (f) The provisions of AS 10.55.905(j), enacted by sec. 23 of this Act, have the effect  
8 of amending Rule 26, Alaska Rules of Civil Procedure, by requiring that the court dissolve an  
9 order for a stay of discovery under certain conditions.

10 (g) The provisions of AS 10.55.906, enacted by sec. 23 of this Act, have the effect of  
11 amending

12 (1) Rule 79, Alaska Rules of Civil Procedure, by changing the award of court  
13 costs in certain cases; and

14 (2) Rule 82, Alaska Rules of Civil Procedure, by changing the award of  
15 attorney fees in certain cases.

16 \* **Sec. 37.** The uncodified law of the State of Alaska is amended by adding a new section to  
17 read:

18 APPLICATION TO EXISTING RELATIONSHIPS. (a) Before January 1, 2011, this  
19 Act applies only to

20 (1) a limited liability company formed on or after January 1, 2010; and

21 (2) except as otherwise provided in (c) of this section, a limited liability  
22 company organized under former AS 10.50 before January 1, 2010, that elects, in the manner  
23 provided in its operating agreement or by former AS 10.50.095 for amending the operating  
24 agreement, to be subject to this Act.

25 (b) Except as otherwise provided in (c) of this section, on and after January 1, 2011,  
26 this Act applies to a limited liability company formed under AS 10.55, enacted by sec. 23 of  
27 this Act, and to a limited liability company organized under former AS 10.50.

28 (c) For the purposes of applying AS 10.55, enacted by sec. 23 of this Act, to a limited  
29 liability company organized under AS 10.50 before the effective date of this Act,

30 (1) the company's articles of organization are considered to be the company's  
31 certificate of organization; in this paragraph, "certificate of organization" has the meaning

1 given in AS 10.55.990, enacted by sec. 23 of this Act; and

2 (2) for the purpose of applying AS 10.55.990(11), enacted by sec. 23 of this  
3 Act, and subject to AS 10.55.112(d), enacted by sec. 23 of this Act, language in the  
4 company's articles of organization designating the company's management structure operates  
5 as if that language were in the operating agreement.

6 (d) In this section,

7 (1) "articles of organization" has the meaning given in former AS 10.50.990;

8 (2) "limited liability company" has the meaning given in AS 10.55.990,  
9 enacted by sec. 23 of this Act;

10 (3) "limited liability company organized under former AS 10.50" has the  
11 meaning given to "limited liability company" in former AS 10.50.990;

12 (4) "operating agreement" has the meaning given in former AS 10.50.990.

13 \* **Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to  
14 read:

15 **SAVING CLAUSE.** This Act does not affect an action commenced, proceeding  
16 brought, or right accrued before January 1, 2010.

17 \* **Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to  
18 read:

19 **CONDITIONAL EFFECT.** AS 10.55.204(b), 10.55.406(d), 10.55.707(b), 10.55.904,  
20 10.55.905(b), 10.55.905(j), and 10.55.906, enacted by sec. 23 of this Act, take effect only if  
21 sec. 36 of this Act receives the two-thirds majority vote of each house required by art. IV, sec.  
22 15, Constitution of the State of Alaska.

23 \* **Sec. 40.** Sections 2, 4, 6, 8, 10, 12, 14, 16, 19, 22, 25, 27, 29, 31, 33, and 35 of this Act  
24 take effect January 1, 2011.

25 \* **Sec. 41.** Except as provided in sec. 40 of this Act, this Act takes effect January 1, 2010.