

By: Representatives Reynolds, Brown, Denny

To: Apportionment and
Elections; Judiciary A

HOUSE BILL NO. 683
(As Sent to Governor)

1 AN ACT TO CREATE THE REVISED MISSISSIPPI LIMITED LIABILITY
2 COMPANY ACT; TO MAKE CERTAIN GENERAL PROVISIONS, ENACT
3 DEFINITIONS, PLACE CERTAIN RESTRICTIONS UPON NAMES ALLOWABLE FOR A
4 LIMITED LIABILITY COMPANY AND PROVIDE FOR REGISTERED AGENTS FOR
5 SERVICE; TO PROVIDE DEFAULT PROVISIONS FOR CHOICE OF LAW AND OTHER
6 MATTERS; TO PROVIDE FOR FORMATION OF A LIMITED LIABILITY COMPANY
7 AND THE CERTIFICATE OF FORMATION; TO PROVIDE FOR ANNUAL REPORTS;
8 TO PROVIDE FOR MERGER, DISSOLUTION AND DISPOSAL OF ASSETS; TO MAKE
9 PROVISIONS CONCERNING MEMBERS OF THE LIMITED LIABILITY COMPANY AND
10 VOTING RIGHTS OF MEMBERS; TO PROVIDE FOR THE MANAGEMENT OF A
11 LIMITED LIABILITY COMPANY; TO PROVIDE FOR THE CONTRIBUTIONS TO AND
12 SHARING OF LOSSES AND PROFITS FROM A LIMITED LIABILITY COMPANY; TO
13 MAKE PROVISIONS FOR DISTRIBUTIONS BY THE LIMITED LIABILITY COMPANY
14 TO ITS MEMBERS; TO PROVIDE FOR THE ASSIGNMENT OF FINANCIAL
15 INTERESTS; TO MAKE CERTAIN PROVISIONS IN THE EVENT OF DISSOLUTION
16 AND PROVIDE FOR WINDING-UP; TO PROVIDE FOR ADMINISTRATIVE
17 DISSOLUTION BY THE SECRETARY OF STATE UNDER CERTAIN CIRCUMSTANCES;
18 TO MAKE PROVISION AND ENACT CERTAIN RESTRICTIONS FOR PROFESSIONAL
19 LIMITED LIABILITY COMPANIES; TO PROVIDE FOR FOREIGN LIMITED
20 LIABILITY COMPANIES, REQUIRE REGISTRATION THEREOF, AND PROVIDE FOR
21 ADMINISTRATIVE REVOCATION OF REGISTRATION UNDER CERTAIN
22 CIRCUMSTANCES; TO PROVIDE FOR DERIVATIVE ACTIONS; TO ENACT RULES
23 OF CONSTRUCTION, IMPOSE CERTAIN FEES, AND MAKE OTHER MISCELLANEOUS
24 PROVISIONS; TO MAKE TRANSITION PROVISIONS; TO CREATE THE
25 "ELECTIONS SUPPORT FUND" AND PROVIDE FOR THE ALLOCATION OF THE
26 MONIES DEPOSITED THEREIN; TO REPEAL SECTIONS 79-29-101 THROUGH
27 79-29-1204, MISSISSIPPI CODE OF 1972, WHICH COMPRISE THE
28 MISSISSIPPI LIMITED LIABILITY COMPANY ACT; AND FOR RELATED
29 PURPOSES.

30 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

31 **SECTION 1.** The following is the revised Mississippi Limited
32 Liability Company Act, and shall be codified in Title 79, Chapter
33 29, Mississippi Code of 1972, to replace Title 79, Chapter 29,
34 that is repealed in Section 3 of this act:

35 ARTICLE 1.

36 GENERAL PROVISIONS



37 **Section 79-29-101. Short title.** This chapter shall be known
38 and may be cited as the "Revised Mississippi Limited Liability
39 Company Act."

40 **Section 79-29-103. Reservation of power to amend or repeal.**
41 Any provision of this chapter may be altered from time to time or
42 repealed and all rights of members, managers and officers are
43 subject to this reservation. Unless expressly stated to the
44 contrary in this chapter, including Article 13, any amendment of
45 this chapter shall apply to limited liability companies and
46 members, managers and officers without regard to either the date
47 of the formation of the limited liability company or the date of
48 the enactment of the amendment.

49 **Section 79-29-105. Definitions.** As used in this chapter,
50 unless the context otherwise requires:

51 (a) "Bankruptcy" means an event that causes a member to
52 cease to be a member as provided in Section 79-29-313 of this
53 chapter.

54 (b) "Certificate of formation" means the certificate
55 referred to in Section 79-29-201, the certificate as amended or
56 restated, and the certificate of merger. In the case of a foreign
57 limited liability company, the term includes all documents serving
58 a similar function that are required to be filed to form the
59 limited liability company in the state or other jurisdiction where
60 it is organized.

61 (c) "Contribution" means any cash, property, services
62 rendered, or a promissory note or other obligation to contribute
63 cash or property or to perform services, which a person
64 contributes to a limited liability company in the person's
65 capacity as a member.

66 (d) "Deliver" or "delivery" means any method of
67 delivery used in conventional commercial practice, including
68 delivery by hand, mail, commercial delivery and electronic
69 transmission. If delivery is to the Secretary of State, delivery



70 may be made by electronic transmission, if, to the extent, and in
71 the manner permitted by the Secretary of State.

72 (e) "Derivative proceeding" means a civil suit in the
73 right of a limited liability company or, to the extent provided in
74 Article 10 of this chapter, in the right of a foreign limited
75 liability company.

76 (f) "Electronic transmission" or "electronically
77 transmitted" means any process of communication not directly
78 involving the physical transfer of paper that is suitable for the
79 retention, retrieval and reproduction of information by the
80 recipient.

81 (g) "Entity" means any association or legal entity
82 organized to conduct business, whether domestic or foreign,
83 including, without limitation, for profit and nonprofit
84 corporations, limited partnerships, general partnerships, limited
85 liability partnerships, limited liability companies, joint
86 ventures, joint-stock companies, business trusts and estates; and
87 states, the United States, foreign governments, governmental
88 subdivisions or governmental agencies.

89 (h) "Financial interests" and "financial rights" means
90 (i) rights to share in profits and losses as provided in Section
91 79-29-505; (ii) rights to share in distributions as provided in
92 Section 79-29-507; (iii) rights to receive interim distributions
93 as provided in Section 79-29-601; (iv) rights to receive
94 distributions upon withdrawal as provided in Section 79-29-603;
95 (v) rights to receive allocations of income, loss, deduction,
96 credit or similar items; (vi) appraisal rights as provided in
97 Section 79-29-231; and (vii) any other rights granted in the
98 certificate of formation or the operating agreement that are in
99 addition to the above and are designated as "financial interests"
100 or "financial rights" by the limited liability company. Financial
101 interests may be owned by members of a limited liability company
102 and may be owned by persons who are not members of a limited



103 liability company. Financial interests are assignable in whole or
104 in part, except as otherwise provided by a limited liability
105 company's certificate of formation or operating agreement.

106 (i) "Foreign," with reference to any entity, means such
107 entity that is formed or organized under laws other than the laws
108 of this state or under the laws of any foreign country or other
109 foreign jurisdiction and denominated as such under the laws of
110 such state or foreign country or other foreign jurisdiction.

111 (j) "Formation document" means the document that
112 creates an entity which document is duly executed and delivered to
113 a public official or office in the state or other foreign
114 jurisdiction of the entity's formation pursuant to the laws under
115 which the entity is organized or formed.

116 (k) "Governance interests" or "governance rights" means
117 all of a member's rights as a member in the limited liability
118 company other than financial rights and the right to assign
119 financial rights, including without limitation: (i) the rights to
120 participate in the management of the limited liability company;
121 (ii) rights to bind the limited liability company as provided in
122 Sections 79-29-307 and 79-29-811; (iii) the right to vote for or
123 consent to matters requiring the vote of or consent of the
124 members, as specified in this chapter or in the certificate of
125 formation or operating agreement; and, unless the context
126 otherwise requires; and (iv) rights to enjoy any privileges
127 bestowed on members of the limited liability company. Only
128 members shall have governance rights or own governance interests
129 in a limited liability company.

130 (l) "Individual" means a natural person.

131 (m) "Interests" means the proprietary interests in an
132 entity and, with respect to a member of a limited liability
133 company, "interests" or "membership interests" are used
134 interchangeably and shall each mean all of the governance



135 interests and financial interests in the limited liability company
136 held by such member or members.

137 (n) "Knowledge" means a person's actual knowledge,
138 rather than the person's constructive knowledge.

139 (o) "Limited liability company" or "domestic limited
140 liability company" means an entity having one or more members that
141 is an unincorporated company or unincorporated association formed
142 and existing under this chapter and is not subject to Section
143 97-13-15.

144 (p) "Manager" or "managers" means a person or persons
145 who are named in or selected or designated pursuant to, the
146 certificate of formation or operating agreement as a manager to
147 manage the limited liability company to the extent and as provided
148 in the certificate of formation or operating agreement. A limited
149 liability company whose management is vested in a manager or
150 managers is referred to in this chapter as a manager-managed
151 limited liability company.

152 (q) "Member" means a person who has been admitted to a
153 limited liability company as provided in Section 79-29-301 or, in
154 the case of a foreign limited liability company, in accordance
155 with the laws under which the foreign limited liability company is
156 organized. A member includes a member of a limited liability
157 company who does not own a financial interest or who does not have
158 an obligation to contribute capital to the limited liability
159 company. A member may or may not have governance interests,
160 including voting rights. A member may have other rights, powers
161 or privileges as prescribed by the certificate of formation or the
162 operating agreement. A limited liability company whose management
163 is vested in the members is referred to in this chapter as a
164 member-managed limited liability company.

165 (r) "Merger" means a business combination pursuant to
166 Section 79-29-221.



167 (s) "Officer" means an individual who is named in or
168 selected or designated pursuant to, the certificate of formation
169 or operating agreement as an officer to manage the limited
170 liability company to the extent and as provided in the certificate
171 of formation or operating agreement.

172 (t) "Operating agreement" or "limited liability company
173 agreement" means any agreement, whether referred to as a limited
174 liability company agreement or otherwise, written, oral or
175 implied, of the member or members as to the affairs of a limited
176 liability company and the conduct of its business. A member or
177 manager of a limited liability company or an assignee of a
178 financial interest is bound by the operating agreement whether or
179 not the member or manager or assignee executes the operating
180 agreement. A limited liability company is not required to execute
181 its operating agreement. A limited liability company is bound by
182 its operating agreement whether or not the limited liability
183 company executes the operating agreement. An operating agreement
184 of a limited liability company having only one (1) member shall
185 not be unenforceable by reason of there being only one (1) person
186 who is a party to the operating agreement. An operating agreement
187 may provide rights to any person, including a person who is not a
188 party to the operating agreement, to the extent set forth therein.
189 A written operating agreement or another written agreement or
190 writing:

191 (i) May provide that a person shall be admitted as
192 a member of a limited liability company, or shall become an
193 assignee of a financial interest or of other rights or powers of a
194 member to the extent assigned:

195 1. If the person, or a representative
196 authorized by the person orally, in writing or by other action
197 such as payment for a financial interest, executes the operating
198 agreement or any other writing evidencing the intent of the person
199 to become a member or assignee; or



200 2. Without such execution, if such person, or
201 a representative authorized by such person orally, in writing or
202 by other action such as payment for a financial interest, complies
203 with the conditions for becoming a member or assignee as set forth
204 in the operating agreement or any other writing; and

205 (ii) Shall not be unenforceable by reason of its
206 not having been signed by a person being admitted as a member or
207 becoming an assignee as provided in subsection (t)(i) of this
208 subsection, or by reason of its having been signed by a
209 representative as provided in this chapter.

210 (u) "Organizational documents" means the document or
211 documents that create, or determine the internal governance of, an
212 entity. The organizational documents of a limited liability
213 company are the certificate of formation and the operating
214 agreement, if any.

215 (v) "Person" means an individual, entity, trust, or any
216 other legal or commercial nominee or any personal representative.

217 (w) "Personal representative" means, as to an
218 individual, the executor, administrator, guardian, conservator or
219 other legal representative thereof or the successor of such
220 executor, administrator, guardian, conservator or legal
221 representative; and, as to a person other than an individual, the
222 legal representative or the successor of the legal representative.
223 The legal representative of a member which has been placed in
224 bankruptcy shall be the bankruptcy trustee or other representative
225 designated in accordance with the bankruptcy code.

226 (x) "Professional limited liability company" is a
227 limited liability company formed and existing under Article 9 of
228 this chapter.

229 (y) "Sign" or "signature" includes any manual,
230 facsimile, conformed or electronic signature.



231 (z) "State" means the District of Columbia or the
232 Commonwealth of Puerto Rico or any state, territory, possession or
233 other jurisdiction of the United States.

234 (aa) "Survivor" of a merger means the entity into which
235 one or more entities are merged. A survivor of a merger may
236 preexist the merger or be created by the merger.

237 (bb) "Withdraw" or "withdrawal" means, with respect to
238 a member of a limited liability company, any voluntary act by
239 which, pursuant to the certificate of formation or written
240 operating agreement, a member ceases to be a member of the limited
241 liability company and ceases to have any governance rights.
242 Withdrawal shall include retirement, resignation or withdrawal,
243 but shall not include the death or expulsion of a member, any
244 event described in Section 79-29-313, or the assignment of the
245 member's entire interest as provided in Section 79-29-703. Any
246 use of the term "resignation" or "retirement" in an operating
247 agreement or certificate of formation, with respect to a member
248 which is not defined in such document, shall mean the withdrawal
249 of the member from the limited liability company for purposes of
250 this chapter.

251 **Section 79-29-107. Form of notice and written consents. (1)**

252 Notice under this chapter shall be in writing unless oral notice
253 is reasonable under the circumstances. Notice by electronic
254 transmission is written notice.

255 (2) Notice may be communicated in person; by mail or other
256 method of delivery; or by telephone, voice mail, email or other
257 electronic means. If these forms of personal notice are
258 impracticable, notice may be communicated by a newspaper of
259 general circulation in the area where published, or by radio,
260 television or other form of public broadcast communication.

261 (3) Electronically transmitted written notice by a limited
262 liability company to its members or managers, if in a
263 comprehensible form, is effective when electronically transmitted



264 to the member or manager in a manner authorized by the member or
265 manager, as applicable.

266 (4) Written notice that is not electronically transmitted by
267 a limited liability company to its members or managers, if in a
268 comprehensible form, is effective at the earliest of the
269 following:

270 (a) When received;

271 (b) Five (5) days after its deposit in the United
272 States mail, if mailed postpaid and correctly addressed to the
273 recipients shown in the limited liability company's current list
274 of members and managers;

275 (c) On the date shown on the return receipt, if sent by
276 registered or certified mail, return receipt requested, and the
277 receipt is signed by or on behalf of the addressee.

278 (5) Oral notice is effective when communicated if
279 communicated in a comprehensible manner.

280 (6) Any notice permitted or required to be made under this
281 chapter or under the operating agreement may be waived at any
282 time.

283 (7) A consent transmitted by electronic transmission by a
284 person or by a person authorized to act for the person shall be
285 deemed to be written and signed for purposes of this chapter.

286 **Section 79-29-109. Name.** (1) The name of each limited
287 liability company as set forth in its certificate of formation:

288 (a) Must contain the words "limited liability company"
289 or the abbreviation "L.L.C." or "LLC";

290 (b) May contain the name of a member or manager;

291 (c) Except as authorized by subsection (3) of this
292 section, must be distinguishable upon the records of the Secretary
293 of State from (i) the name of any domestic or foreign corporation,
294 nonprofit corporation, limited partnership, limited liability
295 partnership or limited liability company that is organized or
296 registered under the laws of this state and which has not been



297 dissolved; and (ii) a name that is reserved or registered in the
298 Office of the Secretary of State for any of the entities named in
299 paragraph (1)(c)(i) of this section which reservation or
300 registration has not expired; and

301 (d) May not contain the following words: "bank,"
302 "banker," "bankers," "banking," "trust company," "insurance,"
303 "trust," "corporation," "incorporated," "partnership," "limited
304 partnership," or any combination or abbreviation thereof, or any
305 words or abbreviations of similar import.

306 (2) The Secretary of State shall reject any certificate of
307 formation that does not comply with subsection (1) of this
308 section.

309 (3) A limited liability company may apply to the Secretary
310 of State for authorization to use a name that is not
311 distinguishable upon the records in the Office of the Secretary of
312 State from one or more of the names described in subsection (1)(c)
313 of this section. The Secretary of State shall authorize the use
314 of the name applied for if:

315 (a) The other domestic or foreign limited liability
316 company, limited partnership, limited liability partnership,
317 corporation or nonprofit corporation consents to the use in
318 writing and submits an undertaking in form satisfactory to the
319 Secretary of State to change its name to a name that is
320 distinguishable upon the records of the Secretary of State from
321 the name of the applying limited liability company; or

322 (b) The applicant delivers to the Office of the
323 Secretary of State for filing a certified copy of the final
324 judgment of a court of competent jurisdiction establishing the
325 applicant's right to use the name applied for in this state.

326 **Section 79-29-111. Reservation of name.** (1) The right to
327 the use of a legal name under Section 79-29-109 may be reserved
328 by:



329 (a) A person intending to organize a limited liability
330 company under this chapter and to adopt that name;

331 (b) A domestic limited liability company or any foreign
332 limited liability company registered in this state which, in
333 either case, intends to adopt that name;

334 (c) A foreign limited liability company intending to
335 register in this state and adopt that name; and

336 (d) A person intending to organize a foreign limited
337 liability company and intending to have it registered in this
338 state and adopt that name.

339 (2) The reservation shall be made by delivering to the
340 Office of the Secretary of State for filing an application, signed
341 by the applicant, specifying the name to be reserved and the name
342 and address of the applicant. If the Secretary of State finds
343 that the name is available for use as a legal name by a domestic
344 or foreign limited liability company, the Secretary of State shall
345 reserve the name for the exclusive use of the applicant as a legal
346 name for a period of one hundred eighty (180) days. Once having
347 so reserved a name, the same applicant may not again reserve the
348 same name until more than sixty (60) days after the expiration of
349 the last one-hundred-eighty-day period for which that applicant
350 reserved that name. The right to the exclusive use of a reserved
351 name may be transferred to any other person by delivering to the
352 Office of the Secretary of State a notice of the transfer, signed
353 by the applicant for whom the name was reserved and specifying the
354 name and address of the transferee.

355 (3) The reservation of a specified name may be cancelled by
356 delivering to the Office of the Secretary of State a notice of
357 cancellation, specifying the name reservation to be cancelled and
358 the name and address of the applicant or transferee.

359 (4) Unless the Secretary of State finds that any
360 application, notice of transfer, or notice of cancellation filed
361 with the Secretary of State as required by this section does not



362 conform to law, upon receipt of all filing fees required by law
363 the Secretary shall prepare and return to the person who filed the
364 instrument a copy of the filed instrument with a notation thereon
365 of the action taken by the Secretary of State.

366 (5) A fee as set forth in Section 79-29-1203 of this chapter
367 shall be paid at the time of the reservation of any name and at
368 the time of the filing of a notice of the transfer or cancellation
369 of any such reservation.

370 **Section 79-29-113. Registered office and registered agent.**

371 (1) Each limited liability company must continuously maintain in
372 this state:

373 (a) A registered office which may be the same as any of
374 its places of business; and

375 (b) A registered agent for service of process on the
376 limited liability company, which agent must be either an
377 individual resident of this state, a domestic corporation,
378 nonprofit corporation or limited liability company or a foreign
379 corporation, nonprofit corporation or limited liability company
380 authorized to transact business in this state, in each case whose
381 business office is identical with the registered office.

382 (2) A limited liability company may change its registered
383 office or registered agent by delivering to the Office of the
384 Secretary of State for filing a certificate that sets forth:

385 (a) The name of the limited liability company;

386 (b) The street address of its current registered
387 office;

388 (c) If the current registered office is to be changed,
389 the street address of the new registered office;

390 (d) The name of its current registered agent;

391 (e) If the current registered agent is to be changed,
392 the name of the new registered agent and the new agent's written
393 consent, either on the certificate or a statement attached to it,
394 to the appointment; and



395 (f) That after the change or changes are made, the
396 street addresses of its registered office and the business office
397 of its registered agent will be identical.

398 (3) A registered agent may change its address to another
399 address in this state by delivering to the Office of the Secretary
400 of State for filing a certificate, signed by the registered agent,
401 setting forth: (a) the names of all the limited liability
402 companies represented by the registered agent, (b) the address at
403 which the registered agent has maintained its office for each of
404 such limited liability companies, and (c) its new address which
405 the registered agent will thereafter maintain for each of the
406 limited liability companies recited in the certificate.

407 Upon filing this certificate, the Secretary of State will
408 deliver to the registered agent a certified copy of the same and
409 thereafter, or until further change of address, as authorized by
410 law, the registered office of each of the limited liability
411 companies recited in the certificate shall be located at the new
412 address of the registered agent as given in the certificate. The
413 filing by the Secretary of State of the certificate shall be
414 deemed to be an amendment of the certificate of formation of each
415 limited liability company affected thereby. Any registered agent
416 delivering a certificate to the Office of the Secretary of State
417 under this section shall promptly, upon filing by the Secretary of
418 State, deliver a copy of any such certificate to each limited
419 liability company affected thereby.

420 (4) The registered agent of one or more limited liability
421 companies may resign its agency appointment by delivering a
422 certificate to the Office of the Secretary of State for filing
423 stating that it resigns as registered agent for the limited
424 liability companies identified in the certificate, but the
425 resignation shall not become effective until ninety (90) days
426 after the certificate is filed by the Secretary of State. There
427 shall be attached to the certificate an affidavit of the



428 registered agent that at least thirty (30) days prior to the
429 filing of the certificate notices were sent by certified or
430 registered mail to each limited liability company for which the
431 registered agent is resigning as registered agent of the
432 resignation of the registered agent. This notice shall be
433 delivered to the last known principal office of each limited
434 liability company identified in the certificate. After receipt of
435 the notice of resignation of its registered agent, the limited
436 liability company for which the registered agent was acting shall
437 obtain and designate a new registered agent. After the
438 resignation of the registered agent has become effective, if the
439 limited liability company fails to obtain and designate a new
440 registered agent, service of legal process against the limited
441 liability company for which the resigned registered agent had been
442 acting shall thereafter be upon the Secretary of State in
443 accordance with Section 79-29-125(2).

444 **Section 79-29-115. Records to be kept.** (1) Each limited
445 liability company shall keep at its principal place of business
446 the following: (a) a current list of the full name and last known
447 street address of each member and manager; (b) a copy of the
448 certificate of formation, together with executed copies of any
449 powers of attorney pursuant to which any certificate has been
450 executed; (c) copies of any then effective operating agreement;
451 and (d) unless contained in the certificate of formation or the
452 operating agreement, a writing setting out: (i) the amount of
453 cash and a description and statement of the agreed value of the
454 other property or services contributed by each member and which
455 each member has agreed to contribute; (ii) the times at which or
456 events on the happening of which any additional contributions
457 agreed to be made by each member are to be made; and (iii) any
458 events upon the happening of which the limited liability company
459 is to be dissolved and its affairs wound up.



460 (2) The failure of the limited liability company to maintain
461 the foregoing required records shall not, for this reason, cause
462 any member to be liable for any debt, obligation or liability of
463 the limited liability company.

464 **Section 79-29-117. Nature of business; powers.** (1) Subject
465 to the provisions of its certificate of formation or the operating
466 agreement and subject to any other laws of this state which govern
467 or limit the conduct of a particular business or activity, a
468 limited liability company may carry on any lawful business,
469 purpose or activity.

470 (2) Every limited liability company has the same powers as
471 an individual to do all things necessary or convenient to carry
472 out its business and affairs.

473 **Section 79-29-119. Governing law.** The law of this state
474 governs:

475 (a) The internal affairs of a limited liability
476 company; and

477 (b) The liability of a member as member, a manager as
478 manager and an officer as officer for the debts, obligations, or
479 other liabilities of a limited liability company.

480 **Section 79-29-121. Business transactions of member or**
481 **manager with the limited liability company.** A member or manager
482 may lend money to and transact other business with the limited
483 liability company and, subject to other applicable law, has the
484 same rights and obligations with respect thereto as a person who
485 is not a member or manager.

486 **Section 79-29-123. General standards of conduct and**
487 **construction and application of certificate of formation and**
488 **operating agreement; scope, function, and limitations.** (1) An
489 operating agreement must initially be agreed to by all of the
490 members. Except as otherwise provided in subsections (2) and (3)
491 of this section, the certificate of formation or operating
492 agreement governs:



493 (a) The affairs of a limited liability company, the
494 conduct of its business and the relations of its members among the
495 members as members and between the members and the limited
496 liability company;

497 (b) The rights, powers and duties under this chapter of
498 a person in the capacity of member, manager, officer or other
499 person who is a party to or is otherwise bound by the operating
500 agreement;

501 (c) The activities of the limited liability company and
502 the conduct of those activities; and

503 (d) The means and conditions for amending the operating
504 agreement.

505 (2) To the extent that: (a) the provisions of the operating
506 agreement are not inconsistent with the certificate of formation,
507 the operating agreement governs the matters described in
508 subsections (a) through (d) of subsection (1) of this section; (b)
509 the certificate of formation or operating agreement does not
510 provide for the method by which an operating agreement may be
511 amended, then all of the members must agree to any amendment of an
512 operating agreement, except an amendment that occurs as the result
513 of a merger with a domestic or foreign limited liability company
514 must be approved by a majority of the members; and (c) the
515 certificate of formation or operating agreement does not otherwise
516 provide for a matter described in paragraphs (a) through (d) of
517 subsection (1) of this section, this chapter governs the matter.

518 (3) Except as provided in this subsection (3), the
519 provisions of this chapter that relate to the matters described in
520 paragraphs (a) through (d) of subsection (1) of this section may
521 be waived, restricted, limited, eliminated or varied by the
522 certificate of formation or operating agreement. In addition to
523 the restrictions set forth in subsections (4) and (5) of this
524 section, the certificate of formation or the operating agreement
525 may not:



526 (a) Vary the requirement set forth in subsection (1) of
527 this section that the initial operating agreement must be agreed
528 to by all of the members;

529 (b) Vary a limited liability company's capacity to sue
530 and be sued in its own name;

531 (c) Vary the law applicable under Section 79-29-119;

532 (d) Vary the power of the court under Section
533 79-29-209;

534 (e) Restrict the right to approve a merger under
535 Section 79-29-223(e) to a member who will have personal liability
536 with respect to a survivor;

537 (f) Restrict the right to approve an asset sale
538 agreement under Section 79-29-233(e) to a member who will have
539 personal liability with respect to any entity;

540 (g) Eliminate the implied contractual covenant of good
541 faith and fair dealing of a member, manager, officer or other
542 person who is a party to the operating agreement or who is
543 otherwise bound by the operating agreement;

544 (h) Unreasonably restrict the duties and rights stated
545 in Section 79-29-315;

546 (i) Waive the requirement of Section 79-29-503(1) that
547 a contribution obligation be in writing;

548 (j) Vary the requirement to wind-up a limited liability
549 company's business following the filing of a certificate of
550 dissolution as specified in Section 79-29-801;

551 (k) Vary the manner of the distribution of assets in
552 connection with the winding-up of a limited liability company's
553 business as required by Section 79-29-813(1) (a);

554 (l) Vary the power of a court to decree dissolution in
555 the circumstances specified in Section 79-29-803(1) or to appoint
556 trustees or receivers as specified in Section 79-29-815;

557 (m) Vary the requirements of Sections 79-29-817 and
558 79-29-819;



559 (n) Vary or modify any provision of Article 9 of this
560 chapter unless otherwise expressly provided in Article 9 that the
561 certificate of formation or the operating agreement may vary or
562 modify such provision;

563 (o) Unreasonably restrict the right of a member to
564 maintain an action under Article 11 of this chapter;

565 (p) Vary any requirement set forth in this chapter that
566 an agreement must be contained in either the certificate of
567 formation or a written operating agreement to be enforceable; or

568 (q) Vary any provision set forth in this chapter
569 relating to filing, fees or any action with or by the Secretary of
570 State's office.

571 (4) The certificate of formation or an operating agreement
572 may provide for the limitation or elimination of any and all
573 liabilities of any manager, member, officer or other person who is
574 a party to or is otherwise bound by the operating agreement for
575 any action taken, or failure to take any action, as a manager or
576 member or other person, including, for breach of contract and for
577 breach of duties, including all or any fiduciary duties, of a
578 member, manager, officer or other person to a limited liability
579 company or to its members or to another member or manager or
580 officer or to another person; provided, that the certificate of
581 formation or an operating agreement may not limit or eliminate
582 liability for:

583 (a) The amount of a financial benefit by a member or
584 manager to which the member or manager is not entitled;

585 (b) An intentional infliction of harm on the limited
586 liability company or the members;

587 (c) An intentional violation of criminal law;

588 (d) A violation of Section 79-29-611;

589 (e) The amount of a distribution in violation of
590 Section 79-29-813(1); or



591 (f) Any act or omission that constitutes a bad faith
592 violation of the implied contractual covenant of good faith and
593 fair dealing.

594 (5) Indemnification. (a) A limited liability company may,
595 and shall have the power to, indemnify and hold harmless any
596 member, manager, officer or other person from and against any and
597 all claims and demands whatsoever, except a limited liability
598 company and an operating agreement shall not indemnify any member,
599 manager, officer or other person from and against any claims or
600 demands in connection with a proceeding by or in the right of the
601 limited liability company in which the member, manager or other
602 person was:

603 (i) Found to have engaged in acts or omissions
604 that constitute fraudulent conduct and was adjudged liable for
605 claims based on such conduct; or

606 (ii) Was found to have engaged in any actions
607 described in subsection (4) of this section and was adjudged
608 liable for claims based on such actions.

609 (b) A limited liability company shall indemnify a
610 member, manager, officer or other person who was wholly
611 successful, on the merits or otherwise, in the defense of any
612 proceeding to which the person was a party because the person is
613 or was a member, manager, officer or agent of the limited
614 liability company against reasonable expenses incurred by the
615 member, manager, officer or agent in connection with the
616 proceeding.

617 (c) Each such indemnity may continue as to a person who
618 has ceased to have the capacity referred to in subsection (5)(a)
619 of this section and may inure to the benefit of the heirs,
620 beneficiaries and personal representatives of such person.

621 (6) General standards of conduct. Subject to the
622 certificate of formation or the terms of a written operating
623 agreement or other written agreement, which may expand, eliminate



624 or restrict the following, except as provided in subsection (4) (f)
625 of this section,

626 (a) A manager:

627 (i) Shall discharge the duties of a manager;

628 1. In good faith and with fair dealing;

629 2. With the care an ordinarily prudent person
630 in a like position would exercise under similar circumstances; and

631 3. In a manner the manager reasonably
632 believes to be in the best interests of the limited liability
633 company.

634 (ii) Shall not be liable to a limited liability
635 company or to another member or manager or to another person who
636 is a party to or is otherwise bound by an operating agreement for
637 the following:

638 1. For any action taken as a manager, or any
639 failure to take any action, if such manager performed the duties
640 of such manager in compliance with subsection (6) (a) (i) of this
641 section.

642 2. For breach of fiduciary duty for the
643 manager's good faith reliance on the provisions of the operating
644 agreement.

645 (b) An officer:

646 (i) Shall discharge the duties of an officer;

647 1. In good faith and with fair dealing;

648 2. With the care an ordinarily prudent person
649 in a like position would exercise under similar circumstances; and

650 3. In a manner the officer reasonably
651 believes to be in the best interests of the limited liability
652 company.

653 (ii) Shall not be liable to a limited liability
654 company or to another member or manager or to another person who
655 is a party to or is otherwise bound by an operating agreement for
656 the following:



657 1. For any action taken as an officer, or any
658 failure to take any action, if such officer performed the duties
659 of such member in compliance with subsection (6)(b)(i) of this
660 section; and

661 2. For breach of fiduciary duty for the
662 officer's good faith reliance on the provisions of the operating
663 agreement.

664 (c) A member of a member-managed limited liability
665 company:

666 (i) Shall discharge the duties of a member of a
667 member-managed limited liability company;

668 1. In good faith and with fair dealing;

669 2. With the care an ordinarily prudent person
670 in a like position would exercise under similar circumstances; and

671 3. In a manner the person reasonably believes
672 to be in the best interests of the limited liability company.

673 (ii) Shall not be liable to a limited liability
674 company or to another member or manager or to another person who
675 is a party to or is otherwise bound by an operating agreement for
676 the following:

677 1. For any action taken as a member of a
678 member-managed limited liability company, or any failure to take
679 any action, if such member performed the duties of such member in
680 compliance with subsection (6)(c)(i) of this section.

681 2. For breach of fiduciary duty for the
682 member's good faith reliance on the provisions of the operating
683 agreement.

684 (d) To the extent that, at law or in equity, a member
685 of a manager-managed limited liability company or other person has
686 duties, including fiduciary duties set forth in this chapter, to a
687 limited liability company or to another member or manager or to
688 another person who is a party to or is otherwise bound by an
689 operating agreement, such member's or other person's fiduciary



690 duties may be expanded, restricted or eliminated by provisions in
691 the certificate of formation or the written operating agreement.

692 (e) The operating agreement may:

693 (i) Identify specific categories of activities
694 that do not violate the duty of loyalty;

695 (ii) Alter or eliminate any other fiduciary duty,
696 including eliminating particular aspects of that duty; and

697 (iii) If not manifestly unreasonable, prescribe
698 the standards by which to measure the performance of the implied
699 contractual covenant of good faith and fair dealing under Section
700 79-29-123(3)(g).

701 (7) Any agreement relating to or governing any event, act,
702 omission, duty, right, power or liability under or pursuant to the
703 following sections of this chapter must be expressly contained in
704 either the certificate of formation or a written operating
705 agreement in order to be enforceable:

706 (a) Section 79-29-123(4);

707 (b) Section 79-29-123(6);

708 (c) Section 79-29-231;

709 (d) Section 79-29-301(6);

710 (e) Section 79-29-303;

711 (f) Section 79-29-309;

712 (g) Section 79-29-313(1);

713 (h) Section 79-29-801; and

714 (i) Section 79-29-1211.

715 (8) A court of equity:

716 (a) May enforce an operating agreement by injunction or
717 by such other relief that the court in its discretion determines
718 to be fair and appropriate in the circumstances or, when the
719 provisions of Section 79-29-803 are applicable, the court may
720 order dissolution of the limited liability company; and



721 (b) Shall decide any claim under subsection (6)(e)(iii)
722 of this section that such standard is manifestly unreasonable.

723 The court:

724 (i) Shall make its determination as of the time
725 the challenged term became part of the operating agreement and by
726 considering only circumstances existing at that time; and

727 (ii) May invalidate the term only if, in light of
728 the purposes and activities of the limited liability company, it
729 is readily apparent that:

730 1. The objective of the term is unreasonable;

731 or

732 2. The term is an unreasonable means to
733 achieve the provision's objective.

734 **Section 79-29-125. Service on limited liability company.**

735 (1) A limited liability company's registered agent is the limited
736 liability company's agent for service of process, notice or demand
737 required or permitted by law to be served on the limited liability
738 company.

739 (2) If a limited liability company has no registered agent,
740 or the agent cannot with reasonable diligence be served, service
741 of legal process against the limited liability company shall be
742 upon the Secretary of State in accordance with the Rules of Civil
743 Procedure of this state. Service is perfected under this
744 subsection at the earliest of:

745 (a) The date the limited liability company receives the
746 mail;

747 (b) The date shown on the return receipt, if signed on
748 behalf of the limited liability company; or

749 (c) Five (5) days after its deposit in the United
750 States mail, if mailed postpaid and correctly addressed.

751 (3) This section does not prescribe the only means, or
752 necessarily the required means, of serving a limited liability
753 company.



754 **Section 79-29-127. Taxation.** Domestic limited liability
755 companies and foreign limited liability companies shall be
756 classified as an entity for purposes of the income tax laws of
757 this state in the same manner as they are classified for federal
758 income tax purposes.

759 ARTICLE 2.

760 FORMATION, CERTIFICATE OF FORMATION

761 **Section 79-29-201. Certificate of formation.** (1) In order
762 to form a limited liability company, a certificate of formation
763 must be signed and delivered to the Office of the Secretary of
764 State. The certificate must set forth:

765 (a) The name of the limited liability company;

766 (b) The street and mailing address of the registered
767 office and the name and the street and mailing address of the
768 registered agent for service of process, required to be maintained
769 by Section 79-29-113; and

770 (c) If the limited liability company is to have a
771 specific date of dissolution, the latest date upon which the
772 limited liability company is to dissolve.

773 (2) The certificate of formation may set forth any other
774 matters the members determine to include therein.

775 (3) A limited liability company is formed at the date and
776 time of the filing of the certificate of formation by the
777 Secretary of State, as evidenced by such means as the Secretary of
778 State may use for the purpose of recording the date and time of
779 filing, or at any later date or time specified in the certificate
780 of formation if, in either case, the certificate of formation so
781 filed substantially complies with the requirements of this
782 chapter. A delayed effective date specified in a certificate of
783 formation may not be later than the ninetieth day after the date
784 and time it is filed by the Secretary of State.

785 (4) For all purposes, a copy of the certificate of formation
786 duly certified by the Secretary of State is conclusive evidence of



787 the formation of a limited liability company and prima facie
788 evidence of its existence.

789 **Section 79-29-203. Amendment to or restatement of**
790 **certificate.** (1) A certificate of formation is amended or
791 restated by delivering a certificate of amendment thereto to the
792 Office of the Secretary of State for filing. The certificate
793 shall set forth:

- 794 (a) The name of the limited liability company;
- 795 (b) The future effective date of the amendment or
796 restatement, which must be a date certain not later than the
797 ninetieth day after the date it is filed by the Secretary of
798 State, unless it is effective upon the filing of the certificate
799 of amendment; and
- 800 (c) The amendment to or restatement of the certificate.

801 (2) A certificate of formation may be amended or restated at
802 any time for any other proper purpose.

803 (3) All members must agree to any amendment to or
804 restatement of the certificate of formation.

805 **Section 79-29-205. Certificate of dissolution.** (1) A
806 certificate of dissolution must be delivered to the Office of the
807 Secretary of State for filing upon commencement of winding-up of
808 the limited liability company in connection with the dissolution
809 of the limited liability company pursuant to Article 8 of this
810 chapter. A certificate of dissolution must be delivered to the
811 Office of the Secretary of State for filing and must set forth:

- 812 (a) The name of the limited liability company;
- 813 (b) The future effective date of dissolution, which
814 must be a date certain not later than the ninetieth day after it
815 is filed by the Secretary of State, unless it is effective upon
816 the filing of the certificate; and
- 817 (c) Any other information the person delivering the
818 certificate for filing determines.



819 (2) The Secretary of State shall not issue a certificate of
820 existence with respect to a limited liability company after the
821 effective date of the certificate of dissolution of such limited
822 liability company.

823 **Section 79-29-207. Signing of certificates.** (1) Unless
824 otherwise specified in any other section of this chapter, any
825 document required by this chapter to be delivered to the Office of
826 the Secretary of State for filing shall be signed by any one or
827 more authorized persons.

828 (2) The person signing the document shall state the person's
829 name beneath or opposite the person's signature, the capacity in
830 which the person signs and the person's street and mailing
831 address. A document required or permitted to be delivered to the
832 Office of the Secretary of State for filing under this chapter
833 which contains a copy of a signature, however made, is acceptable
834 for filing by the Secretary of State.

835 (3) Any person may sign a certificate, an operating
836 agreement or any amendment to either by an agent, including an
837 attorney-in-fact.

838 (4) A person commits an offense if the person signs a
839 document with the knowledge that it is false in any material
840 respect with intent that the document be delivered to the Office
841 of the Secretary of State for filing. An offense under this
842 provision is a misdemeanor punishable by a fine not to exceed One
843 Thousand Dollars (\$1,000.00).

844 **Section 79-29-209. Amendment or dissolution by judicial act.**
845 If a person required by this Article 2 to sign a certificate fails
846 or refuses to do so, any other person who is adversely affected by
847 the failure or refusal may petition the chancery court of the
848 county in which the principal office (or, if none in this state,
849 the registered office) of the limited liability company is located
850 to direct the signing of the certificate. If the court finds that
851 it is proper for the certificate to be signed and that any person



852 so designated has failed or refused to sign the certificate, it
853 shall order appropriate relief, including an order to the
854 Secretary of State to file an appropriate certificate.

855 **Section 79-29-211. Filing with the Secretary of State. (1)**

856 The certificate of formation and of any certificate of amendment,
857 dissolution, correction or merger and any restated certificate or
858 of any judicial decree of amendment, dissolution or merger or
859 restated certificate and any certificate filed by the Secretary of
860 State pursuant to Section 79-29-113 must be delivered to the
861 Office of the Secretary of State. A person who signs a
862 certificate as an agent or fiduciary need not exhibit evidence of
863 the person's authority as a prerequisite to filing by the
864 Secretary of State. Unless the Secretary of State finds that a
865 certificate is not acceptable for filing, upon receipt of all
866 filing fees required by Section 79-29-1203 and delivery of the
867 certificate the Secretary of State shall:

868 (a) Certify that the certificate has been filed in the
869 Secretary of State's office by endorsing upon the signed
870 certificate the word "Filed" and the date and time of the filing.
871 This endorsement is conclusive evidence of the date and time of
872 its filing in absence of actual fraud;

873 (b) File the certificate; and

874 (c) Return a copy to the person who delivered it for
875 filing or that person's representative with an acknowledgment of
876 the date and time of filing.

877 (2) Upon the filing of a certificate of amendment or
878 judicial decree of amendment, certificate of correction or an
879 amended and restated certificate by the Secretary of State or upon
880 the future effective date of a certificate of amendment (or
881 judicial decree thereof) or an amended and restated certificate,
882 as provided for therein, the certificate of formation shall be
883 amended, corrected or restated as set forth therein. Upon the
884 filing of a certificate of dissolution (or a judicial decree



885 thereof) by the Secretary of State or upon the future effective
886 date of a certificate of dissolution (or a judicial decree
887 thereof), the certificate of formation is dissolved.

888 (3) Each certificate delivered to the Office of the
889 Secretary of State for filing must be typewritten or printed, or,
890 if electronically transmitted, it must be in a format that can be
891 retrieved or reproduced by the Secretary of State in typewritten
892 or printed form, and must be in the English language. A limited
893 liability company name need not be in English if written in
894 English letters or Arabic or Roman numerals.

895 (4) Refused documents shall be returned by the Secretary of
896 State to the limited liability company or its representative
897 within ten (10) days after the document was delivered, together
898 with a brief, written explanation of the reason for the refusal.

899 (a) If the Secretary of State refuses to file a
900 document, the limited liability company may appeal the refusal to
901 the chancery court of the county where the limited liability
902 company's principal office is or will be located. The appeal is
903 commenced by petitioning the court to compel filing the document
904 and by attaching to the petition the document and the Secretary of
905 State's explanation of the refusal to file.

906 (b) The court may summarily order the Secretary of
907 State to file the document or take other action the court
908 considers appropriate.

909 (c) The court's final decision may be appealed as in
910 other civil proceedings.

911 (5) A certificate from the Secretary of State delivered with
912 a copy of the document filed by the Secretary of State is
913 conclusive evidence that the original document is on file with the
914 Secretary of State.

915 **Section 79-29-213. Correction of filings made with the**
916 **Secretary of State.** In the event that a manager or member becomes
917 aware that any statement in a certificate of formation or any



918 other filing was false or inaccurate when made, or that such
919 filing was defectively or erroneously executed, such member or
920 manager shall then promptly take one (1) of the following actions,
921 as applicable, to correct such filing or certificate:

922 (a) If the correction is to be made within one (1) year of
923 the date of the filing to be corrected, then the certificate may
924 be corrected by filing a certificate of correction of the
925 certificate with the Office of the Secretary of State. The
926 certificate of correction shall specify the inaccuracy or defect
927 to be corrected, shall set forth the portion of the certificate in
928 corrected form, and shall be executed and filed as required by
929 this chapter. The certificate of correction shall be effective as
930 of the date the original certificate was filed, except as to those
931 persons who are substantially and adversely affected by the
932 correction, and as to those persons the certificate of correction
933 shall be effective from the filing date; or

934 (b) If the correction is to be made after one (1) year of
935 the date of the filing to be corrected then the person shall
936 correct the certificate or filing by filing a certificate of
937 amendment as provided by Section 79-29-203. Any amendment made
938 pursuant to this subsection (b) shall be effective upon the filing
939 of the certificate of amendment.

940 **Section 79-29-215. Annual report for Secretary of State.**

941 (1) Each domestic limited liability company and each foreign
942 limited liability company authorized to transact business in this
943 state shall deliver on such date as may be established by the
944 Secretary of State, to the Secretary of State for filing an annual
945 report that sets forth:

946 (a) The name of the limited liability company and the
947 state or country or other foreign jurisdiction under whose law it
948 is organized;

949 (b) The name and street or physical address of its
950 registered agent in this state;



951 (c) The address of its principal office;
952 (d) The names and business addresses of the managers if
953 manager-managed and the name and address of at least one (1)
954 member if member-managed;
955 (e) The names, titles and business addresses of its
956 principal officers, if any;
957 (f) A statement as to whether the limited liability
958 company has a written operating agreement; and
959 (g) A brief description of the nature of its business.
960 (2) Information in the annual report must be current as of
961 the date the annual report is executed on behalf of the limited
962 liability company.
963 (3) If an annual report does not contain the information
964 required by this section, the Secretary of State shall notify
965 promptly in writing the reporting limited liability company and
966 return the report to it for correction. If the report is
967 corrected to contain the information required by this section and
968 delivered to the Secretary of State within thirty (30) days after
969 the effective date of notice, it is deemed to be timely filed.

970 **Section 79-29-217. Notice.** Certificates of formation and
971 all other documents properly filed and of record with the Office
972 of the Secretary of State constitute notice to the public of all
973 information stated therein.

974 **Section 79-29-219. Certificate of existence.** (1) The
975 Secretary of State, upon request and payment of the requisite fee,
976 shall furnish to any person a certificate of existence for a
977 limited liability company if the records filed in the Office of
978 the Secretary of State show that the limited liability company has
979 been formed under Section 79-29-201 and a certificate of
980 dissolution or certificate of administrative dissolution
981 pertaining to the limited liability company has not been filed
982 that has become effective. A certificate of existence must state:

983 (a) The name of the limited liability company;



984 (b) That the limited liability company was duly formed
985 under the laws of this state and the date of formation;

986 (c) Whether all fees due under this chapter to the
987 Secretary of State have been paid;

988 (d) Whether the limited liability company's most recent
989 annual report required by Section 79-29-215 has been filed with
990 the Secretary of State;

991 (e) Whether a certificate of administrative dissolution
992 has been filed;

993 (f) Whether a certificate of dissolution has been
994 filed; and

995 (g) Other facts of record in the Office of the
996 Secretary of State which are specified by the person requesting
997 the certificate.

998 (2) Subject to any qualification stated in the certificate,
999 a certificate of existence issued by the Secretary of State is
1000 conclusive evidence that the limited liability company is in
1001 existence.

1002 **Section 79-29-221. Merger of limited liability company.** (1)

1003 One or more domestic limited liability companies may merge with a
1004 domestic or foreign entity pursuant to an agreement of merger.

1005 (2) A domestic or foreign entity may be a party to the
1006 merger, or may be created by the terms of the agreement of merger,
1007 only if:

1008 (a) The merger is permitted by the laws under which the
1009 entity is organized or by which it is governed; and

1010 (b) In effecting the merger, the entity complies with
1011 such laws and with its organizational documents.

1012 (3) The agreement of merger must include:

1013 (a) The name of each entity that will merge and the
1014 name of the entity that will be the survivor of the merger;

1015 (b) The terms and conditions of the merger;



1016 (c) The manner and basis of converting the interests of
1017 each merging entity into shares or other securities, interests,
1018 obligations, rights to acquire shares or other securities, cash,
1019 other property, or any combination of the foregoing;

1020 (d) The organizational documents of any entity to be
1021 created by the merger, or if a new entity is not to be created by
1022 the merger, any amendments to the survivor's organizational
1023 documents; and

1024 (e) Any other provisions required by the laws under
1025 which any party to the merger is organized or by which it is
1026 governed, or by the organizational documents of any such party.

1027 (4) The terms described in subsections (3)(b) and (3)(c) of
1028 this section may be made dependent on facts ascertainable outside
1029 the agreement of merger, provided that those facts are objectively
1030 ascertainable. The term "facts" includes, but is not limited to,
1031 the occurrence of any event, including a determination or action
1032 by any person, including the limited liability company.

1033 (5) The agreement of merger may also include a provision
1034 that the agreement of merger may be amended prior to filing the
1035 certificate of merger with the Secretary of State, provided that
1036 if the members of a domestic limited liability company that is a
1037 party to the merger are required or permitted to vote on the
1038 agreement of merger, the agreement of merger must provide that
1039 subsequent to approval of the agreement of merger by such members
1040 the agreement of merger may not be amended to:

1041 (a) Change the amount or kind of shares or other
1042 securities, interests, obligations, rights to acquire shares or
1043 other securities, cash, or other property to be received by the
1044 owners of interests in any party to the merger upon conversion of
1045 their interests under the agreement of merger;

1046 (b) Change the organizational documents of any other
1047 entity that will survive or be created as a result of the merger;
1048 or



1049 (c) Change any of the other terms or conditions of the
1050 agreement of merger if the change would adversely affect such
1051 members in any material respect.

1052 **Section 79-29-223. Action on an agreement of merger.** In the
1053 case of a limited liability company that is a party to a merger:

1054 (a) The agreement of merger must be adopted by the
1055 members in accordance with subsection (c) of this section.

1056 (b) Unless the agreement of merger is not required to
1057 be approved by the members, the limited liability company must
1058 notify each member and each owner of a financial interest, whether
1059 or not entitled to vote, of the meeting of members at which the
1060 agreement of merger is to be submitted for approval. The notice
1061 must state that the purpose, or one of the purposes, of the
1062 meeting is to consider the agreement of merger and must contain or
1063 be accompanied by a copy or summary of the agreement of merger, If
1064 the limited liability company is to be merged into an existing
1065 entity, the notice shall also include or be accompanied by a copy
1066 or summary of the organizational documents of that entity. If the
1067 limited liability company is to be merged into an entity that is
1068 to be created pursuant to the merger, the notice shall include or
1069 be accompanied by a copy or a summary of the organizational
1070 documents of the new entity.

1071 (c) Approval of the agreement of merger requires the
1072 approval of at least a majority of the votes entitled to be cast
1073 on the agreement of merger, and, if any class or series of
1074 interests is entitled to vote as a separate group on the agreement
1075 of merger, the approval of at least a majority of the votes
1076 entitled to be cast on the merger by that voting group.

1077 (d) Separate voting by voting groups is required:

1078 (i) On an agreement of merger, by each class or
1079 series of interests that: 1. are to be converted, pursuant to the
1080 provisions of the agreement of merger, into shares or other
1081 securities, interests, obligations, rights to acquire interests or



1082 other securities, cash, other property, or any combination of the
1083 foregoing; or 2. would have a right to vote as a separate group on
1084 a provision in the agreement of merger that, if contained in a
1085 proposed amendment to the certificate of formation or operating
1086 agreement, would require action by separate voting groups under
1087 the certificate of formation or operating agreement;

1088 (ii) On an agreement of merger, if the voting
1089 group is entitled under the certificate of formation or operating
1090 agreement, to vote as a voting group to approve an agreement of
1091 merger.

1092 (e) If as a result of a merger one or more members or
1093 owners of a financial interest of a domestic limited liability
1094 company would become subject to personal liability for the
1095 obligations or liabilities of any entity, approval of the
1096 agreement of merger shall require the execution, by each such
1097 member and owner of a financial interest, of a separate written
1098 consent to become subject to such personal liability.

1099 **Section 79-29-225. Certificate of merger.** After an
1100 agreement of merger has been adopted and approved as required by
1101 this chapter, a certificate of merger shall be executed on behalf
1102 of each party to the merger by an authorized person. The
1103 certificate shall set forth:

1104 (a) The names and jurisdictions of formation or
1105 organization of the parties to the merger and the date on which
1106 the merger occurred or is to be effective;

1107 (b) If the formation document of the survivor of a
1108 merger is amended, or if a new entity is created as a result of a
1109 merger, the amendments to the formation document of the survivor
1110 or the formation document of the new entity;

1111 (c) A statement that the agreement of merger was duly
1112 approved by the members and, if voting by any separate voting
1113 group was required, by each such separate voting group, in the



1114 manner required by this chapter and the certificate of formation
1115 and operating agreement;

1116 (d) As to each entity that was a party to the merger, a
1117 statement that the agreement of merger and the performance of its
1118 terms were duly authorized by all action required by the laws
1119 under which the entity is organized, or by which it is governed,
1120 and by its organizational documents; and

1121 (e) The future effective date of the merger, which
1122 shall be a date or time certain not later than the ninetieth day
1123 after the date it is filed, if it is not to be effective upon the
1124 filing of the certificate of merger.

1125 **Section 79-29-227. Effect of merger.** (1) When a merger
1126 becomes effective:

1127 (a) The entity that is designated in the agreement of
1128 merger as the survivor continues or comes into existence, as the
1129 case may be;

1130 (b) The separate existence of every entity that is
1131 merged into the survivor ceases;

1132 (c) All property owned by, and every contract right
1133 possessed by, each entity that merges into the survivor is vested
1134 in the survivor without reversion or impairment;

1135 (d) All liabilities of each entity that is merged into
1136 the survivor are vested in the survivor;

1137 (e) The name of the survivor may, but need not be,
1138 substituted in any pending proceeding for the name of any party to
1139 the merger whose separate existence ceased in the merger;

1140 (f) The organizational documents of the survivor are
1141 amended to the extent provided in the agreement of merger;

1142 (g) The organizational documents of a survivor that is
1143 created by the merger become effective; and

1144 (h) The interests in an entity that is a party to a
1145 merger that are to be converted under the agreement of merger into
1146 shares interests, obligations, rights to acquire securities, other



1147 securities, cash, other property, or any combination of the
1148 foregoing, are converted, and the former holders of such interests
1149 are entitled only to the rights provided to them in the agreement
1150 of merger or to any rights they may have under Section 79-29-231.

1151 (2) Any member or owner of a financial interest of a
1152 domestic limited liability company that is a party to a merger
1153 who, prior to the merger, was liable for the liabilities or
1154 obligations of such limited liability company shall not be
1155 released from such liabilities or obligations by reason of the
1156 merger.

1157 (3) Upon a merger becoming effective, a foreign entity that
1158 is the survivor of the merger is deemed to:

1159 (a) Appoint the Secretary of State as its agent for
1160 service of process in a proceeding to enforce the rights of the
1161 members and owners of a financial interest of each domestic
1162 limited liability company that is a party to the merger who
1163 exercise appraisal rights; and

1164 (b) Agree that it will promptly pay the amount, if any,
1165 to which such members and owners of a financial interest are
1166 entitled under Section 79-29-231.

1167 **Section 79-29-229. Abandonment of a merger.** (1) Unless
1168 otherwise provided in an agreement of merger or in the laws under
1169 which a domestic or foreign entity that is a party to a merger is
1170 organized or by which it is governed, after the agreement of
1171 merger has been adopted and approved as required by this chapter,
1172 and at any time before the merger has become effective, it may be
1173 abandoned by any party thereto without action by the party's
1174 owners of interests, in accordance with any procedures set forth
1175 in the agreement of merger or, if no such procedures are set forth
1176 in the agreement of merger, in the manner determined by the entity
1177 subject to any contractual rights of other parties to the merger.

1178 (2) If a merger is abandoned under subsection (1) of this
1179 section after a certificate of merger has been filed with the



1180 Secretary of State but before the merger has become effective, a
1181 statement that the merger has been abandoned in accordance with
1182 this subsection, executed on behalf of a party to the merger by
1183 any authorized person shall be delivered to the Secretary of State
1184 for filing prior to the effective date of the merger. Upon
1185 filing, the statement shall take effect and the merger shall be
1186 deemed abandoned and shall not become effective.

1187 **Section 79-29-231. Appraisal rights.** (1) The certificate
1188 of formation or written operating agreement may eliminate, expand
1189 or restrict the appraisal rights granted in this section and may
1190 vary, modify, eliminate or expand any of the provisions of this
1191 section.

1192 (2) **Definitions.** In this section:

1193 (a) "Entitled persons" means all owners of financial
1194 interests. Financial interests may be owned by members and may
1195 also be owned by persons who are not members of the limited
1196 liability company. Members of the limited liability company who
1197 have no financial interests in the limited liability company are
1198 not entitled to appraisal rights pursuant to this section.

1199 (b) "Fair value" means the value of the financial
1200 interests of the limited liability company determined:

1201 (i) Immediately before the effectuation of the
1202 action to which the entitled person objects;

1203 (ii) Using customary and current valuation
1204 concepts and techniques generally employed for similar businesses
1205 in the context of the transaction requiring appraisal; and

1206 (iii) Without discounting for lack of
1207 marketability or minority status.

1208 (3) **Right to appraisal.** (a) Unless otherwise provided in
1209 the certificate of formation or written operating agreement or
1210 other written agreement each entitled person is entitled to
1211 appraisal rights, and to obtain payment of the fair value of the



1212 entitled person's financial interest in the event of any of the
1213 following actions:

1214 (i) Consummation of a merger to which the limited
1215 liability company is a party;

1216 (ii) Consummation of a sale, lease, exchange, or
1217 other disposition of assets if the disposition would leave the
1218 limited liability company without a significant continuing
1219 business activity. If a limited liability company retains a
1220 business activity that represented at least twenty-five percent
1221 (25%) of total assets at the end of the most recently completed
1222 fiscal year, and twenty-five percent (25%) of either income from
1223 continuing operations or revenues from continuing operations for
1224 that fiscal year, in each case of the limited liability company
1225 and its subsidiaries on a consolidated basis, the limited
1226 liability company will conclusively be deemed to have retained a
1227 significant continuing business activity;

1228 (iii) Any other action to the extent provided by
1229 the certificate of formation or written operating agreement.

1230 (b) An entitled person may not challenge a completed
1231 action for which appraisal rights are available unless such
1232 action:

1233 (i) Was not effectuated in accordance with the
1234 applicable provisions of this chapter or the limited liability
1235 company's certificate of formation or operating agreement; or

1236 (ii) Was procured as a result of fraud or material
1237 misrepresentation.

1238 (4) **Notice of appraisal rights.** If a proposed action
1239 described in subsection (3) of this section is to be submitted to
1240 a vote, the meeting notice must state that the limited liability
1241 company has concluded that entitled persons are entitled to assert
1242 appraisal rights under this section and a copy of this section or
1243 a copy of the appraisal rights and procedures as provided in the



1244 written operating agreement, as applicable, must accompany the
1245 meeting notice sent to the entitled persons.

1246 (5) **Notice of intent to demand payment.** (a) If a proposed
1247 action requiring appraisal rights under subsection (3)(a) of this
1248 section is submitted to a vote, entitled persons who wish to
1249 assert appraisal rights with respect to any class or series of
1250 financial interests:

1251 (i) Must deliver to the limited liability company
1252 before the vote is taken written notice of the person's intent to
1253 demand payment if the proposed action is effectuated; and

1254 (ii) Must not vote, or cause or permit to be
1255 voted, any of the person's financial interests in favor of the
1256 proposed action.

1257 (b) An entitled person who does not satisfy the
1258 requirements of subsection (5)(a) of this section is not entitled
1259 to payment under this section.

1260 (6) **Appraisal notice and form.** (a) If a proposed action
1261 requiring appraisal rights under subsection (3) of this section
1262 becomes effective, the limited liability company must deliver a
1263 written appraisal notice and form required by this subsection (6)
1264 to all entitled persons who satisfied the requirements of
1265 subsection (5) of this section.

1266 (b) The appraisal notice must be sent no earlier than
1267 the date the action became effective and no later than ten (10)
1268 days after such date and must:

1269 (i) Supply a form that specifies the date of the
1270 first announcement to entitled persons of the principal terms of
1271 the proposed action and requires the person asserting appraisal
1272 rights to certify: 1. whether the entitled person acquired
1273 ownership of the interests for which appraisal rights are asserted
1274 before that date; and 2. that the person did not vote for the
1275 transaction;

1276 (ii) State:



1277 1. Where the form must be sent and where
1278 certificates for certificated interests must be deposited and the
1279 date by which those certificates must be deposited, which date may
1280 not be earlier than the date for receiving the required form under
1281 subsection (6) (b) (ii)2 of this section;

1282 2. A date by which the limited liability
1283 company must receive the form which date may not be fewer than
1284 forty (40) nor more than sixty (60) days after the date the
1285 subsection (6) (a) appraisal notice and form are sent, and state
1286 that the person shall have waived the right to demand appraisal
1287 with respect to the interests unless the form is received by the
1288 limited liability company by such specified date;

1289 3. The limited liability company's estimate
1290 of the fair value of the financial interests;

1291 4. That, if requested in writing, the limited
1292 liability company will provide to the person so requesting, within
1293 ten (10) days after the date specified in subsection (6) (b) (ii)2
1294 of this section, the number of persons who return the forms by the
1295 specified date and the aggregate interests owned by them; and

1296 5. The date by which the notice to withdraw
1297 under subsection (7) must be received, which date must be within
1298 twenty (20) days after the date specified in subsection
1299 (6) (b) (ii)2 of this section; and

1300 (c) Be accompanied by a copy of this section or by a
1301 copy of the appraisal rights and procedures as provided in the
1302 written operating agreement, as applicable.

1303 (7) **Perfection of rights; right to withdraw.** (a) An
1304 entitled person who receives notice pursuant to subsection (6) of
1305 this section and who wishes to exercise appraisal rights must
1306 certify on the form sent by the limited liability company whether
1307 the entitled person acquired ownership of the person's financial
1308 interests before the date required to be set forth in the notice
1309 pursuant to subsection (6) (b) of this section. If an entitled



1310 person fails to make this certification, the limited liability
1311 company may elect to treat the entitled person's financial
1312 interests as after-acquired interests under subsection (9) of this
1313 section. In addition, an entitled person who wishes to exercise
1314 appraisal rights must execute and return the form and, in the case
1315 of certificated interests, deposit the entitled person's
1316 certificates in accordance with the terms of the notice by the
1317 date referred to in the notice pursuant to subsection (6) (b) (ii)2
1318 of this section. Once an entitled person deposits that person's
1319 certificates or, in the case of uncertificated interests, returns
1320 the executed forms, that entitled person loses all rights as a
1321 member or owner of a financial interest, unless the entitled
1322 person withdraws pursuant to subsection (7) (b) of this section.

1323 (b) An entitled person who has complied with subsection
1324 (7) (a) of this section may nevertheless decline to exercise
1325 appraisal rights and withdraw from the appraisal process by so
1326 notifying the limited liability company in writing by the date set
1327 forth in the appraisal notice pursuant to subsection (6) (b) (ii)5
1328 of this section. An entitled person who fails to so withdraw from
1329 the appraisal process may not thereafter withdraw from the
1330 appraisal process without the limited liability company's written
1331 consent.

1332 (c) An entitled person who does not execute and return
1333 the form and, in the case of certificated interests, deposit that
1334 person's certificates where required, each by the date set forth
1335 in the notice described in subsection (6) (b) (ii)2 of this section,
1336 shall not be entitled to payment under this subsection.

1337 (8) **Payment.** (a) Except as provided in subsection (7) of
1338 this section, within thirty (30) days after the form required by
1339 subsection (6) (b) (ii)2 of this section is due, the limited
1340 liability company shall pay in cash to those entitled persons who
1341 complied with subsection (7) (a) of this section the amount the



1342 limited liability company estimates to be the fair value of their
1343 financial interests, plus interest at the legal rate.

1344 (b) The payment to each person pursuant to subsection
1345 (8) (a) of this section must be accompanied by:

1346 (i) Financial statements of the limited liability
1347 company that issued the financial interests to be appraised,
1348 consisting of a balance sheet as of the end of a fiscal year
1349 ending not more than sixteen (16) months before the date of
1350 payment, an income statement for that year, a statement of changes
1351 in equity for that year, and the latest available interim
1352 financial statements, if any;

1353 (ii) A statement of the limited liability
1354 company's estimate of the fair value of the financial interests,
1355 which estimate must equal or exceed the limited liability
1356 company's estimate given pursuant to subsection (6) (b) (ii) 3 of
1357 this section;

1358 (iii) A statement that persons described in this
1359 subsection (8) have the right to demand further payment under
1360 subsection (10) of this section and that if any such person does
1361 not do so within the time period specified therein, the person
1362 shall be deemed to have accepted the payment in full satisfaction
1363 of the limited liability company's obligations under this section.

1364 (9) **After-acquired interests.** (a) A limited liability
1365 company may elect to withhold payment required by subsection (8)
1366 of this section from any entitled person who did not certify that
1367 ownership of all of the entitled person's financial interests for
1368 which appraisal rights are asserted was acquired before the date
1369 set forth in the appraisal notice sent pursuant to subsection (6)
1370 (b) (i) of this section.

1371 (b) If the limited liability company elected to
1372 withhold payment under subsection (9) (a) of this section, it must,
1373 within thirty (30) days after the form required by subsection



1374 (6) (b) (ii) 2 of this section is due, notify all entitled persons
1375 who are described in subsection (9) (a) of this section:

1376 (i) Of the information required by subsection
1377 (8) (b) (i) of this section;

1378 (ii) Of the limited liability company's estimate
1379 of fair value pursuant to subsection (8) (b) (ii) of this section;

1380 (iii) That they may accept the limited liability
1381 company's estimate of fair value, plus interest at the legal rate,
1382 in full satisfaction of their demands, or demand appraisal under
1383 subsection (10) of this section;

1384 (iv) That those entitled persons who wish to
1385 accept the offer must so notify the limited liability company of
1386 the person's acceptance of the limited liability company's offer
1387 within thirty (30) days after receiving the offer; and

1388 (v) That those entitled persons who do not satisfy
1389 the requirements for demanding appraisal under subsection (10) of
1390 this section shall be deemed to have accepted the limited
1391 liability company's offer.

1392 (c) Within ten (10) days after receiving the entitled
1393 person's acceptance pursuant to subsection (9) (b) of this section,
1394 the limited liability company must pay in cash the amount it
1395 offered under subsection (9) (b) (ii) of this section to each person
1396 who agreed to accept the limited liability company's offer in full
1397 satisfaction of the person's demand.

1398 (d) Within forty (40) days after sending the notice
1399 described in subsection (9) (b) of this section, the limited
1400 liability company must pay in cash the amount it offered to pay
1401 under subsection (8) (b) of this section to each entitled person
1402 described in subsection (9) (b) (ii) of this section.

1403 (10) **Procedure if entitled person dissatisfied with payment**
1404 **or offer.** (a) An entitled person paid pursuant to subsection (8)
1405 of this section who is dissatisfied with the amount of the payment
1406 must notify the limited liability company in writing of that



1407 person's estimate of the fair value of the financial interests and
1408 demand payment of that estimate plus interest at the legal rate
1409 less any payment under subsection (8) of this section. An
1410 entitled person offered payment under subsection (9) of this
1411 section who is dissatisfied with that offer must reject the offer
1412 and demand payment of the person's stated estimate of the fair
1413 value of the financial interests plus interest at the legal rate.

1414 (b) An entitled person who fails to notify the limited
1415 liability company in writing of that entitled person's demand to
1416 be paid the entitled person's stated estimate of the fair value
1417 plus interest at the legal rate under subsection (10)(a) of this
1418 section within thirty (30) days after receiving the limited
1419 liability company's payment or offer of payment under subsections
1420 (8) or (9) of this section, respectively, waives the right to
1421 demand payment under this subsection (10) and shall be entitled
1422 only to the payment made or offered pursuant to those respective
1423 subsections.

1424 (11) **Court action.** (a) If an entitled person makes demand
1425 for payment under subsection (10) of this section which remains
1426 unsettled, the limited liability company shall commence a
1427 proceeding within sixty (60) days after receiving the payment
1428 demand and petition the court to determine the fair value of the
1429 financial interests and accrued interest at the legal rate. If
1430 the limited liability company does not commence the proceeding
1431 within the sixty-day period, it shall pay in cash to each the
1432 entitled person the amount the entitled person demanded pursuant
1433 to subsection (10)(a) of this section plus interest at the legal
1434 rate.

1435 (b) The limited liability company shall commence the
1436 proceeding in the chancery court of the county where the limited
1437 liability company's registered office is located. If the limited
1438 liability company is a foreign limited liability company without a
1439 registered office in this state, it shall commence the proceeding



1440 in the county in this state where the registered office of the
1441 domestic limited liability company merged with the foreign limited
1442 liability company was located at the time of the transaction.

1443 (c) The limited liability company shall make all
1444 entitled persons whose demands remain unsettled, whether or not
1445 residents of this state, parties to the proceeding as in an action
1446 against their interests, and all parties must be served with a
1447 copy of the complaint. Nonresidents may be served as otherwise
1448 provided by law.

1449 (d) The jurisdiction of the court in which the
1450 proceeding is commenced under subsection (11) (b) of this section
1451 is plenary and exclusive. The court may appoint one or more
1452 persons as appraisers to receive evidence and recommend a decision
1453 on the question of fair value. The appraisers shall have the
1454 powers described in the order appointing them, or in any amendment
1455 to it. The entitled persons demanding appraisal rights are
1456 entitled to the same discovery rights as parties in other civil
1457 proceedings. There shall be no right to a jury trial.

1458 (e) Each entitled person made a party to the proceeding
1459 is entitled to judgment: (i) for the amount, if any, by which the
1460 court finds the fair value of the entitled person's financial
1461 interests, plus interest at the legal rate, exceeds the amount
1462 paid by the limited liability company to the entitled person for
1463 such financial interests; or (ii) for the fair value, plus
1464 interest at the legal rate, of the entitled person's financial
1465 interests for which the limited liability company elected to
1466 withhold payment under subsection (9) of this section.

1467 (12) **Court costs and counsel fees.** (a) The court in an
1468 appraisal proceeding commenced under subsection (11) of this
1469 section shall determine all costs of the proceeding including the
1470 reasonable compensation and expenses of appraisers appointed by
1471 the court. The court shall assess the costs against the limited
1472 liability company, except that the court may assess costs against



1473 all or some of the entitled persons demanding appraisal, in
1474 amounts the court finds equitable, to the extent the court finds
1475 such persons acted arbitrarily, vexatiously, or not in good faith
1476 with respect to the rights provided by this subsection.

1477 (b) The court in an appraisal proceeding may also
1478 assess the fees and expenses of counsel and experts for the
1479 respective parties, in amounts the court finds equitable:

1480 (i) Against the limited liability company and in
1481 favor of any or all entitled persons demanding appraisal if the
1482 court finds the limited liability company did not substantially
1483 comply with the requirements of subsections (4), (6), (8) or (9)
1484 of this section; or

1485 (ii) Against either the limited liability company
1486 or an entitled person demanding appraisal, in favor of any other
1487 party, if the court finds that the party against whom the fees and
1488 expenses are assessed acted arbitrarily, vexatiously, or not in
1489 good faith with respect to the rights provided by this subsection.

1490 (c) If the court in an appraisal proceeding finds that
1491 the services of counsel for any entitled person were of
1492 substantial benefit to other persons similarly situated, and that
1493 the fees for those services should not be assessed against the
1494 limited liability company, the court may award to such counsel
1495 reasonable fees to be paid out of the amounts awarded the entitled
1496 persons who were benefited.

1497 (d) To the extent the limited liability company fails
1498 to make a required payment pursuant to subsections (8), (9) or
1499 (10) of this section, the entitled person may sue directly for the
1500 amount owed and, to the extent successful, shall be entitled to
1501 recover from the limited liability company all costs and expenses
1502 of the suit, including counsel fees.

1503 **Section 79-29-233. Action on an agreement to sell, lease,**
1504 **exchange or otherwise dispose of assets.** In the case of a limited
1505 liability company that is a party to an agreement outside the



1506 ordinary course of the limited liability company's activities to
1507 sell, lease, exchange, or otherwise dispose of assets if the
1508 disposition would leave the limited liability company without a
1509 significant continuing business activity, as such term is defined
1510 in Section 79-29-231(3) (a) (ii):

1511 (a) The agreement, referred to herein as the "asset
1512 sale agreement," must be approved by the members in accordance
1513 with subsection (c) of this section.

1514 (b) Unless the asset sale agreement is not required to
1515 be approved by the members, the limited liability company must
1516 notify each member and each owner of a financial interest, whether
1517 or not entitled to vote, of the meeting of members at which the
1518 asset sale agreement is to be submitted for approval. The notice
1519 must state that the purpose, or one (1) of the purposes, of the
1520 meeting is to consider the asset sale agreement and must contain
1521 or be accompanied by a copy or summary of the asset sale
1522 agreement.

1523 (c) Approval of the asset sale agreement requires the
1524 approval of at least a majority of the votes entitled to be cast
1525 on the asset sale agreement, and, if any class or series of
1526 interests is entitled to vote as a separate group on the asset
1527 sale agreement, the approval of at least a majority of the votes
1528 entitled to be cast on the asset sale agreement by that voting
1529 group.

1530 (d) Separate voting by voting groups is required:

1531 (i) On an asset sale agreement, by each class or
1532 series of interests that would have a right to vote as a separate
1533 group on a provision in the asset sale agreement that, if
1534 contained in a proposed amendment to the certificate of formation
1535 or operating agreement, would require action by separate voting
1536 groups under the certificate of formation or operating agreement;

1537 (ii) On an asset sale agreement, if the voting
1538 group is entitled under the certificate of formation or operating



1539 agreement, to vote as a voting group to approve an asset sale
1540 agreement.

1541 (e) If as a result of the asset disposition one or more
1542 members or owners of a financial interest would become subject to
1543 personal liability for the obligations or liabilities of any
1544 entity, approval of the asset sale agreement shall require the
1545 execution, by each such member and owner of a financial interest,
1546 of a separate written consent to become subject to personal
1547 liability.

1548 ARTICLE 3.

1549 MEMBERS

1550 **Section 79-29-301. Admission of members.** (1) A person
1551 becomes a member on the later of:

1552 (a) The formation of the limited liability company; or

1553 (b) The date stated in the records of the limited
1554 liability company as the date that person becomes a member.

1555 (2) After the formation of the limited liability company, a
1556 person is admitted as a member of the limited liability company:

1557 (a) In the case of a person who is not an assignee of a
1558 financial interest, including a person acquiring an interest
1559 directly from the limited liability company and a person to be
1560 admitted as a member of the limited liability company without
1561 acquiring a financial interest in the limited liability company at
1562 the time provided in and upon the compliance with the certificate
1563 of formation or the operating agreement or, if the certificate of
1564 formation or the operating agreement does not so provide, upon the
1565 written consent of all members. If the parties do not specify an
1566 agreed admission date in writing, the admission shall be deemed to
1567 have occurred upon the date of the compliance with the conditions
1568 set forth in this subsection; and

1569 (b) In the case of an assignee of a financial interest,
1570 upon compliance with subsection (1) of Section 79-29-707. If the
1571 parties do not specify an agreed admission date in writing the



1572 admission shall be deemed to have occurred upon the date of the
1573 compliance with the conditions set forth in subsection (1) of
1574 Section 79-29-707.

1575 (c) In the case of a person being admitted as a member
1576 of a surviving limited liability company pursuant to a merger
1577 approved in accordance with Section 79-29-223 of this chapter, as
1578 provided in the operating agreement of the surviving limited
1579 liability company or in the agreement of merger, and in the event
1580 of any inconsistency, the terms of the agreement of merger shall
1581 control; and in the case of a person being admitted as a member of
1582 a limited liability company pursuant to a merger in which such
1583 limited liability company is not the surviving limited liability
1584 company in the merger, as provided in the operating agreement of
1585 such limited liability company.

1586 (d) In the case of a person who inherits an interest in
1587 a limited liability company from a deceased member, upon the
1588 distribution of the interest from the estate of the deceased
1589 member to the person.

1590 (e) In the case of a person who is the successor of a
1591 member that is an entity which has merged, upon the merger of the
1592 member.

1593 (3) A person may be admitted to a limited liability company
1594 as a member of the limited liability company and may receive an
1595 interest in the limited liability company without making a
1596 contribution or being obligated to make a contribution to the
1597 limited liability company.

1598 (4) A person may be admitted to a limited liability company
1599 as a member of the limited liability company without acquiring an
1600 interest in the limited liability company.

1601 (5) A person may be admitted as the sole member of a limited
1602 liability company without making a contribution or being obligated
1603 to make a contribution to the limited liability company or without
1604 acquiring an interest in the limited liability company.



1605 (6) A certificate of formation or written operating
1606 agreement may provide that a member or members shall have
1607 preemptive rights to subscribe to any additional issue of
1608 interests in a limited liability company.

1609 **Section 79-29-303. Withdrawal of member and expulsion of**
1610 **member.** A member may withdraw from a limited liability company
1611 only at the time or upon the happening of events specified in a
1612 written operating agreement and in accordance with the written
1613 operating agreement or upon the written consent of all the
1614 members. Notwithstanding anything to the contrary under
1615 applicable law, unless the certificate of formation or a written
1616 operating agreement provides otherwise, a member may not withdraw
1617 from a limited liability company prior to the dissolution and
1618 winding-up of the limited liability company without the written
1619 consent of all of the members of the limited liability company.
1620 Unless otherwise provided by the certificate of formation or
1621 written operating agreement, a limited liability company has no
1622 power to expel a member. Except as otherwise provided by the
1623 certificate of formation or written operating agreement, a member
1624 who has withdrawn from or been expelled from a limited liability
1625 company ceases to be a member of the limited liability company and
1626 ceases to have any governance rights.

1627 **Section 79-29-305. Management of limited liability company.**
1628 The management of a limited liability company shall be vested in
1629 its members in proportion to the then current percentage or other
1630 interest of members in the profits of the limited liability
1631 company owned by all of the members, the decision of members
1632 owning more than fifty percent (50%) of the said percentage or
1633 other interest in the profits controlling; provided however, that
1634 if an operating agreement provides for the management, in whole or
1635 in part, of a limited liability company by a manager or managers,
1636 the management of the limited liability company, to the extent so



1637 provided, shall be vested in the manager or managers who shall be
1638 chosen in the manner provided in the operating agreement.

1639 A member of a member-managed limited liability company has
1640 the power and authority to delegate to one or more other persons
1641 the member's rights and powers to manage and control the business
1642 and affairs of the limited liability company, including to
1643 delegate to agents, officers and employees of a member or the
1644 limited liability company and to delegate by agreement to other
1645 persons. The delegation shall not cause the member to cease to be
1646 a member of the limited liability company or cause the person to
1647 whom any such rights and powers have been delegated to be a member
1648 or manager, as the case may be, of the limited liability company.

1649 **Section 79-29-307. Agency power of members, managers and**
1650 **officers.** (1) Except as provided in subsection (2) of this
1651 section, every member is an agent of the limited liability company
1652 for the purpose of conducting its business and affairs, and the
1653 act of any member, including, but not limited to, the execution in
1654 the name of the limited liability company of any instrument for
1655 apparently carrying on in the ordinary course the business or
1656 affairs of the limited liability company of which the person is a
1657 member, binds the limited liability company, unless the member so
1658 acting has, in fact, no authority to act for the limited liability
1659 company in the particular matter and the person with whom the
1660 member is dealing has knowledge of the fact that the member has no
1661 such authority.

1662 (2) If the certificate of formation or operating agreement
1663 provides that management of the limited liability company is
1664 vested in a manager or managers then except as otherwise provided
1665 in the certificate of formation or the operating agreement:

1666 (a) No member, acting solely in the capacity as a
1667 member, is an agent of the limited liability company; and

1668 (b) Every manager is an agent of the limited liability
1669 company for the purpose of its business and affairs, and the act



1670 of any manager, including, but not limited to, the execution in
1671 the name of the limited liability company of any instrument for
1672 apparently carrying on in the ordinary course the business or
1673 affairs of the limited liability company of which the person is
1674 the manager, binds the limited liability company, unless the
1675 manager so acting has, in fact, no authority to act for the
1676 limited liability company in the particular matter and the person
1677 with whom the manager is dealing has knowledge of the fact that
1678 the manager has no such authority.

1679 (3) Every officer is an agent of the limited liability
1680 company for the purpose of its business and affairs to the extent
1681 the agency authority has been delegated to the officer as provided
1682 by the operating agreement, and the act of any officer, including,
1683 but not limited to, the execution in the name of the limited
1684 liability company of any instrument for apparently carrying on in
1685 the ordinary course the business or affairs of the limited
1686 liability company of which the person is an officer, binds the
1687 limited liability company, unless the officer so acting has, in
1688 fact, no authority to act for the limited liability company in the
1689 particular matter and the person with whom the officer is dealing
1690 has knowledge of the fact that the officer has no such authority.

1691 (4) No act of a manager, member or officer in contravention
1692 of a restriction on authority shall bind the limited liability
1693 company to persons having knowledge of the restriction.

1694 **Section 79-29-309. Voting, classes and meetings.** (1) With
1695 respect to any matter to be voted on, consented to or approved by
1696 the members, or any action required or permitted to be taken by
1697 the members the vote of each member shall be based on the then
1698 current percentage held by such member in the profits of the
1699 limited liability company owned by all the members.

1700 (2) Unless a greater percentage is expressly required by
1701 another section of this chapter, with respect to any matter to be
1702 voted on, consented to or approved by the members or any action



1703 required or permitted to be taken by the members, the decision of
1704 members of a limited liability company owning more than fifty
1705 percent (50%) of the said percentage in the profits as described
1706 in subsection (1) of this section is controlling.

1707 (3) A certificate of formation or operating agreement may
1708 provide for classes or groups of members having such relative
1709 rights, powers and duties as may be provided therein, and may make
1710 provision for the future creation in the manner provided therein
1711 of additional classes or groups of members having such relative
1712 rights, powers and duties as may from time to time be established,
1713 including rights, powers and duties senior to existing classes and
1714 groups of members. A certificate of formation or written
1715 operating agreement may provide that any member or class or group
1716 of members shall have no voting rights.

1717 (4) The certificate of formation or operating agreement may
1718 grant to all or certain identified members or a specified class or
1719 group of the members the right to vote (on any basis) separately
1720 or with all or any class or group of the members, on any matter.

1721 (5) A certificate of formation or operating agreement may
1722 set forth provisions relating to notice of the time, place or
1723 purpose of any meeting at which any matter is to be voted on by
1724 any members, waiver of any such notice, action by consent without
1725 a meeting, the establishment of a record date, quorum
1726 requirements, voting in person or by proxy, or any other matter
1727 with respect to the exercise of any such right to vote.

1728 (6) (a) Meetings of members may be held by means of
1729 telephone or other communications equipment by means of which all
1730 persons participating in the meeting can speak to and hear each
1731 other, and participation in a meeting pursuant to this subsection
1732 shall constitute presence in person at the meeting;

1733 (b) On any matter that is to be voted on, consented to
1734 or approved by members, or any action required or permitted to be
1735 taken by the members the members may take such action without a



1736 meeting, without prior notice and without a vote if a consent or
1737 consents in writing, setting forth the action so taken, shall be
1738 signed by the members owning at least the percent of the interests
1739 which would be necessary to authorize or take such action at a
1740 meeting at which all members entitled to vote thereon were present
1741 and voted. If any action of the members is proposed to be taken
1742 pursuant to this subsection without the written consent of all of
1743 the members, the members who did not sign the written consent
1744 shall be provided with notice of the executed consent within
1745 twenty (20) days of the execution of the written consent. The
1746 execution of a written consent by any member shall constitute a
1747 waiver by such member of notice thereof.

1748 (c) On any matter that is to be voted on by members,
1749 the members may vote in person or by proxy, and the proxy may be
1750 granted in writing, by means of electronic transmission or as
1751 otherwise permitted by applicable law.

1752 (d) If a meeting of members has not been held during
1753 the immediately preceding fifteen (15) months, a member or members
1754 owning twenty percent (20%) or more of the voting power of all
1755 members entitled to vote may call a regular meeting of members by
1756 giving thirty (30) days' written notice to the members, all at the
1757 expense of the limited liability company.

1758 **Section 79-29-311. Liability to third parties.** (1) Except
1759 as otherwise provided by this chapter, the debts, obligations and
1760 liabilities of a limited liability company, whether arising in
1761 contract, tort or otherwise, shall be solely the debts,
1762 obligations and liabilities of the limited liability company, and
1763 no member, manager or officer of a limited liability company shall
1764 be obligated personally for any such debt, obligation or liability
1765 of the limited liability company solely by reason of being a
1766 member, acting as a manager or acting as an officer of the limited
1767 liability company.



1768 (2) A member, manager or officer of a limited liability
1769 company is not a proper party to a proceeding by or against a
1770 limited liability company, by reason of being a member, manager or
1771 officer, as applicable, of the limited liability company, except:

1772 (a) Where the object of the proceeding is to enforce a
1773 member's, manager's or officer's right against or liability to the
1774 limited liability company; or

1775 (b) In a derivative action brought pursuant to Article
1776 11 of this chapter.

1777 (3) Notwithstanding the provisions of subsections (1) and
1778 (2) of this section, under an operating agreement or under another
1779 agreement, a member, manager or officer may agree to be obligated
1780 personally for any or all of the debts, obligations and
1781 liabilities of the limited liability company.

1782 **Section 79-29-313. Events of bankruptcy.** (1) The
1783 certificate of formation or the written operating agreement may
1784 provide for events the occurrence of which result in a member
1785 either (a) ceasing to have some or all governance rights; (b)
1786 ceasing to have some or all financial rights; or (c) ceasing to be
1787 a member.

1788 (2) A person who has ceased to be a member shall continue to
1789 have any financial rights that the person had at the time of the
1790 event but shall cease to have any governance rights or any other
1791 rights.

1792 (3) Unless otherwise provided in the certificate of
1793 formation or written operating agreement or with the written
1794 consent of all members, a member ceases to be a member upon the
1795 happening of the following events:

1796 (a) A member: (i) makes an assignment for the benefit
1797 of creditors; (ii) files a voluntary petition in bankruptcy; (iii)
1798 is adjudicated a bankrupt or insolvent; (iv) files a petition or
1799 answer seeking for the person any reorganization, arrangement,
1800 composition, readjustment, liquidation, dissolution, or similar



1801 relief under any statute, law or regulation; (v) files an answer
1802 or other pleading admitting or failing to contest the material
1803 allegations of a petition filed against the member in any
1804 proceeding of the nature described in this subsection (3) (a); or
1805 (vi) seeks, consents to or acquiesces in the appointment of a
1806 trustee, receiver or liquidator of the member or of all or any
1807 substantial part of the member's properties; or

1808 (b) If one hundred twenty (120) days after the
1809 commencement of any proceeding against the member seeking
1810 reorganization, arrangement, composition, readjustment,
1811 liquidation, dissolution, or similar relief under any statute, law
1812 or regulation, the proceeding has not been dismissed, or if within
1813 ninety (90) days after the appointment without the member's
1814 consent or acquiescence of a trustee, receiver or liquidator of
1815 the member or of all or any substantial part of the member's
1816 properties, the appointment is not vacated or stayed or within
1817 ninety (90) days after the expiration of any stay, the appointment
1818 is not vacated.

1819 **Section 79-29-315. Access to and confidentiality of**
1820 **information; records.** (1) Each member of a limited liability
1821 company has the right, subject to such reasonable standards,
1822 including standards governing what information and documents are
1823 to be furnished at what time and location and at whose expense, as
1824 may be set forth in an operating agreement or otherwise
1825 established by the manager or, if there is no manager, then by the
1826 members, to obtain from the limited liability company from time to
1827 time upon reasonable demand for any good faith purpose reasonably
1828 related to the member's interest as a member of the limited
1829 liability company:

1830 (a) True, full and current information regarding the
1831 status of the business and financial condition of the limited
1832 liability company;



1833 (b) Promptly after becoming available, a copy of the
1834 limited liability company's federal, state and local income tax
1835 returns for each year;

1836 (c) A current list of the name and last known business,
1837 residence or mailing address of each member and manager;

1838 (d) A copy of any written operating agreement and
1839 certificate of formation and all amendments thereto, together with
1840 executed copies of any written powers of attorney pursuant to
1841 which the operating agreement and any certificate and all
1842 amendments thereto have been executed;

1843 (e) True and full information regarding the amount of
1844 cash and a description and statement of the agreed value of any
1845 other property or services contributed by each member and which
1846 each member has agreed to contribute in the future, and the date
1847 on which each became a member; and

1848 (f) Other information regarding the affairs of the
1849 limited liability company as is just and reasonable.

1850 (2) Each manager shall have the right to examine all of the
1851 information described in subsection (1) of this section for a good
1852 faith purpose reasonably related to the position of manager.

1853 (3) The manager or members of a limited liability company,
1854 referred to herein as the "authority," shall have the right to
1855 keep confidential from the members and managers, for a period of
1856 time as the authority deems reasonable, any information which the
1857 authority reasonably believes to be in the nature of trade secrets
1858 or other information the disclosure of which the authority in good
1859 faith believes is not in the best interest of the limited
1860 liability company or could damage the limited liability company or
1861 its business or which the limited liability company is required by
1862 law or by agreement with a third party to keep confidential.

1863 (4) A limited liability company may maintain its records in
1864 other than a written form if such form is capable of conversion
1865 into written form within a reasonable time.



1866 (5) Any demand under this section shall be in writing and
1867 shall state the purpose of such demand with reasonable detail.

1868 (6) Any action to enforce any right arising under this
1869 section shall be brought in the chancery court of the county where
1870 the limited liability company's principal office is located. If
1871 the limited liability company refuses to permit a member to obtain
1872 or a manager to examine the information described in subsection
1873 (1) of this section or does not reply to the demand that has been
1874 made within five (5) business days after the demand has been made,
1875 the demanding member or manager may apply to the chancery court
1876 for an order to compel the disclosure. The chancery court is
1877 hereby vested with exclusive jurisdiction to determine whether the
1878 person seeking the information is entitled to the information
1879 sought. The court may summarily order the limited liability
1880 company to permit the demanding member to obtain or manager to
1881 examine the information described in subsection (1) of this
1882 section and to make copies or abstracts therefrom, or the court
1883 may summarily order the limited liability company to furnish to
1884 the demanding member or manager the information described in
1885 subsection (1) of this section on the condition that the demanding
1886 member or manager first pay to the limited liability company the
1887 reasonable cost of obtaining and furnishing the information and on
1888 such other conditions as the court of chancery deems appropriate.
1889 When a demanding member seeks to obtain or a manager seeks to
1890 examine the information described in subsection (1) of this
1891 section, the demanding member or manager shall first establish (a)
1892 that the demanding member or manager has complied with the
1893 provisions of this section respecting the form and manner of
1894 making demand for obtaining or examining of the information, and
1895 (b) that the information the demanding member or manager seeks is
1896 reasonably related to the member's interest as a member or the
1897 manager's position as a manager, as the case may be. The court
1898 may, in its discretion, prescribe any limitations or conditions



1899 with reference to the obtaining or examining of information, or
1900 award such other or further relief as the chancery court may deem
1901 just and proper. The court may order books, documents and
1902 records, pertinent extracts therefrom, or duly authenticated
1903 copies thereof, to be brought within the state and kept in the
1904 state upon such terms and conditions as the order may prescribe.

1905 (7) The rights of a member or manager to obtain information
1906 as provided in this section may be restricted in the initial
1907 operating agreement or in any subsequent amendment approved or
1908 adopted by all of the members or in compliance with any applicable
1909 requirements of the operating agreement. The provisions of this
1910 subsection shall not be construed to limit the ability to impose
1911 restrictions on the rights of a member or manager to obtain
1912 information by any other means permitted under this section.

1913 ARTICLE 4.

1914 MANAGEMENT

1915 **Section 79-29-401. Management of a limited liability company**
1916 **by a manager or managers.** (1) The certificate of formation or
1917 the operating agreement may delegate responsibility for managing a
1918 limited liability company to or among one or more managers to the
1919 extent provided therein. Managers may also serve as officers to
1920 the extent provided in the operating agreement.

1921 (2) Managers need not be residents of this state or members
1922 of the limited liability company. The certificate of formation or
1923 the operating agreement may prescribe other qualifications for
1924 managers.

1925 (3) The number of managers shall be fixed by or in the
1926 manner provided in the certificate of formation or the operating
1927 agreement. The number of managers may be increased or decreased
1928 by amendment to, or in the manner provided in, the certificate of
1929 formation or the operating agreement.

1930 (4) Managers shall be elected by the members.



1931 (5) Any vacancy occurring in the office of manager shall be
1932 filled by the vote of the members.

1933 (6) All managers or any lesser number may be removed in the
1934 manner provided in the certificate of formation or the operating
1935 agreement. All managers or any lesser number may be removed with
1936 or without cause by the vote of the members required to elect such
1937 manager or managers.

1938 (7) Any action required or permitted to be taken by the
1939 managers of a limited liability company may be taken upon a
1940 majority vote of the managers.

1941 (8) An operating agreement may set forth provisions relating
1942 to notice of the time, place or purpose of any meeting at which
1943 any matter is to be voted on by any manager or class or group of
1944 managers, waiver of any such notice, action by consent without a
1945 meeting, quorum requirements, voting in person or by proxy, or any
1946 other matter with respect to the exercise of any such right to
1947 vote.

1948 (9) Meetings of managers may be held by means of telephone
1949 or other communications equipment by means of which all persons
1950 participating in the meeting can speak to and hear each other, and
1951 participation in a meeting pursuant to this subsection shall
1952 constitute presence in person at the meeting.

1953 (10) The managers may take action on any matter that is to
1954 be voted on, consented to or approved by managers without a
1955 meeting, and without a vote with not less than one (1) but not
1956 more than ten (10) days' prior notice to all the managers if a
1957 consent or consents in writing, setting forth the action so taken,
1958 shall be signed by the managers having not less than the minimum
1959 number of votes that would be necessary to authorize or take such
1960 action at a meeting at which all managers entitled to vote thereon
1961 were present and voted.

1962 **Section 79-29-403. Reliance on reports and information.** A
1963 member, manager, officer or liquidating trustee of a limited



1964 liability company shall be fully protected in relying in good
1965 faith upon:

1966 (a) The records of the limited liability company; and
1967 upon

1968 (b) Information, opinions, reports or statements,
1969 including, information, opinions, reports or statements as to the
1970 value and amount of the assets, liabilities, profits or losses of
1971 the limited liability company, or the value and amount of assets,
1972 reserves, contracts, agreements or other undertakings that would
1973 be sufficient to pay claims and obligations of the limited
1974 liability company or to make reasonable provision to pay such
1975 claims and obligations, or any other facts pertinent to the
1976 existence and amount of assets from which distributions might
1977 properly be paid which are presented by:

1978 (i) Another manager of the limited liability
1979 company;

1980 (ii) A member of the limited liability company;

1981 (iii) A liquidating trustee of the limited
1982 liability company;

1983 (iv) An officer of the limited liability company;

1984 (v) An employee of the limited liability company;

1985 (vi) Committees of the limited liability company,
1986 members or managers; or

1987 (vii) Any other person as to matters the member,
1988 manager, officer or liquidating trustee reasonably believes is
1989 within such other person's professional or expert competence.

1990 **Section 79-29-405. Delegation of rights and powers to**

1991 **manage.** (1) The manager of a limited liability company has the
1992 power and authority to delegate to one or more other persons the
1993 manager's rights and powers to manage and control the business and
1994 affairs of the limited liability company, including to delegate to
1995 agents, officers and employees of: (a) a member, (b) a manager or
1996 (c) the limited liability company, and to delegate by a management



1997 agreement or another agreement with, or otherwise to, other
1998 persons.

1999 (2) Such delegation as provided in subsection (1) of this
2000 section shall not cause the manager to cease to be a manager of
2001 the limited liability company or cause the person to whom any such
2002 rights and powers have been delegated to be a manager of the
2003 limited liability company.

2004 **Section 79-29-407. Resignation of manager.** An operating
2005 agreement may provide that a manager may resign as a manager of a
2006 limited liability company at the time or upon the happening of
2007 events specified in an operating agreement and in accordance with
2008 the operating agreement. An operating agreement may provide that
2009 a manager shall not have the right to resign as a manager of a
2010 limited liability company. A manager may resign as a manager of a
2011 limited liability company at any time by giving written notice to
2012 the members and other managers. If the resignation of a manager
2013 violates an operating agreement, in addition to any remedies
2014 otherwise available under applicable law, a limited liability
2015 company may recover from the resigning manager damages for breach
2016 of the operating agreement and offset the damages against the
2017 amount otherwise payable to the resigning manager.

2018 ARTICLE 5.

2019 FINANCE

2020 **Section 79-29-501. Form of contribution.** The contribution
2021 of a member may be in cash, property, services rendered, or a
2022 promissory note or other obligation to contribute cash or property
2023 or to perform services.

2024 **Section 79-29-503. Liability for contributions.** (1) A
2025 promise by a member to contribute to the limited liability company
2026 is not enforceable unless set out in a writing signed by the
2027 member.

2028 (2) A member is obligated to the limited liability company
2029 to perform an enforceable promise to contribute cash or property



2030 or to perform services, even if the member is unable to perform
2031 because of death, disability or any other reason. If a member
2032 does not make the required contribution of property or services,
2033 the member is obligated at the option of the limited liability
2034 company to contribute cash equal to that portion of the value of
2035 the stated contribution that has not been made. The foregoing
2036 option shall be in addition to, and not in lieu of, any other
2037 rights, including the right to specific performance, that the
2038 limited liability company may have against the member under the
2039 operating agreement or applicable law.

2040 (3) The obligation of a member to make a contribution or
2041 return money or other property paid or distributed in violation of
2042 this chapter may be compromised only by specific consent of all
2043 the members. However, a creditor of a limited liability company
2044 who extends credit, or otherwise acts in reliance on that
2045 obligation after the member signs a writing that reflects the
2046 obligation and before the amendment or cancellation thereof to
2047 reflect the compromise, may enforce the original obligation to the
2048 same extent as the limited liability company could pursuant to
2049 this section. A conditional obligation of a member to make a
2050 contribution or return money or other property to a limited
2051 liability company may not be enforced unless the conditions of the
2052 obligation have been satisfied or waived as to or by such member.
2053 Conditional obligations include contributions payable upon a
2054 discretionary call of a limited liability company prior to the
2055 time the call occurs.

2056 (4) A certificate of formation or operating agreement may
2057 provide that the interest of any member who fails to make any
2058 contribution that the member is obligated to make, shall be
2059 subject to specified penalties for, or specified consequences of,
2060 such failure. Such penalty or consequence may take the form of
2061 reducing the defaulting member's proportionate financial or
2062 governance interest in the limited liability company,



2063 subordinating the defaulting member's financial or governance
2064 interests to that of nondefaulting members, forcing a sale of the
2065 defaulting member's financial or governance interest, forfeiting
2066 the defaulting member's financial or governance interest, the
2067 lending by other members of the amount necessary to meet the
2068 defaulting member's commitment, fixing the value of the defaulting
2069 member's financial or governance interest by appraisal or by
2070 formula and redeeming or selling of the defaulting member's
2071 financial or governance interest at such value, or other penalty
2072 or consequence.

2073 **Section 79-29-505. Sharing of profits and losses.** The
2074 profits and losses of a limited liability company shall be
2075 allocated among the members who own financial interests and other
2076 owners of financial interests, and among groups or classes of
2077 members, in the manner provided in the certificate of formation or
2078 operating agreement. Profits and losses must be allocated on the
2079 basis of the agreed value, as stated in the limited liability
2080 company records required to be kept pursuant to Section 79-29-115,
2081 of the contributions made by each owner of a financial interest to
2082 the extent they have been received by the limited liability
2083 company and have not been returned.

2084 **Section 79-29-507. Sharing of distributions.** Distributions
2085 of cash or other assets of a limited liability company must be
2086 allocated among the members who own financial interests and other
2087 owners of financial interests, and among classes or groups of
2088 members, in the manner provided in the certificate of formation or
2089 operating agreement. Distributions must be made on the basis of
2090 the agreed value, as stated in the limited liability company
2091 records required to be kept pursuant to Section 79-29-115, of the
2092 contributions made by each member who owns a financial interest to
2093 the extent they have been received by the limited liability
2094 company and have not been returned.



2095 **Section 79-29-509. Defense of usury not available.** No
2096 obligation of a member, manager or officer of a limited liability
2097 company to the limited liability company arising under the
2098 operating agreement or a separate agreement or writing, and no
2099 note, instrument or other writing evidencing any such obligation
2100 of a member, manager or officer, shall be subject to the defense
2101 of usury, and no member, manager or officer shall interpose the
2102 defense of usury with respect to any such obligation in any
2103 action.

2104 ARTICLE 6.

2105 DISTRIBUTIONS

2106 **Section 79-29-601. Distributions generally and interim**
2107 **distributions.** For purposes of this article, except for Section
2108 79-29-611(1) which shall apply to any member, any reference to a
2109 member of a limited liability company in this article shall mean a
2110 member who owns a financial interest and shall not mean a member
2111 who does not own a financial interest or hold a financial right in
2112 the limited liability company.

2113 Except as provided in this article, to the extent specified
2114 in the certificate of formation or the operating agreement and at
2115 the times or upon the occurrence of the events specified in the
2116 certificate of formation or operating agreement, a member is
2117 entitled to receive from a limited liability company distributions
2118 before the member's withdrawal from the limited liability company
2119 and before the dissolution and winding-up thereof.

2120 **Section 79-29-603. Distribution upon withdrawal of member.**
2121 Except as provided in this article, upon withdrawal any
2122 withdrawing member is entitled to receive any distribution to
2123 which the member is entitled under an operating agreement and, if
2124 not otherwise provided in an operating agreement, the member is
2125 entitled to receive, within a reasonable time after withdrawal the
2126 fair value of the member's financial interest as of the date of



2127 withdrawal based upon the member's right to share in distributions
2128 from the limited liability company.

2129 For purposes of this section the fair value of the member's
2130 financial interest shall be determined as of the date of
2131 withdrawal:

2132 (a) Using customary and current valuation concepts and
2133 techniques generally employed for similar businesses in the
2134 context of the transaction requiring appraisal; and

2135 (b) Without discounting for lack of marketability or
2136 minority status.

2137 The distribution must be accompanied by current financial
2138 statements of the limited liability company.

2139 **Section 79-29-605. Distribution in kind.** A member,
2140 regardless of the nature of the person's contribution, has no
2141 right to demand and receive any distribution from a limited
2142 liability company in any form other than cash. A member may not
2143 be compelled to accept a distribution of any asset in kind from a
2144 limited liability company to the extent that the percentage of the
2145 asset distributed to the person exceeds a percentage of that asset
2146 which is equal to the percentage in which the person shares in
2147 distributions from the limited liability company. Except as
2148 provided in the operating agreement, a member may be compelled to
2149 accept a distribution of any asset in kind from a limited
2150 liability company to the extent that the percentage of the asset
2151 distributed is equal to a percentage of that asset which is equal
2152 to the percentage in which the member shares in distributions from
2153 the limited liability company.

2154 **Section 79-29-607. Right to distribution.** Subject to
2155 Sections 79-29-609 and 79-29-813, at the time a member becomes
2156 entitled to receive a distribution, the member has the status of,
2157 and is entitled to all remedies available to, a creditor of the
2158 limited liability company with respect to the distribution. An
2159 operating agreement may provide for the establishment of a record



2160 date with respect to allocations and distributions by a limited
2161 liability company.

2162 **Section 79-29-609. Limitations on distribution.** (1) No
2163 distribution may be made if, after giving effect to the
2164 distribution:

2165 (a) The limited liability company would not be able to
2166 pay its debts as they become due in the usual course of business;
2167 or

2168 (b) The limited liability company's total assets would
2169 be less than the sum of its total liabilities plus the amount that
2170 would be needed, if the limited liability company were to be
2171 dissolved at the time of the distribution, to satisfy the
2172 preferential rights of other members upon dissolution which are
2173 superior to the rights of the member receiving the distribution.

2174 For purposes of this section, the term "distribution" shall
2175 not include amounts constituting reasonable compensation for
2176 present or past services or reasonable payments made in the
2177 ordinary course of business pursuant to a bona fide retirement
2178 plan or other benefits program.

2179 (2) The limited liability company may base a determination
2180 that a distribution is not prohibited under subsection (1) of this
2181 section either on:

2182 (a) Financial statements prepared on the basis of
2183 accounting practices and principles that are reasonable under the
2184 circumstances; or

2185 (b) A fair valuation or other method that is reasonable
2186 under the circumstances.

2187 (3) The effect of a distribution under subsection (1) of
2188 this section is measured as of: (a) the date the distribution is
2189 authorized if the payment occurs within one hundred twenty (120)
2190 days after the date of authorization; or (b) the date payment is
2191 made if it occurs more than one hundred twenty (120) days after
2192 the date of authorization.



2193 **Section 79-29-611. Liability for wrongful distribution.** (1)

2194 A member or manager who votes for or assents to a distribution in
2195 violation of the certificate of formation or operating agreement
2196 or Section 79-29-609 is personally liable to the limited liability
2197 company for the amount of the distribution that exceeds what could
2198 have been distributed without violating Section 79-29-609 or the
2199 certificate of formation or operating agreement if it is
2200 established that the member or manager did not act in compliance
2201 with Section 79-29-609. Each member or manager held liable under
2202 this subsection (1) is entitled to contribution:

2203 (a) From each other member or manager who could be held
2204 liable under this subsection (1) for the unlawful distribution;
2205 and

2206 (b) From each member for the amount the member received
2207 knowing that the distribution was made in violation of Section
2208 79-29-605, the certificate of formation or the operating
2209 agreement.

2210 (2) (a) A member who receives a distribution in violation
2211 of Section 79-29-609, and who knew at the time of the distribution
2212 that the distribution violated Section 79-29-609, shall be liable
2213 to a limited liability company for the amount of the distribution.

2214 (b) A member who receives a distribution in violation
2215 of Section 79-29-609, and who did not know at the time of the
2216 distribution that the distribution violated Section 79-29-609,
2217 shall not be liable for the amount of the distribution.

2218 (3) Subject to subsection (4) of this section, this section
2219 shall not affect any obligation or liability of a member under an
2220 agreement or other applicable law for the amount of a
2221 distribution.

2222 (4) Unless otherwise agreed, a member who either assents to
2223 or receives a distribution from a limited liability company shall
2224 have no liability under this chapter or other applicable law for
2225 the amount of the distribution after the expiration of two (2)



2226 years from the date of the distribution unless an action to
2227 recover the distribution from the member is commenced before the
2228 expiration of the two-year period and an adjudication of liability
2229 against the member is made in the action.

2230 ARTICLE 7.

2231 ASSIGNMENT OF FINANCIAL INTERESTS

2232 **Section 79-29-701. Nature of financial interest in a limited**
2233 **liability company.** A financial interest in a limited liability
2234 company is intangible personal property. A member has no interest
2235 in specific limited liability company property.

2236 **Section 79-29-703. Assignment of financial interest in a**
2237 **limited liability company.** (1) A financial interest is
2238 assignable, in whole or in part. The assignee of a member's
2239 financial interest shall have no right to participate in the
2240 management of the business and affairs of a limited liability
2241 company except as provided in an operating agreement and upon:

2242 (a) The approval of all of the members of the limited
2243 liability company other than the member assigning the financial
2244 interest; or

2245 (b) Compliance with any procedure provided for in the
2246 operating agreement.

2247 (2) (a) An assignment of a financial interest does not
2248 dissolve a limited liability company or entitle the assignee to
2249 become or to exercise any rights or powers of a member;

2250 (b) An assignment of a financial interest entitles the
2251 assignee to share in such profits and losses, to receive such
2252 distribution or distributions, and to receive such allocation of
2253 income, gain, loss, deduction, or credit or similar item to which
2254 the assignor was entitled, to the extent assigned; and

2255 (c) A member ceases to be a member, ceases to hold a
2256 governance interest, and ceases to have the power to exercise any
2257 rights or powers of a member upon assignment of all of the
2258 member's financial interest. The pledge of, or granting of, a



2259 security interest, lien or other encumbrance in or against, any or
2260 all of the financial interest of a member shall not cause the
2261 member to cease to be a member or to cease to have the power to
2262 exercise any rights or powers of a member.

2263 (3) A member's interest in a limited liability company may
2264 be evidenced by a certificate issued by the limited liability
2265 company. An operating agreement may provide for the assignment or
2266 transfer of any interest represented by such a certificate and
2267 make other provisions with respect to the certificates. A limited
2268 liability company shall not have the power to issue a certificate
2269 of an interest in a limited liability company in bearer form.

2270 (4) Except to the extent assumed by written agreement until
2271 an assignee of a financial interest becomes a member, the assignee
2272 shall have no liability as a member solely as a result of the
2273 assignment.

2274 (5) A limited liability company may acquire, by purchase,
2275 redemption or otherwise, any interest in the limited liability
2276 company. Any such interest so acquired by the limited liability
2277 company shall be deemed canceled.

2278 **Section 79-29-705. Rights of creditor.** (1) On application
2279 to a court of competent jurisdiction by a judgment creditor of a
2280 member, referred to in this section as the "judgment debtor," the
2281 court may charge the financial interest of the judgment debtor
2282 with payment of the unsatisfied amount of the judgment, with
2283 interest (referred to in this section as a "charging order"). To
2284 the extent so charged, the judgment creditor has only the rights
2285 of an assignee of the financial interest, however, the judgment
2286 creditor shall have no rights to bring a proceeding under Article
2287 11 of this chapter. This article does not deprive any judgment
2288 debtor of the benefit of any exemption laws applicable to the
2289 judgment debtor's financial interest.

2290 (2) A charging order constitutes a lien on the judgment
2291 debtor's financial interest.



2292 (3) The entry of a charging order is the exclusive remedy by
2293 which a judgment creditor of a judgment debtor or its assignee may
2294 satisfy a judgment out of the judgment debtor's financial
2295 interest.

2296 (4) No creditor of a judgment debtor or its assignee shall
2297 have any right to obtain possession of, or otherwise exercise
2298 legal or equitable remedies with respect to, the property of the
2299 limited liability company.

2300 (5) The chancery court shall have jurisdiction to hear and
2301 determine any matter relating to any such charging order.

2302 **Section 79-29-707. Right of assignee to become a member.**

2303 (1) An assignee of a financial interest may become a member with
2304 governance interests if and to the extent that: (a) the
2305 certificate of formation or operating agreement so provides; (b)
2306 all other members consent; or (c) in the case of an assignee of a
2307 member's entire financial interest in which, immediately following
2308 the assignment, the limited liability company otherwise would have
2309 no members, simultaneously with and upon the assignment of the
2310 interest to an assignee who agrees to become a member.

2311 (2) An assignee who has become a member has, to the extent
2312 assigned, the governance rights and powers, and is subject to the
2313 restrictions and liabilities, of a member under the certificate of
2314 formation or operating agreement and this chapter. An assignee
2315 who becomes a member also is liable for the obligations of the
2316 assignee's assignor to make and return contributions as provided
2317 in Articles 5 and 6 of this chapter. However, the assignee is not
2318 obligated for liabilities or obligations unknown to the assignee
2319 at the time the assignee became a member and which could not be
2320 ascertained from the certificate of formation or the operating
2321 agreement.

2322 (3) Whether or not an assignee of a financial interest
2323 becomes a member, the assignor is not released from the assignor's



2324 liability to the limited liability company under Articles 5 and 6
2325 of this chapter.

2326 **Section 79-29-709. Powers of personal representative of**
2327 **deceased, incompetent or dissolved member.** (1) If a court of
2328 competent jurisdiction adjudges a member to be incompetent, the
2329 member's personal representative may exercise all rights until
2330 such time that the member's competency is regained, including the
2331 member's governance rights, on behalf of the member and any power
2332 under an operating agreement of an assignee to become a member.

2333 (2) If a member who is an individual dies, a personal
2334 representative of the member's estate may exercise all rights for
2335 the purpose of settling the estate, including the governance
2336 rights that were held by such member at the time of the member's
2337 death and any power under an operating agreement of an assignee to
2338 become a member.

2339 (3) If a member is a corporation, trust or other entity and
2340 such entity is dissolved, terminated or liquidated, the personal
2341 representative of the entity may exercise all rights and powers of
2342 that member until a successor is established, including the
2343 member's governance rights.

2344 **Section 79-29-711. Enforceability of limitations on**
2345 **assignments of financial interests.** Sections 75-9-406 and
2346 75-9-408 do not apply to a member's financial interest in a
2347 domestic limited liability company, including the rights, powers
2348 and interests arising under the limited liability company's
2349 certificate of formation or operating agreement or under this
2350 chapter. To the extent of any conflict or inconsistency between
2351 this section and Sections 75-9-406 and 75-9-408, this section
2352 prevails. It is the express intent of this section to permit the
2353 enforcement, as an agreement among the members of a limited
2354 liability company, of any provision of an operating agreement that
2355 would otherwise be ineffective under Sections 75-9-406 and
2356 75-9-408.



2357 ARTICLE 8.

2358 DISSOLUTION

2359 **Section 79-29-801. Nonjudicial dissolution.** (1) A limited
2360 liability company is dissolved and its affairs must be wound up
2361 upon the first of the following to occur:

2362 (a) At the time specified in the certificate of
2363 formation;

2364 (b) Upon the occurrence of the event specified in the
2365 certificate of formation or the written operating agreement;

2366 (c) Upon the consent of all members, or such lesser
2367 number as may be provided in the certificate of formation or
2368 operating agreement;

2369 (d) At any time there are no members; provided, that
2370 the limited liability company is not dissolved and is not required
2371 to be wound up if:

2372 (i) Within one hundred eighty (180) days or such
2373 other period as is provided for in the certificate of formation or
2374 operating agreement after the occurrence of the event that
2375 terminated the continued membership of the last remaining member,
2376 the personal representative of the last remaining member agrees in
2377 writing to continue the limited liability company and to the
2378 admission of the personal representative of the member or its
2379 nominee or designee to the limited liability company as a member,
2380 effective as of the occurrence of the event that terminated the
2381 continued membership of the last remaining member; however, an
2382 operating agreement may provide that the personal representative
2383 of the last remaining member shall be obligated to agree in
2384 writing to continue the limited liability company and to the
2385 admission of the personal representative of such member or its
2386 nominee or designee to the limited liability company as a member,
2387 effective as of the occurrence of the event that terminated the
2388 continued membership of the last remaining member; or



2389 (ii) A member is admitted to the limited liability
2390 company in the manner provided in the operating agreement,
2391 effective as of the occurrence of the event that terminated the
2392 continued membership of the last remaining member, within one
2393 hundred eighty (180) days or such other period as is provided in
2394 the operating agreement after the occurrence of the event that
2395 terminated the continued membership of the last remaining member,
2396 pursuant to a provision of the operating agreement that
2397 specifically provides for the admission of a member to the limited
2398 liability company after there is no longer a remaining member of
2399 the limited liability company.

2400 (e) Upon the entry of a decree of judicial dissolution
2401 under Section 79-29-803.

2402 (2) The following events with respect to any member shall
2403 not cause the limited liability company to be dissolved or its
2404 affairs to be wound up, and upon the occurrence of any such event,
2405 the limited liability company shall be continued without
2406 dissolution:

2407 (a) Death;

2408 (b) Withdrawal;

2409 (c) Expulsion;

2410 (d) Bankruptcy;

2411 (e) Dissolution; or

2412 (f) The occurrence of any other event that terminates
2413 the continued membership of any member.

2414 **Section 79-29-803. Judicial dissolution.** (1) On
2415 application by or for a member, the chancery court for the county
2416 in which the registered office of the limited liability company is
2417 located may decree dissolution of a limited liability company:

2418 (a) Whenever it is not reasonably practicable to carry
2419 on the business in conformity with the certificate of formation or
2420 the operating agreement;



2421 (b) Whenever the managers or the members in control of
2422 the limited liability company have been guilty of or have
2423 knowingly countenanced persistent and pervasive fraud or abuse of
2424 authority, or the property of the limited liability company is
2425 being misapplied or wasted by such persons; or

2426 (c) In a proceeding by the limited liability company to
2427 have its voluntary dissolution continued under court supervision.

2428 (2) If a limited liability company has no members due to the
2429 expulsion or withdrawal of the last remaining member pursuant to
2430 the terms of the certificate of formation or the written operating
2431 agreement and the certificate of formation or the written
2432 operating agreement of the limited liability company prohibits the
2433 substitution of a member, then an officer, manager or any assignee
2434 or owner of a financial interest of the limited liability company
2435 or the personal representative of the member may apply to the
2436 chancery court to dissolve the limited liability company; provided
2437 however, that if there are no persons that hold the above
2438 described positions, then any creditor of the limited liability
2439 company or the Secretary of State may apply to the chancery court
2440 to dissolve the limited liability company.

2441 (3) A court in a judicial proceeding brought to dissolve a
2442 limited liability company may appoint one or more receivers to
2443 wind-up and liquidate, or one or more custodians to manage, the
2444 business and affairs of the limited liability company. The court
2445 appointing a receiver or custodian has jurisdiction over the
2446 limited liability company and all its property wherever located.
2447 The court may appoint an individual or entity (authorized to
2448 transact business in this state) as a receiver or custodian. The
2449 court may require the receiver or custodian to post bond, with or
2450 without sureties, in an amount the court directs.

2451 The court shall describe the powers and duties of the
2452 receiver or custodian in its appointing order, which may be
2453 amended from time to time. Among other powers:



2454 (a) The receiver (i) may dispose of all or any part of
2455 the assets of the limited liability company wherever located, at a
2456 public or private sale, if authorized by the court; and (ii) may
2457 sue and defend in the receiver's own name as receiver of the
2458 limited liability company in all courts of this state; and

2459 (b) The custodian may exercise all the powers of the
2460 limited liability company, through or in place of its members,
2461 managers or officers, to the extent necessary to manage the
2462 affairs of the limited liability company in the best interests of
2463 its members and creditors.

2464 The court during a receivership may redesignate the receiver
2465 a custodian, and during a custodianship may redesignate the
2466 custodian a receiver, if doing so is in the best interests of the
2467 limited liability company, its members and creditors.

2468 The court from time to time during the receivership or
2469 custodianship may order compensation paid and expenses paid or
2470 reimbursed to the receiver or custodian from the assets of the
2471 limited liability company or proceeds from the sale of the assets.

2472 **Section 79-29-805. Decree; winding-up, liquidation,**
2473 **notification.** (1) If after a hearing the court determines that
2474 one or more grounds for judicial dissolution exist, it may enter a
2475 decree dissolving the limited liability company and specifying the
2476 effective date of the dissolution, and the clerk of the court
2477 shall deliver a certified copy of the decree to the Secretary of
2478 State who shall file it.

2479 (2) After entering the decree of dissolution, the court
2480 shall direct the winding-up and liquidation of the limited
2481 liability company's business and affairs in accordance with
2482 Section 79-29-809 and the notification of claimants in accordance
2483 with Sections 79-29-817 and 79-29-819.

2484 (3) Nothing contained in this section shall diminish the
2485 inherent equity powers of the court to fashion alternative
2486 remedies to judicial dissolution.



2487 **Section 79-29-807. Safekeeping by State Treasurer.** Assets
2488 of a dissolved limited liability company that should be
2489 transferred to a creditor, claimant or member of the limited
2490 liability company who cannot be found shall be reduced to cash and
2491 deposited with the State Treasurer for safekeeping. When the
2492 creditor, claimant or member furnishes satisfactory proof of
2493 entitlement to the amount deposited, the State Treasurer shall pay
2494 such person or the person's personal representative that amount.

2495 **Section 79-29-809. Winding-up.** (1) A manager who has not
2496 wrongfully dissolved a limited liability company or, if none, the
2497 members or a person approved by the members or, if there is more
2498 than one (1) class or group of members, then by each class or
2499 group of members, in either case, by members who own more than
2500 fifty percent (50%) of the then current percentage or other
2501 interest in the profits of the limited liability company owned by
2502 all of the members or by the members in each class or group, as
2503 appropriate, may wind-up the limited liability company's affairs;
2504 but the chancery court upon cause shown, may wind-up the limited
2505 liability company's affairs upon application of any member or
2506 manager, the member's or manager's personal representative or
2507 assignee, and in connection therewith, may appoint a liquidating
2508 trustee.

2509 (2) Upon dissolution of a limited liability company, the
2510 persons winding-up the limited liability company's affairs may, in
2511 the name of, and for and on behalf of, the limited liability
2512 company, prosecute and defend suits, whether civil, criminal or
2513 administrative, gradually settle and close the limited liability
2514 company's business, dispose of and convey the limited liability
2515 company's property, discharge or make reasonable provision for the
2516 limited liability company's liabilities, and distribute to the
2517 members any remaining assets of the limited liability company, all
2518 without affecting the liability of members and managers and
2519 without imposing liability on a liquidating trustee.



2520 **Section 79-29-811. Agency power of managers, officers or**
2521 **members after dissolution.** (1) Except as provided in subsections
2522 (3), (4) and (5) of this section, after an event causing
2523 dissolution of the limited liability company, any member can bind
2524 the limited liability company:

2525 (a) By any act appropriate for winding-up the limited
2526 liability company's affairs or completing transactions unfinished
2527 at dissolution; and

2528 (b) By any transaction that would have bound the
2529 limited liability company if it had not been dissolved, if the
2530 other party to the transaction does not have notice of the
2531 dissolution.

2532 (2) The filing of the certificate of dissolution shall be
2533 presumed to constitute notice of dissolution for purposes of
2534 subsection (1)(b) of this section.

2535 (3) An act of a manager, officer or member which is not
2536 binding on the limited liability company pursuant to subsection
2537 (1) of this section is binding if it is otherwise authorized by
2538 the limited liability company.

2539 (4) An act of a manager, officer or member which would be
2540 binding under subsection (1) or would be otherwise authorized but
2541 which is in contravention of a restriction on authority shall not
2542 bind the limited liability company to persons having knowledge of
2543 the restriction.

2544 (5) If the certificate of formation or the operating
2545 agreement vests management of the limited liability company in a
2546 manager or managers, the manager or managers shall have the
2547 authority of a member provided for in subsection (1) of this
2548 section, and no member shall have such authority if the member is
2549 acting solely in the capacity of a member.

2550 **Section 79-29-813. Distribution of assets.** (1) Upon the
2551 winding-up of a limited liability company, the assets shall be
2552 distributed as follows:



2553 (a) To creditors, including members and managers who
2554 are creditors, to the extent otherwise permitted by law, in
2555 satisfaction of liabilities of the limited liability company,
2556 whether by payment or the making of reasonable provision for
2557 payment thereof, other than liabilities for which reasonable
2558 provision for payment has been made and liabilities for
2559 distributions to members and former members under Section
2560 79-29-601 or Section 79-29-603;

2561 (b) To members and former members in satisfaction of
2562 liabilities for distributions under Section 79-29-601 or Section
2563 79-29-603; and

2564 (c) To members first for the return of their
2565 contributions and second respecting their financial interests, in
2566 the proportions in which the members share in distributions.

2567 (2) A limited liability company which has dissolved:

2568 (a) Shall pay or make reasonable provision to pay all
2569 claims and obligations, including all contingent, conditional or
2570 unmatured contractual claims, known to the limited liability
2571 company;

2572 (b) Shall make such provision as will be reasonably
2573 likely to be sufficient to provide compensation for any claim
2574 against the limited liability company which is the subject of a
2575 pending action, suit or proceeding to which the limited liability
2576 company is a party; and

2577 (c) Shall make such provision as will be reasonably
2578 likely to be sufficient to provide compensation for claims that
2579 have not been made known to the limited liability company or that
2580 have not arisen but that, based on facts known to the limited
2581 liability company, are likely to arise or to become known to the
2582 limited liability company within three (3) years after the date of
2583 dissolution.

2584 If there are sufficient assets, such claims and obligations
2585 shall be paid in full and any such provision for payment made



2586 shall be made in full. If there are insufficient assets, such
2587 claims and obligations shall be paid or provided for according to
2588 their priority and, among claims of equal priority, ratably to the
2589 extent of assets available therefor. Any remaining assets shall
2590 be distributed as provided in this chapter. Any liquidating
2591 trustee winding-up a limited liability company's affairs who has
2592 complied with this section shall not be personally liable to the
2593 claimants of the dissolved limited liability company by reason of
2594 such person's actions in winding-up the limited liability company.

2595 (3) A member who receives a distribution in violation of
2596 subsection (1) of this section, and who knew at the time of the
2597 distribution that the distribution violated subsection (1) of this
2598 section, shall be liable to the limited liability company for the
2599 amount of the distribution. For purposes of the immediately
2600 preceding sentence, the term "distribution" shall not include
2601 amounts constituting reasonable compensation for present or past
2602 services or reasonable payments made in the ordinary course of
2603 business pursuant to a bona fide retirement plan or other benefits
2604 program. A member who receives a distribution in violation of
2605 subsection (1) of this section, and who did not know at the time
2606 of the distribution that the distribution violated subsection (1)
2607 of this section, shall not be liable for the amount of the
2608 distribution. Subject to subsection (4) of this section, this
2609 subsection shall not affect any obligation or liability of a
2610 member under an agreement or other applicable law for the amount
2611 of a distribution.

2612 (4) Unless otherwise agreed, a member who receives a
2613 distribution from a limited liability company to which this
2614 section applies shall have no liability under this chapter or
2615 other applicable law for the amount of the distribution after the
2616 expiration of two (2) years from the date of the distribution
2617 unless an action to recover the distribution from such member is
2618 commenced prior to the expiration of the said two-year period and



2619 an adjudication of liability against such member is made in the
2620 said action.

2621 (5) Section 79-29-609 shall not apply to a distribution to
2622 which this section applies.

2623 **Section 79-29-815. Trustees or receivers for limited**
2624 **liability companies; appointment; powers; duties.** When the
2625 certificate of formation of any limited liability company formed
2626 under this chapter shall be dissolved by the filing of a
2627 certificate of dissolution, the chancery court, on application of
2628 any creditor, member or manager of the limited liability company,
2629 or any other person who shows good cause therefor, at any time,
2630 may either appoint one or more of the managers of the limited
2631 liability company to be trustees, or appoint one or more persons
2632 to be receivers, of and for the limited liability company, to take
2633 charge of the limited liability company's property, and to collect
2634 the debts and property due and belonging to the limited liability
2635 company, with the power to prosecute and defend, in the name of
2636 the limited liability company, or otherwise, all such suits as may
2637 be necessary or proper for the purposes aforesaid, and to appoint
2638 an agent or agents under them, and to do all other acts which
2639 might be done by the limited liability company, if in being, that
2640 may be necessary for the final settlement of the unfinished
2641 business of the limited liability company. The powers of the
2642 trustees or receivers may be continued as long as the chancery
2643 court shall think necessary for the purposes aforesaid.

2644 **Section 79-29-817. Known claims against dissolved limited**
2645 **liability company.** (1) A dissolved limited liability company may
2646 dispose of the known claims against it by filing a certificate of
2647 dissolution pursuant to Section 79-29-205 and following the
2648 procedure described in this section.

2649 (2) The dissolved limited liability company shall notify its
2650 known claimants in writing of the dissolution at any time after
2651 the effective date of the dissolution. The written notice must:



2652 (a) Describe information that must be included in a
2653 claim;

2654 (b) Provide a mailing address where a claim may be
2655 sent;

2656 (c) State the deadline, which may not be fewer than one
2657 hundred twenty (120) days from the latter of the mailing date of
2658 the written notice or the filing of a certificate of dissolution
2659 pursuant to Section 79-29-205, by which the dissolved limited
2660 liability company must receive the claim; and

2661 (d) State that the claim will be barred if not received
2662 by the deadline.

2663 (3) A claim against the dissolved limited liability company
2664 is barred:

2665 (a) If a claimant who was given written notice under
2666 subsection (2) of this section does not deliver the claim to the
2667 dissolved limited liability company by the deadline; or

2668 (b) If a claimant whose claim was rejected by the
2669 dissolved limited liability company does not commence a proceeding
2670 to enforce the claim within ninety (90) days from the date the
2671 claimant receives notice of the rejection of the claim.

2672 (4) For purposes of this section, "claim" does not include a
2673 contingent liability or a claim based on an event occurring after
2674 the effective date of dissolution.

2675 **Section 79-29-819. Unknown claims against dissolved limited**
2676 **liability company.** (1) A dissolved limited liability company may
2677 publish notice of its dissolution pursuant to this section which
2678 requests that persons with claims against the limited liability
2679 company present them in accordance with the notice.

2680 (2) The notice must:

2681 (a) Be published one (1) time in a newspaper of general
2682 circulation in the county where the dissolved limited liability
2683 company's principal office, or, if none in this state, its
2684 registered office, is or was last located;



2685 (b) Describe the information that must be included in a
2686 claim and provide a mailing address where the claim may be sent;
2687 and

2688 (c) State that a claim against the limited liability
2689 company not otherwise barred will be barred unless a proceeding to
2690 enforce the claim is commenced within three (3) years after the
2691 latter of the publication of the notice or the filing of a
2692 certificate of dissolution with respect to the limited liability
2693 company.

2694 (3) If the dissolved limited liability company publishes a
2695 newspaper notice in accordance with subsection (2) and files a
2696 certificate of dissolution pursuant to Section 79-29-205, the
2697 claim of each of the following claimants which is not otherwise
2698 barred is barred unless the claimant commences a proceeding to
2699 enforce the claim against the dissolved limited liability company
2700 within three (3) years after the latter of the publication date of
2701 the newspaper notice or the filing of the certificate of
2702 dissolution:

2703 (a) A claimant who did not receive written notice under
2704 Section 79-29-817;

2705 (b) A claimant whose claim was timely sent to the
2706 dissolved limited liability company but not acted on within the
2707 three-year period; and

2708 (c) A claimant whose claim is contingent or based on an
2709 event occurring after the effective date of dissolution.

2710 (4) A claim may be enforced under this section:

2711 (a) Against the dissolved limited liability company, to
2712 the extent of its undistributed assets; or

2713 (b) If the assets have been distributed in liquidation,
2714 against a member of the dissolved limited liability company to the
2715 extent of the member's pro rata share of the claim or the assets
2716 of the limited liability company distributed to the member in
2717 liquidation, whichever is less, but a member's total liability for



2718 all claims under this section may not exceed the total amount of
2719 assets distributed to the member, subject to Section 79-29-611(1).

2720 **Section 79-29-821. Grounds for administrative dissolution.**

2721 The Secretary of State may commence a proceeding under Section
2722 79-29-823 to administratively dissolve a limited liability company
2723 if:

2724 (a) The limited liability company does not pay within
2725 sixty (60) days after they are due any fees imposed by this
2726 chapter or other law;

2727 (b) The limited liability company does not deliver its
2728 annual report to the Secretary of State within sixty (60) days
2729 after it is due;

2730 (c) The limited liability company is without a
2731 registered agent in this state for sixty (60) days or more;

2732 (d) The limited liability company does not notify the
2733 Secretary of State within sixty (60) days that its registered
2734 agent has been changed or that its registered agent has resigned;
2735 or

2736 (e) The Department of Revenue notifies the Secretary of
2737 State that the limited liability company is delinquent in any
2738 payments or tax owed by the limited liability company to the State
2739 of Mississippi; or

2740 (f) A misrepresentation has been made of any material
2741 matter in any application, report, affidavit, or other record
2742 submitted by the limited liability company to the Secretary of
2743 State pursuant to this chapter.

2744 **Section 79-29-823. Procedure for administrative dissolution.**

2745 (1) If the Secretary of State determines that one or more grounds
2746 exist under Section 79-29-821 for administratively dissolving a
2747 limited liability company, the Secretary of State shall serve the
2748 limited liability company with written notice of the determination
2749 under Section 79-29-125, except that such determination may be
2750 served by first class mail.



2751 (2) If the limited liability company does not correct each
2752 ground for dissolution or demonstrate to the reasonable
2753 satisfaction of the Secretary of State that each ground determined
2754 by the Secretary of State does not exist within sixty (60) days
2755 after the service of the notice, the Secretary of State shall
2756 administratively dissolve the limited liability company by signing
2757 a certification of the administrative dissolution that recites the
2758 ground or grounds for dissolution and its effective date. The
2759 Secretary of State shall file the original of the certificate of
2760 administrative dissolution and serve the limited liability company
2761 with a copy of the certificate of administrative dissolution under
2762 Section 79-29-125, except that such certificate of administrative
2763 dissolution may be served by first class mail.

2764 **Section 79-29-825. Reinstatement following administrative**

2765 **dissolution.** (1) A limited liability company administratively
2766 dissolved under Section 79-29-823 may apply to the Secretary of
2767 State for reinstatement at any time after the effective date of
2768 dissolution. The application must:

2769 (a) Recite the name of the limited liability company
2770 and the effective date of its administrative dissolution;

2771 (b) State that the ground or grounds for administrative
2772 dissolution either did not exist or have been eliminated; and

2773 (c) State that the limited liability company's name
2774 satisfies the requirements of Section 79-29-109.

2775 (2) If the Secretary of State determines that the
2776 application contains the information required by subsection (1) of
2777 this section and that the information is correct, the Secretary of
2778 State shall cancel the certificate of administrative dissolution
2779 and prepare a certificate of reinstatement that recites this
2780 determination and the effective date of reinstatement, file the
2781 original of the certificate of reinstatement, and serve the
2782 limited liability company with a copy of the certificate of



2783 reinstatement under Section 79-29-125, except that such
2784 certificate of reinstatement may be served by first class mail.

2785 (3) When the reinstatement is effective:

2786 (a) The reinstatement relates back to and takes effect
2787 as of the effective date of the administrative dissolution;

2788 (b) Any liability incurred by the limited liability
2789 company or a member after the administrative dissolution and
2790 before the reinstatement shall be determined as if the
2791 administrative dissolution had never occurred; and

2792 (c) The limited liability company may resume carrying
2793 on its business as if the administrative dissolution had never
2794 occurred.

2795 **Section 79-29-827. Appeal from denial of reinstatement.** (1)

2796 If the Secretary of State denies a limited liability company's
2797 application for reinstatement following administrative
2798 dissolution, the Secretary of State shall serve the limited
2799 liability company under Section 79-29-125 with a record that
2800 explains the reason or reasons for denial, except that such record
2801 may be served by first class mail.

2802 (2) The limited liability company may appeal the denial of
2803 reinstatement to the Chancery Court of the First Judicial District
2804 of Hinds County, Mississippi, or the chancery court where the
2805 limited liability company is domiciled within thirty (30) days
2806 after service of the notice of denial is perfected. The limited
2807 liability company appeals by petitioning the court to set aside
2808 the dissolution and attaching to the petition copies of the
2809 Secretary of State's certificate of administrative dissolution,
2810 the limited liability company's application for reinstatement, and
2811 the Secretary of State's notice of denial.

2812 (3) The court may summarily order the Secretary of State to
2813 reinstate the dissolved limited liability company or may take
2814 other action the court considers appropriate.



2815 (4) The court's final decision may be appealed as in other
2816 civil proceedings.

2817 **Section 79-29-829. Revocation of dissolution.**

2818 Notwithstanding the occurrence of an event set forth in Section
2819 79-29-801(1)(a), (b), (c) or (d) of this chapter, the limited
2820 liability company shall not be dissolved and its affairs shall not
2821 be wound up if, within one hundred twenty (120) days of the
2822 effective date of the dissolution:

2823 (a) The limited liability company is continued pursuant
2824 to the affirmative majority vote or consent of all remaining
2825 members of the limited liability company or the personal
2826 representative of the last remaining member of the limited
2827 liability company if there is no remaining member, and any other
2828 person whose approval is required under the operating agreement to
2829 revoke a dissolution pursuant to this section, and; however, if
2830 the dissolution was caused by a vote or consent, the dissolution
2831 shall not be revoked unless each member and other person, or their
2832 respective personal representatives, who voted in favor of, or
2833 consented to, the dissolution has voted or consented to continue
2834 the limited liability company. If there is no remaining member of
2835 the limited liability company and the personal representative of
2836 the last remaining member votes in favor of or consents to the
2837 continuation of the limited liability company, the personal
2838 representative shall be required to agree in writing to the
2839 admission of the personal representative of the member or its
2840 nominee or designee to the limited liability company as a member,
2841 effective as of the occurrence of the event that terminated the
2842 continued membership of the last remaining member; and

2843 (b) The limited liability company delivers to the
2844 Secretary of State for filing a certificate of revocation of
2845 dissolution, together with a copy of certificate of dissolution,
2846 that sets forth:

2847 (i) The name of the limited liability company;



2848 (ii) The effective date of the dissolution that
2849 was revoked; and

2850 (iii) The date that the revocation of dissolution
2851 was authorized.

2852 (c) The revocation of dissolution is effective upon the
2853 date of the certificate of revocation of dissolution is filed, but
2854 the revocation shall relate back to and take effect as of the
2855 effective date of the dissolution and any liability incurred by
2856 the limited liability company or a member after the dissolution
2857 and before the revocation shall be determined as if the
2858 dissolution had never occurred; and the limited liability company
2859 may resume or continue carrying on its business as if the
2860 dissolution had never occurred.

2861 **Section 79-29-831. Effect of dissolution.** (1) The
2862 dissolution of a limited liability company does not terminate the
2863 authority of the registered agent of the limited liability
2864 company.

2865 (2) The administrative dissolution of a limited liability
2866 company shall not impair the validity on any contract, deed,
2867 mortgage, security interest, lien or act of such limited liability
2868 company or prevent such limited liability company from defending
2869 any action, suit or proceeding with any court of this state.

2870 (3) A member, manager or officer of a limited liability
2871 company is not liable for the debts, obligations or liabilities of
2872 such limited liability company solely by reason of the
2873 administrative dissolution of a limited liability company.

2874 (4) A limited liability company that has been
2875 administratively dissolved may not maintain any action, suit or
2876 proceeding in any court of this state until such limited liability
2877 company is reinstated. An action, suit or proceeding may not be
2878 maintained in any court of this state by any successor or assignee
2879 of such limited liability company on any right, claim or demand



2880 arising out of the transaction of business by such limited
2881 liability company after the administrative dissolution.

2882 (5) A limited liability company that is dissolved pursuant
2883 to Section 79-29-801 or 79-29-803 continues its legal existence
2884 but may carry on only business necessary or appropriate to wind-up
2885 and liquidate its business and affairs under Section 79-29-809 and
2886 to notify claimants under Sections 79-29-817 and 79-29-819.

2887 ARTICLE 9.

2888 PROFESSIONAL LIMITED LIABILITY COMPANIES

2889 **Section 79-29-901. Applicability of remaining articles of**
2890 **chapter.** The other provisions of this chapter apply to
2891 professional limited liability companies, both domestic and
2892 foreign, to the extent not inconsistent with the provisions of
2893 this article.

2894 **Section 79-29-902. Article definitions.** As used in this
2895 article, unless the context requires otherwise:

2896 (a) "Disqualified person" means an individual, general
2897 partnership, professional limited liability company, professional
2898 limited liability partnership or other entity that for any reason
2899 is or becomes ineligible under this article to be a member of a
2900 professional limited liability company.

2901 (b) "Domestic professional limited liability company"
2902 means a professional limited liability company.

2903 (c) "Foreign professional limited liability company"
2904 means a limited liability company formed for the purpose of
2905 rendering professional services under a law other than the law of
2906 this state.

2907 (d) "Law" includes rules promulgated in accordance with
2908 Section 79-29-929.

2909 (e) "Licensing authority" means the office, board,
2910 agency, court or other authority in this state empowered to
2911 license or otherwise authorize the rendition of a professional
2912 service.



2913 (f) "Professional limited liability company" means a
2914 limited liability company, other than a foreign professional
2915 limited liability company, subject to the provisions of this
2916 article.

2917 (g) "Professional service" means a service that may be
2918 lawfully rendered only by a person licensed or otherwise
2919 authorized by a licensing authority in this state to render the
2920 service, including, without limitation, certified public
2921 accountants, dentists, architects, veterinarians, osteopaths,
2922 physicians, surgeons and attorneys at law.

2923 (h) "Qualified person" means an individual, general
2924 partnership, professional limited liability company, professional
2925 limited liability partnership or other entity that is eligible
2926 under this article to be a member of a professional limited
2927 liability company.

2928 **Section 79-29-903. Election of professional limited**
2929 **liability company status.** (1) One or more persons may form a
2930 professional limited liability company by delivering to the
2931 Secretary of State for filing a certificate of formation which
2932 includes a statement that: (a) it is a professional limited
2933 liability company; and (b) its purpose is to render the specified
2934 professional services.

2935 (2) Nothing in this article shall be construed to require a
2936 person rendering professional services in this state to render
2937 such services through a professional limited liability company or
2938 foreign professional limited liability company unless a law of
2939 this state other than this article so requires.

2940 **Section 79-29-904. Purposes.** (1) Except to the extent
2941 authorized by subsection (2), a limited liability company may
2942 elect professional limited liability company status under Section
2943 79-29-903, solely for the purpose of rendering professional
2944 services, including services ancillary to them, and solely within
2945 a single profession.



2946 (2) A limited liability company may elect professional
2947 limited liability company status under Section 79-29-903 for the
2948 purpose of rendering professional services within two (2) or more
2949 professions, and for the purpose of engaging in any lawful
2950 business authorized by Section 79-29-117(1) to the extent the
2951 combination of professional purposes or of professional and
2952 business purposes is not prohibited by the licensing law of this
2953 state applicable to each profession in the combination.

2954 **Section 79-29-905. General powers.** (1) Except as provided
2955 in subsection (2) of this section, a professional limited
2956 liability company has the powers enumerated in Section
2957 79-29-117(2).

2958 (2) A professional limited liability company may be a
2959 promoter, general partner, member, associate or manager of a
2960 partnership, joint venture, trust or other entity only if the
2961 entity is engaged solely in rendering professional services or in
2962 carrying on business authorized by the professional limited
2963 liability company's certificate of formation and not prohibited by
2964 the licensing laws applicable to each profession rendering
2965 services through the professional limited liability company.

2966 **Section 79-29-906. Rendering professional services.** (1) A
2967 domestic or foreign limited liability company may render
2968 professional services in this state only through individuals
2969 licensed or otherwise authorized in this state to render the
2970 services.

2971 (2) Subsection (1) of this section does not:

2972 (a) Require an individual employed by a professional
2973 limited liability company to be licensed to perform services for
2974 the limited liability company if a license is not otherwise
2975 required;

2976 (b) Prohibit a licensed individual from rendering
2977 professional services in the individual's capacity although the



2978 individual is a member, manager, employee or agent of a domestic
2979 or foreign professional limited liability company;

2980 (c) Prohibit an individual licensed in another state
2981 from rendering professional services for a domestic or foreign
2982 professional limited liability company in this state if not
2983 prohibited by the licensing authority.

2984 **Section 79-29-907. Prohibited activities.** (1) A
2985 professional limited liability company may not render any
2986 professional service other than the professional service
2987 authorized by its certificate of formation.

2988 (2) Subsection (1) of this section does not prohibit a
2989 professional limited liability company from investing its funds in
2990 real estate, mortgages, securities, or any other type of
2991 investment or from owning real or personal property appropriate
2992 for carrying on its business.

2993 **Section 79-29-908. Corporate name.** (1) The name of a
2994 domestic professional limited liability company and of a foreign
2995 professional limited liability company authorized to transact
2996 business in this state, in addition to satisfying the requirements
2997 of Sections 79-29-109 and 79-29-1007:

2998 (a) Must contain the words "professional limited
2999 liability company" or the abbreviations "P.L.L.C." or "PLLC";

3000 (b) May not contain language stating or implying that
3001 it is formed for a purpose other than that authorized by Section
3002 79-29-904 and its certificate of formation; and

3003 (c) Must conform with any rule promulgated by the
3004 licensing authority having jurisdiction over a professional
3005 service described in the limited liability company's certificate
3006 of formation.

3007 (2) Sections 79-29-109 and 79-29-1007 do not prevent the use
3008 of a name otherwise prohibited by those sections if it is the
3009 personal name of a member or former member of the domestic or
3010 foreign professional limited liability company or the name of an



3011 individual who was associated with a predecessor of the limited
3012 liability company.

3013 **Section 79-29-909. Who may become members.** (1) No
3014 professional limited liability company organized under the
3015 provisions of this article may have as a member any person other
3016 than:

3017 (a) Individuals who are authorized by law in this or
3018 another state to render a professional service described in the
3019 limited liability company's certificate of formation;

3020 (b) A professional limited liability company, domestic
3021 or foreign, authorized by law in this state to render a
3022 professional service described in the limited liability company's
3023 certificate of formation;

3024 (c) General partnerships in which all the partners are
3025 individuals or entities otherwise authorized by paragraph (a), (b)
3026 or (d) of this subsection (1) to be members of a professional
3027 limited liability company under this article;

3028 (d) A professional limited liability partnership,
3029 domestic or foreign, authorized by law in this state to render a
3030 professional service described in the limited liability
3031 partnership's certificate of registration;

3032 (e) Any other individual or entity not included in
3033 paragraph (a), (b), (c) or (d) of this subsection (1) if expressly
3034 authorized by the licensing authority having jurisdiction over the
3035 professional services described in the certificate of formation of
3036 the professional limited liability company.

3037 (2) A licensing authority with jurisdiction over a
3038 profession may by rule restrict or condition, or revoke in part,
3039 the authority of a professional limited liability company subject
3040 to its jurisdiction to issue membership interests. A rule
3041 promulgated under this section does not, of itself, make a member
3042 of a professional limited liability company at the time the rule
3043 becomes effective a disqualified person.



3044 (3) The certificate of formation may provide for additional
3045 limitations and restrictions on members or for additional
3046 qualifications of members and such limitations, restrictions or
3047 qualifications shall be valid and enforceable in each instance.

3048 (4) Membership interests issued in violation of this section
3049 or a rule promulgated under this section are void.

3050 **Section 79-29-910. Membership interest transfer**

3051 **restrictions.** (1) A member of a professional limited liability
3052 company may transfer the member's membership interests only to
3053 qualified persons. Unless otherwise prohibited by the certificate
3054 of formation or operating agreement, a member of a professional
3055 limited liability company may pledge the member's membership
3056 interest to a qualified person or to a disqualified person.

3057 (2) A transfer of a membership interest made in violation of
3058 subsection (1), except one made by operation of law or court
3059 judgment, is void.

3060 **Section 79-29-911. Compulsory acquisition of membership**

3061 **interests after death or disqualification of a member.** (1) A
3062 professional limited liability company must acquire, or cause to
3063 be acquired by a qualified person, a member's membership interest
3064 if:

3065 (a) The member dies and the successor in interest to
3066 the deceased member is not a qualified person, except as provided
3067 in subsection (3) of this section;

3068 (b) The member becomes a disqualified person, except as
3069 provided in subsection (3) of this section; or

3070 (c) The membership interest is transferred by operation
3071 of law or court judgment to a disqualified person, except as
3072 provided in subsection (3) of this section.

3073 (2) If a price for the membership interest is established in
3074 accordance with the certificate of formation or written operating
3075 agreement or by private agreement, that price controls. If the
3076 price is not so established, the limited liability company shall



3077 acquire the membership interest in accordance with Section
3078 79-29-912. If the disqualified person rejects the limited
3079 liability company's purchase offer made pursuant to Section
3080 79-29-912, either the person or the limited liability company may
3081 commence a proceeding under Section 79-29-913 to determine the
3082 price of the membership interest.

3083 (3) This section does not require the acquisition of
3084 membership interests in the event of disqualification if the
3085 disqualification lasts no more than five (5) months from the date
3086 the disqualification or transfer occurs. A member who becomes a
3087 disqualified person shall notify the limited liability company
3088 promptly.

3089 (4) This section and Section 79-29-912 do not prevent or
3090 relieve a professional limited liability company from paying
3091 pension benefits or other deferred compensation for services
3092 rendered to a former member if otherwise permitted by law.

3093 (5) A provision for the acquisition of membership interests
3094 contained in a professional limited liability company's
3095 certificate of formation or operating agreement, or in a private
3096 agreement, is specifically enforceable.

3097 **Section 79-29-912. Acquisition procedure.** (1) If
3098 membership interests must be acquired under Section 79-29-911, the
3099 professional limited liability company shall deliver a written
3100 notice to the executor or administrator of the estate of its
3101 deceased member, or to the disqualified person or transferee,
3102 offering to purchase the membership interest at a price the
3103 limited liability company believes represents the membership
3104 interests' fair value as of the date of death, disqualification or
3105 transfer. The offer notice must be accompanied by the limited
3106 liability company's balance sheet for the most recent fiscal year
3107 ending prior to the date of death or disqualification, an income
3108 statement for that fiscal year, a reconciliation of members'



3109 capital accounts for that fiscal year, and the latest available
3110 interim financial statements, if any.

3111 (2) The disqualified person has thirty (30) days from the
3112 effective date of the notice to accept the limited liability
3113 company's offer or demand that the limited liability company
3114 commence a proceeding under Section 79-29-913 to determine the
3115 fair value of the disqualified person's membership interest. If
3116 the individual accepts the offer, the limited liability company
3117 shall make payment for the membership interests within sixty (60)
3118 days from the effective date of the offer notice (unless a later
3119 date is agreed on) upon the disqualified person's surrender of the
3120 disqualified person's membership interest to the limited liability
3121 company.

3122 (3) After the limited liability company makes payment for
3123 the membership interest, the disqualified person has no further
3124 interest in the limited liability company.

3125 **Section 79-29-913. Court action to appraise membership**
3126 **interests.** (1) If the disqualified member does not accept the
3127 professional limited liability company's offer under Section
3128 79-29-912(2) within the thirty-day period, the member during the
3129 following thirty-day period may deliver a written notice to the
3130 limited liability company demanding that it commence a proceeding
3131 to determine the fair value of the membership interest. The
3132 limited liability company may commence a proceeding at any time
3133 during the sixty (60) days following the effective date of its
3134 offer notice. If it does not do so, the member may commence a
3135 proceeding against the limited liability company to determine the
3136 fair value of the disqualified person's membership interest.

3137 (2) The limited liability company or disqualified member
3138 shall commence the proceeding in the chancery court of the county
3139 where the limited liability company's principal office, or, if
3140 none in this state, its registered office, is located. The
3141 limited liability company shall make the disqualified person a



3142 party to the proceeding as in an action against the disqualified
3143 person's membership interest. The jurisdiction of the court in
3144 which the proceeding is commenced is plenary and exclusive.

3145 (3) The court may appoint one or more persons as appraisers
3146 to receive evidence and recommend decision on the question of fair
3147 value. The appraisers have the power described in the order
3148 appointing them, or in any amendment to it.

3149 (4) The disqualified member is entitled to judgment for the
3150 fair value of the disqualified person's membership interest
3151 determined by the court as of the date of death, disqualification
3152 or transfer, together with interest from that date at a rate found
3153 by the court to be fair and equitable.

3154 (5) The court may order the judgment paid in installments
3155 determined by the court.

3156 (6) "Fair value" means the value of the membership interest
3157 of the professional limited liability company determined:

3158 (a) Using customary and current valuation concepts and
3159 techniques generally employed for similar businesses in the
3160 context of the transaction requiring appraisal; and

3161 (b) Without discounting for lack of marketability or
3162 minority status.

3163 **Section 79-29-914. Court costs and fees of experts. (1)**

3164 The court in an appraisal proceeding commenced under Section
3165 79-29-913 shall determine all costs of the proceeding, including
3166 the reasonable compensation and expenses of appraisers appointed
3167 by the court, and shall assess the costs against the professional
3168 limited liability company. But the court may assess costs against
3169 the disqualified member, in an amount the court finds equitable,
3170 if the court finds the member acted arbitrarily, vexatiously or
3171 not in good faith in refusing to accept the limited liability
3172 company's offer.

3173 (2) The court may also assess the fees and expenses of
3174 counsel and experts for the disqualified member against the



3175 limited liability company and in favor of the disqualified member
3176 if the court finds that the fair value of disqualified member's
3177 membership interest substantially exceeded the amount offered by
3178 the limited liability company or that the limited liability
3179 company did not make an offer.

3180 **Section 79-29-915. Cancellation of disqualified membership**
3181 **interests.** If the membership interest of a disqualified person is
3182 not acquired under Section 79-29-912 or 79-29-913 within ten (10)
3183 months after the death of the member or within five (5) months
3184 after the disqualification or transfer, the professional limited
3185 liability company shall immediately cancel the membership interest
3186 on its books and the disqualified person has no further interest
3187 as a member in the limited liability company other than the
3188 disqualified member's right to payment of the fair value of the
3189 membership interest under Section 79-29-912 or 79-29-913.

3190 **Section 79-29-917. Voting of membership interests.** (1)

3191 Only a qualified person may be appointed a proxy to vote the
3192 membership interest of a professional limited liability company.

3193 (2) A voting trust with respect to membership interests of a
3194 professional limited liability company is not valid unless all of
3195 its trustees and beneficiaries are qualified persons. If a
3196 beneficiary who is a qualified person dies or becomes
3197 disqualified, a voting trust valid under this subsection continues
3198 to be valid for ten (10) months after the date of death or for
3199 five (5) months after the disqualification occurred.

3200 **Section 79-29-918. Confidential relationship.** (1) The
3201 relationship between an individual rendering professional services
3202 as an employee of a domestic or foreign professional limited
3203 liability company and the individual's client or patient is the
3204 same as if the individual were rendering the services as a sole
3205 practitioner.

3206 (2) The relationship between a domestic or foreign
3207 professional limited liability company and the client or patient



3208 for whom its employee is rendering professional services is the
3209 same as that between the client or patient and the employee.

3210 **Section 79-29-919. Privileged communications.** A privilege
3211 applicable to communications between an individual rendering
3212 professional services and the person receiving the services
3213 recognized under the statute or common law of this state is not
3214 affected by this article. The privilege applies to a domestic or
3215 foreign professional limited liability company and to its
3216 employees in all situations in which it applies to communications
3217 between an individual rendering professional services on behalf of
3218 the limited liability company and the person receiving the
3219 services.

3220 **Section 79-29-920. Responsibility for professional services.**

3221 (1) Each individual who renders professional services as an
3222 employee of a domestic or foreign professional limited liability
3223 company is liable for a negligent or wrongful act or omission in
3224 which the member personally participates to the same extent as if
3225 the member rendered the services as a sole practitioner. A member
3226 or an employee of a domestic or foreign professional limited
3227 liability company is not liable, however, for the conduct of other
3228 members or employees of the limited liability company, except a
3229 person under the member's direct supervision and control, while
3230 rendering professional services on behalf of the professional
3231 limited liability company to the person for whom such professional
3232 services were being rendered.

3233 (2) A domestic or foreign professional limited liability
3234 company whose employees perform professional services within the
3235 scope of their employment or of their apparent authority to act
3236 for the limited liability company is liable to the same extent as
3237 its employees.

3238 **Section 79-29-921. Merger.** (1) If all the members of the
3239 disappearing and surviving limited liability companies, unless
3240 prohibited by certificate of formation or the operating agreement,



3241 are qualified to be members of the surviving limited liability
3242 company, a professional limited liability company may merge with
3243 another domestic or foreign professional limited liability company
3244 or with a domestic or foreign limited liability company.

3245 (2) If the surviving limited liability company is to render
3246 professional services in this state, it must comply with this
3247 article.

3248 **Section 79-29-922. Termination of professional activities.**

3249 If a professional limited liability company ceases to render
3250 professional services, it must amend its certificate of formation
3251 to delete references to rendering professional services and to
3252 conform its name to the requirements of Section 79-29-109. After
3253 the amendment becomes effective the limited liability company may
3254 continue in existence as a limited liability company under this
3255 chapter other than the provisions of this article.

3256 **Section 79-29-923. Judicial dissolution.** The Attorney
3257 General may commence a proceeding under Section 79-29-803 to
3258 dissolve a professional limited liability company if:

3259 (a) The Secretary of State or a licensing authority
3260 with jurisdiction over a professional service described in the
3261 limited liability company's certificate of formation serves
3262 written notice on the limited liability company under Section
3263 79-29-125 that it has violated or is violating a provision of this
3264 article;

3265 (b) The limited liability company does not correct each
3266 alleged violation, or demonstrate to the reasonable satisfaction
3267 of the Secretary of State or licensing authority that it did not
3268 occur, within sixty (60) days after service of the notice is
3269 perfected under Section 79-29-125; and

3270 (c) The Secretary of State or licensing authority
3271 certifies to the Attorney General a description of the violation,
3272 that it notified the limited liability company of the violation,
3273 and that the limited liability company did not correct it, or



3274 demonstrate that it did not occur, within sixty (60) days after
3275 perfection of service of the notice.

3276 **Section 79-29-924. Authority to transact business.** (1) A
3277 foreign professional limited liability company may not transact
3278 business in this state until it obtains a certificate of authority
3279 from the Secretary of State.

3280 (2) A foreign professional limited liability company may not
3281 obtain a certificate of authority unless:

3282 (a) Its name satisfies the requirements of Section
3283 79-29-908;

3284 (b) It is formed for one or more of the purposes
3285 described in Section 79-29-904; and

3286 (c) All of its members would be qualified persons if
3287 the foreign professional limited liability company were a domestic
3288 professional limited liability company.

3289 **Section 79-29-925. Application for certificate of authority.**
3290 The application of a foreign professional limited liability
3291 company for a certificate of authority to render professional
3292 services in this state must contain the information called for by
3293 Section 79-29-1003 and in addition include a statement that all of
3294 its members meet the requirements of Section 79-29-924.

3295 **Section 79-29-926. Revocation of certificate of authority.**
3296 The Secretary of State may administratively revoke the certificate
3297 of authority of a foreign professional limited liability company
3298 authorized to transact business in this state if a licensing
3299 authority with jurisdiction over a professional service described
3300 in the limited liability company's certificate of formation
3301 certifies to the Secretary of State that the limited liability
3302 company has violated or is violating a provision of this article
3303 and describes the violation. Such administrative revocation may
3304 be challenged by the foreign professional limited liability
3305 company in the chancery court of the county where the foreign



3306 professional limited liability company maintains its principal
3307 place of business in this state.

3308 **Section 79-29-930. Rulemaking by licensing authority.** Each
3309 licensing authority is empowered to promulgate rules expressly
3310 authorized by this article if the rules are consistent with the
3311 public interest or required by the public health or welfare or by
3312 generally recognized standards of professional conduct.

3313 **Section 79-29-931. Licensing authority's regulatory**
3314 **jurisdiction.** This article does not restrict the jurisdiction of
3315 a licensing authority over individuals rendering a professional
3316 service within the jurisdiction of the licensing authority, nor
3317 does it affect the interpretation or application of any law
3318 pertaining to standards of professional conduct.

3319 **Section 79-29-933. Application to existing professional**
3320 **limited liability companies.** (1) This article does not apply to
3321 a limited liability company now existing or later formed under a
3322 law of this state that is not a professional limited liability
3323 company unless the limited liability company elects professional
3324 limited liability company status under Section 79-29-903.

3325 (2) This article does not affect an existing or future right
3326 or privilege to render professional services through the use of
3327 any other form of business entity.

3328 (3) Unless otherwise specifically provided by an amendment
3329 to the certificate of formation, for professional limited
3330 liability companies in existence on July 1, 1995, Sections
3331 79-29-912, 79-29-913 and 79-29-914 shall be applied by
3332 substituting the term "book value" for the term "fair value" in
3333 such sections only. Book value shall be determined from the books
3334 and records of the professional limited liability company in
3335 accordance with the regular method of accounting used by the
3336 professional limited liability company and shall be determined as
3337 of the end of the month immediately preceding the death or
3338 disqualification of the member.



3339 ARTICLE 10.
3340 FOREIGN LIMITED LIABILITY COMPANIES.
3341 **Section 79-29-1001. Law governing.** (1) Subject to the
3342 Constitution of this state, the laws of the state or country or
3343 other jurisdiction under which a foreign limited liability company
3344 is organized govern its organization and internal affairs and the
3345 liability of its members, and a foreign limited liability company
3346 may not be denied registration by reason of any difference between
3347 those laws and the laws of this state.
3348 (2) A foreign limited liability company shall be subject to
3349 Section 79-29-117 of this chapter.
3350 **Section 79-29-1003. Registrations; application to register**
3351 **foreign limited companies.** (1) Before transacting business in
3352 this state, a foreign limited liability company, including a
3353 foreign limited liability company formed to render professional
3354 services, shall register with the Secretary of State. In order to
3355 register, a foreign limited liability company shall deliver the
3356 application for registration of foreign limited liability company
3357 to the Office of the Secretary of State for filing, signed by a
3358 person with authority to do so under the laws of the state,
3359 country or other jurisdiction of its formation who is either a
3360 member, manager or officer of the foreign limited liability
3361 company and setting forth:
3362 (a) The name of the foreign limited liability company
3363 which must meet the requirements of Section 79-29-1007 and, if
3364 different, the name under which it proposes to transact business
3365 in this state which must meet the requirements of Section
3366 79-29-1007;
3367 (b) The state or other jurisdiction and date of its
3368 formation and a statement that, as of the date of filing, the
3369 foreign limited liability company validly exists as a limited
3370 liability company under the laws of the jurisdiction of its
3371 formation;



3372 (c) The name and street and mailing address of the
3373 registered agent for service of process on the foreign limited
3374 liability company which the foreign limited liability company has
3375 elected to appoint and who meets the requirements of Section
3376 79-29-113(1) (b) ;

3377 (d) A statement that the Secretary of State is
3378 appointed the registered agent of the foreign limited liability
3379 company for service of process if the registered agent's authority
3380 has been revoked or if the registered agent cannot be found or
3381 served with the exercise of reasonable diligence;

3382 (e) The date on which the foreign limited liability
3383 company first did, or intends to do, business in the State of
3384 Mississippi.

3385 (f) The address of the office required to be maintained
3386 in the state or other jurisdiction of its formation by the laws of
3387 that state or other jurisdiction or, if not so required, the
3388 address of the principal office of the foreign limited liability
3389 company;

3390 (g) If the limited liability company is to have a
3391 specific date of dissolution, the latest date upon which the
3392 foreign limited liability company is to dissolve; and

3393 (h) Any other matters the manager or members determine
3394 to include therein.

3395 The person signing the application shall state the person's
3396 name, the capacity in which the person signs and the street and
3397 mailing address of the person beneath or opposite the person's
3398 signature. A document required or permitted to be delivered to
3399 the Office of the Secretary of State for filing under this chapter
3400 which contains a copy of a signature, however made, is acceptable
3401 for filing by the Secretary of State.

3402 (2) The foreign limited liability company shall deliver with
3403 the completed application a certificate of existence, or a
3404 document of similar import, duly authenticated by the Secretary of



3405 State or other public official having custody of corporate records
3406 in the state or country under whose law it is formed.

3407 **Section 79-29-1005. Issuance of registration.** If the
3408 Secretary of State finds that an application for registration
3409 meets the requirements of Sections 79-29-1003 and 79-29-1007 and
3410 all requisite fees as provided in Section 79-29-1203 have been
3411 paid, the Secretary of State shall:

3412 (a) Certify that the application has been filed in the
3413 Secretary of State's office by endorsing upon the signed
3414 application the word "Filed" and the date and time of the filing.
3415 This endorsement is conclusive evidence of the date and time of
3416 its filing in the absence of actual fraud;

3417 (b) File the application; and

3418 (c) Return a copy to the person who delivered it for
3419 filing or that person's representative.

3420 **Section 79-29-1007. Name.** A foreign limited liability
3421 company shall register with the Secretary of State under any name,
3422 whether or not it is the name under which it is registered in its
3423 state of organization, that includes the words "limited liability
3424 company" or the abbreviation "L.L.C." or "LLC" and that could be
3425 registered by a domestic limited liability company.

3426 **Section 79-29-1009. Changes and amendments.** If any
3427 statement, arrangements or other facts described in the
3428 application for registration of a foreign limited liability
3429 company have changed, making the application inaccurate in any
3430 respect, the foreign limited liability company shall promptly
3431 amend the application by delivering to the Office of the Secretary
3432 of State for filing a certificate of amendment that includes the
3433 amendment to the certificate correcting such statement, signed and
3434 acknowledged by a person authorized to do so under the laws of the
3435 state or other jurisdiction of its formation who is either a
3436 member, manager or officer of the limited liability company,
3437 together with a fee as set forth in Section 79-29-1203.



3438 **Section 79-29-1011. Cancellation of registration.** (1) A
3439 foreign limited liability company registered under this chapter
3440 shall cancel its registration upon completion of the winding-up of
3441 its affairs.

3442 (2) A foreign limited liability company may cancel its
3443 registration whenever it ceases transacting business in this
3444 state.

3445 (3) Registration is canceled by delivering to the Office of
3446 the Secretary of State for filing a certificate of cancellation
3447 signed by a person authorized to do so under the laws of the state
3448 or other jurisdiction of its formation and paying the fee set
3449 forth in Section 79-29-1203.

3450 (4) A cancellation revokes the authority of the registered
3451 agent for service of process designated pursuant to Section
3452 79-29-1003 and operates as a consent that the Secretary of State
3453 may accept service of process on the foreign limited liability
3454 company with respect to causes of action arising out of the
3455 transaction of business in this state.

3456 **Section 79-29-1013. Transaction of business without**
3457 **registration.** (1) A foreign limited liability company
3458 transacting business in this state may not maintain any action,
3459 suit, or proceeding in any court of this state until it has
3460 registered in this state.

3461 (2) The failure of a foreign limited liability company to
3462 register in this state does not:

3463 (a) Impair the validity of any contract or act of the
3464 foreign limited liability company;

3465 (b) Impair the right of any other party to the contract
3466 to maintain any action, suit or proceeding on the contract; or

3467 (c) Prevent the foreign limited liability company from
3468 defending any action, suit, or proceeding in any court of this
3469 state.



3470 (3) A member of a foreign limited liability company is not
3471 liable for the debts, obligations or liabilities of the foreign
3472 limited liability company solely by reason of the foreign limited
3473 liability company having transacted business in this state without
3474 registration.

3475 (4) By transacting business in this state without
3476 registration, a foreign limited liability company appoints the
3477 Secretary of State as its registered agent for service of process
3478 with respect to causes of action arising out of the transaction of
3479 business in this state.

3480 **Section 79-29-1015. Transactions not constituting**

3481 **transacting business.** (1) The following activities of a foreign
3482 limited liability company, among others, do not constitute
3483 transacting business in this state within the meaning of this
3484 article:

3485 (a) Maintaining, defending, or settling any proceeding;

3486 (b) Holding meetings of its members or managers or
3487 carrying on any other activities concerning its internal affairs;

3488 (c) Maintaining bank accounts;

3489 (d) Maintaining offices or agencies for the transfer,
3490 exchange and registration of the foreign limited liability
3491 company's own securities or interests or maintaining trustees or
3492 depositories with respect to those securities or interests;

3493 (e) Selling through independent contractors;

3494 (f) Soliciting or obtaining orders, whether by mail or
3495 through employees or agents or otherwise, if the orders require
3496 acceptance outside this state before they become contracts;

3497 (g) Creating or acquiring indebtedness, mortgages, and
3498 security interests in real or personal property;

3499 (h) Securing or collecting debts or enforcing mortgages
3500 and security interests in property securing the debts and holding,
3501 protecting and maintaining property so acquired;

3502 (i) Owning, without more, real or personal property;



3503 (j) Conducting an isolated transaction that is
3504 completed within thirty (30) days and that is not one in the
3505 course of repeated transactions of a like nature; or

3506 (k) Transacting business in interstate commerce.

3507 (2) A foreign limited liability company shall not be
3508 considered to be transacting business in this state solely because
3509 it:

3510 (a) Is a shareholder in a corporation or a foreign
3511 corporation that transacts business in this state;

3512 (b) Is a limited partner of a limited partnership or
3513 foreign limited partnership that is transacting business in this
3514 state; or

3515 (c) Is a member or manager of a limited liability
3516 company or foreign limited liability company that is transacting
3517 business in this state.

3518 (3) This section does not apply in determining the contracts
3519 or activities that may subject a foreign limited liability company
3520 to service of process or taxation in this state or to regulation
3521 under any other law of this state.

3522 (4) A foreign limited liability company which is a general
3523 partner of any general or limited partnership, which partnership
3524 is transacting business in this state, is hereby declared to be
3525 transacting business in this state.

3526 **Section 79-29-1017. Action by Attorney General.** The
3527 Attorney General may bring an action to restrain a foreign limited
3528 liability company from transacting business in this state in
3529 violation of this article.

3530 **Section 79-29-1019. Execution; liability.** Section
3531 79-29-207(4) shall be applicable to foreign limited liability
3532 companies as if they were domestic limited liability companies.

3533 **Section 79-29-1021. Administrative revocation of**
3534 **registration of foreign limited liability company.** (1) The
3535 Secretary of State may commence a proceeding under Section



3536 79-29-1023 to administratively revoke the registration of a
3537 foreign limited liability company authorized to transact business
3538 in this state if:

3539 (a) The foreign limited liability company does not pay
3540 within sixty (60) days after they are due any fees imposed by this
3541 chapter or other law;

3542 (b) The foreign limited liability company does not
3543 deliver its annual report to the Secretary of State within sixty
3544 (60) days after it is due;

3545 (c) The foreign limited liability company is without a
3546 registered agent in this state for sixty (60) days or more;

3547 (d) The foreign limited liability company does not
3548 notify the Secretary of State within sixty (60) days that its
3549 registered agent has been changed or that its registered agent has
3550 resigned;

3551 (e) The Secretary of State receives a duly
3552 authenticated certificate from the Secretary of State or other
3553 public official having custody of corporate records in the state
3554 or country under whose law the foreign limited liability company
3555 is organized stating that it has been dissolved or ceased to exist
3556 as the result of a merger; or

3557 (f) A misrepresentation has been made of any material
3558 matter in any application, report, affidavit, or other record
3559 submitted by the foreign limited liability company to the
3560 Secretary of State pursuant to this chapter.

3561 (2) The Secretary of State may not administratively revoke a
3562 registration of a foreign limited liability company unless the
3563 Secretary of State sends the foreign limited liability company
3564 notice of the administrative revocation under Section 79-29-1023,
3565 at least sixty (60) days before its effective date, by a record
3566 addressed to its registered agent, or to the foreign limited
3567 liability company if the foreign limited liability company fails
3568 to appoint and maintain a proper agent in this state. The notice



3569 must specify the cause for the administrative revocation of the
3570 registration. The authority of the foreign limited liability
3571 company to transact business in this state ceases on the effective
3572 date of the administrative revocation unless the foreign limited
3573 liability company cures the failure before that date.

3574 **Section 79-29-1023. Administrative revocation of**
3575 **registration, procedure and effect.** (1) If the Secretary of
3576 State determines that one or more grounds exist under Section
3577 79-29-1021 for administrative revocation of registration, the
3578 Secretary of State shall serve the foreign limited liability
3579 company with written notice of the determination under Section
3580 79-29-125, except that such determination may be served by first
3581 class mail.

3582 (2) If the foreign limited liability company does not
3583 correct each ground for administrative revocation or demonstrate
3584 to the reasonable satisfaction of the Secretary of State that each
3585 ground determined by the Secretary of State does not exist within
3586 sixty (60) days after the service of the notice, the Secretary of
3587 State may administratively revoke the foreign limited liability
3588 company's registration by signing a certificate of administrative
3589 revocation that recites the ground or grounds for administrative
3590 revocation and its effective date. The Secretary of State shall
3591 file the original of the certificate of administrative revocation
3592 and serve the foreign limited liability company with a copy of the
3593 certificate of administrative revocation under Section 79-29-125,
3594 except that such certificate of administrative revocation may be
3595 served by first-class mail.

3596 (3) The authority of a foreign limited liability company to
3597 transact business in this state ceases on the date shown on the
3598 certificate of administrative revocation.

3599 (4) The Secretary of State's administrative revocation of a
3600 foreign limited liability company's registration appoints the
3601 Secretary of State the foreign limited liability company's agent



3602 for service of process in any proceeding based on a cause of
3603 action which arose during the time the foreign limited liability
3604 company was authorized to transact business in this state.
3605 Service of process on the Secretary of State under this subsection
3606 is service on the foreign limited liability company. Upon receipt
3607 of process and the payment of the fee specified in Section
3608 79-29-1203, the Secretary of State shall mail a copy of the
3609 process to the foreign limited liability company at the office of
3610 its registered agent, or if the agent has resigned or cannot be
3611 located, at its principal office shown in its most recent
3612 communication received from the foreign limited liability company
3613 stating the current mailing address of its principal office, or,
3614 if none are on file, in its application for registration of
3615 foreign limited liability company.

3616 (5) Administrative revocation of a foreign limited liability
3617 company's registration does not terminate the authority of the
3618 registered agent of the foreign limited liability company.

3619 (6) The administrative revocation of the registration of a
3620 foreign limited liability company shall not impair the validity on
3621 any contract, deed, mortgage, security interest, lien or act of
3622 such foreign limited liability company or prevent the foreign
3623 limited liability company from defending any action, suit or
3624 proceeding with any court of this state.

3625 (7) A member, manager or officer of a foreign limited
3626 liability company is not liable for the debts, obligations or
3627 liabilities of such foreign limited liability company solely by
3628 reason of the administrative revocation of the registration of a
3629 foreign limited liability company.

3630 (8) A foreign limited liability company whose registration
3631 has been administratively revoked may not maintain any action,
3632 suit or proceeding in any court of this state until such foreign
3633 limited liability company's registration has been reinstated. An
3634 action, suit or proceeding may not be maintained in any court of



3635 this state by any successor or assignee of such foreign limited
3636 liability company on any right, claim or demand arising out of the
3637 transaction of business by a foreign limited liability company
3638 after the administrative revocation.

3639 **Section 79-29-1025. Administrative revocation of**
3640 **registration, appeal and reinstatement.** (1) A foreign limited
3641 liability company whose registration is administratively revoked
3642 under Section 79-29-1021 may apply to the Secretary of State for
3643 reinstatement at any time after the effective date of such
3644 administrative revocation. The application must:

3645 (a) Recite the name of the foreign limited liability
3646 company and the effective date of the administrative revocation;

3647 (b) State that the ground or grounds for administrative
3648 revocation either did not exist or have been eliminated; and

3649 (c) State that the foreign limited liability company's
3650 name satisfies the requirements of Section 79-29-1007.

3651 (2) If the Secretary of State determines that the
3652 application contains the information required by subsection (1) of
3653 this section and that the information is correct, the Secretary of
3654 State shall reinstate the registration of a foreign limited
3655 liability company, prepare a certificate of reinstatement that
3656 recites this determination and the effective date of
3657 reinstatement, file the original of the certificate of
3658 reinstatement, and serve the foreign limited liability company
3659 with a copy of the certificate of reinstatement under Section
3660 79-29-125, except that such certificate may be served by first
3661 class mail.

3662 (3) When the reinstatement is effective:

3663 (a) The reinstatement relates back to and takes effect
3664 as of the effective date of the administrative revocation;

3665 (b) Any liability incurred by the foreign limited
3666 liability company or a member after the administrative revocation



3667 and before the reinstatement shall be determined as if the
3668 administrative revocation had never occurred; and

3669 (c) The foreign limited liability company may resume
3670 carrying on its business as if the administrative revocation had
3671 never occurred.

3672 **Section 79-29-1027. Administrative revocation of**
3673 **registration, denial of reinstatement; further review.** (1) If
3674 the Secretary of State denies a foreign limited liability
3675 company's application for reinstatement of the registration
3676 following administrative revocation, the Secretary of State shall
3677 serve the foreign limited liability company with a record that
3678 explains the reason or reasons for denial.

3679 (2) The foreign limited liability company may appeal the
3680 denial of reinstatement to the Chancery Court of the First
3681 Judicial District of Hinds County or the chancery court of the
3682 county where the foreign limited liability company is domiciled
3683 within thirty (30) days after service of the notice of denial is
3684 perfected. The foreign limited liability company appeals by
3685 petitioning the court to set aside the administrative revocation
3686 and attaching to the petition copies of the Secretary of State's
3687 certificate of administrative revocation, the foreign limited
3688 liability company's application for reinstatement and the
3689 Secretary of State's notice of denial.

3690 (3) The court may summarily order the Secretary of State to
3691 reinstate the registration of the foreign limited liability
3692 company or may take other action the court considers appropriate.

3693 (4) The court's final decision may be appealed as in other
3694 civil proceedings.

3695 **Section 79-29-1029. Certificate of authorization.** (1) The
3696 Secretary of State, upon request and payment of the requisite fee,
3697 shall furnish to any person a certificate of authorization for a
3698 foreign limited liability company if the records filed in the
3699 Office of the Secretary of State show that the foreign limited



3700 liability company has registered as a foreign limited liability
3701 company, the registration has not been administratively revoked,
3702 and a certificate of cancellation has not been filed which has
3703 become effective. A certificate of authorization must state:

3704 (a) The foreign limited liability company's name and
3705 any alternate name adopted under Section 79-29-1003(1)(a) for use
3706 in this state;

3707 (b) That the foreign limited liability company is
3708 authorized to transact business in this state;

3709 (c) Whether all fees due under this chapter to the
3710 Secretary of State have been paid;

3711 (d) Whether the foreign limited liability company's
3712 most recent annual report required by Section 79-29-215 has been
3713 filed with the Secretary of State;

3714 (e) Whether a certificate of administrative revocation
3715 of registration has been filed;

3716 (f) Whether a certificate of cancellation of
3717 registration as a foreign limited liability company has been filed
3718 for the limited liability company; and

3719 (g) Other facts of record in the Office of the
3720 Secretary of State which are specified by the person requesting
3721 the certificate.

3722 (2) Subject to any qualification stated in the certificate,
3723 a certificate of authorization issued by the Secretary of State is
3724 conclusive evidence that the foreign limited liability company is
3725 authorized to transact business in this state.

3726 ARTICLE 11.

3727 DERIVATIVE ACTIONS

3728 **Section 79-29-1101. Right to bring action.** A member or an
3729 owner of a financial interest may bring an action in chancery
3730 court in the right of a limited liability company to recover a
3731 judgment in its favor if managers or members with authority to do



3732 so have refused to bring the action or if an effort to cause those
3733 managers or members to bring the action is not likely to succeed.

3734 **Section 79-29-1103. Proper plaintiff.** In a derivative
3735 action, the plaintiff must be a member or an owner of a financial
3736 interest at the time of bringing the action and:

3737 (a) At the time of the transaction of which the
3738 plaintiff complains; or

3739 (b) The plaintiff's status as a member or an owner of a
3740 financial interest had devolved upon the plaintiff by operation of
3741 law or pursuant to the terms of an operating agreement from a
3742 person who was a member or an owner of a financial interest at the
3743 time of the transaction.

3744 A plaintiff may not commence or maintain a derivative
3745 proceeding unless the plaintiff fairly and adequately represents
3746 the interests of the limited liability company in enforcing the
3747 right of the limited liability company.

3748 **Section 79-29-1105. Complaint.** In a derivative action, the
3749 complaint shall set forth with particularity the effort, if any,
3750 of the plaintiff to secure initiation of the action by a manager
3751 or member pursuant to Section 79-29-1101 or the reasons for not
3752 making the effort.

3753 **Section 79-29-1107. Stay of proceedings.** If the limited
3754 liability company commences an inquiry into the allegations made
3755 in the complaint, the court may stay any derivative proceeding for
3756 such period as the court deems appropriate.

3757 **Section 79-29-1109. Dismissal.** (1) A derivative proceeding
3758 shall be dismissed by the court on motion by the limited liability
3759 company if one of the groups specified in subsection (2) or (6) of
3760 this section has determined in good faith, after conducting a
3761 reasonable inquiry upon which its conclusions are based, that the
3762 maintenance of the derivative proceeding is not in the best
3763 interests of the limited liability company.



3764 (2) Unless a panel is appointed pursuant to subsection (6)
3765 of this section, the determination in subsection (1) of this
3766 section shall be made by one (1) of the following:

3767 (a) A majority vote of independent managers present at
3768 a meeting of managers if independent managers constitute a
3769 majority of all managers;

3770 (b) A majority vote of independent members at a meeting
3771 of the members, whether or not such independent members
3772 constituted a majority of all members; or

3773 (c) A majority vote of a committee consisting of two
3774 (2) or more independent managers appointed by the majority vote of
3775 independent managers present at a meeting of managers, whether or
3776 not such independent managers constituted a majority of all
3777 managers.

3778 (3) None of the following shall by itself cause a manager or
3779 member to be considered not independent for purposes of this
3780 section:

3781 (a) The nomination or election of the manager by
3782 persons who are defendants in the derivative proceeding or against
3783 whom action is demanded;

3784 (b) The naming of the manager or member as a defendant
3785 in the derivative proceeding or as a person against whom action is
3786 demanded; or

3787 (c) The approval by the manager or member of the act
3788 being challenged in the derivative proceeding if the act resulted
3789 in no personal benefit to the manager or member.

3790 (4) If a derivative proceeding is commenced after a
3791 determination has been made rejecting a demand by a member, the
3792 complaint shall allege with particularity facts establishing
3793 either:

3794 (a) That a majority of the persons making the
3795 determination under subsection (2) of this section were not
3796 independent at the time the determination was made; or



3797 (b) That the requirements of subsection (1) of this
3798 section have not been met.

3799 (5) If the determination in subsection (1) of this section
3800 is made by a committee pursuant to subsection (2)(c) of this
3801 section and a majority of managers are not independent at the time
3802 the determination is made, or if the determination in subsection
3803 (1) is made by the members pursuant to subsection (2)(b) of this
3804 section and a majority of the members are not independent at the
3805 time the determination is made, then the limited liability company
3806 shall have the burden of proving that the requirements of
3807 subsection (1) have been met. In all other cases, the plaintiff
3808 shall have the burden of proving that the requirements of
3809 subsection (1) of this section have not been met.

3810 (6) The court may appoint a panel of one or more independent
3811 persons upon motion by the limited liability company to make a
3812 determination whether the maintenance of the derivative proceeding
3813 is in the best interests of the limited liability company. In
3814 such case, the plaintiff shall have the burden of proving that the
3815 requirements of subsection (1) of this section have not been met.

3816 **Section 79-29-1111. Discontinuance or settlement.** A
3817 derivative proceeding may not be discontinued or settled without
3818 the court's approval. If the court determines that a proposed
3819 discontinuance or settlement will substantially affect the
3820 interests of the limited liability company's members or a class of
3821 members, the court shall direct that notice be given to the
3822 members affected.

3823 **Section 79-29-1113. Payment of expenses.** (1) If a
3824 derivative action is successful, in whole or in part, as a result
3825 of a judgment, compromise or settlement of any such action, the
3826 court may award the plaintiff reasonable expenses, including
3827 reasonable attorney's fees, from any recovery in any such action
3828 or from a limited liability company.



3829 (2) On termination of the derivative proceeding the court
3830 may order the plaintiff to pay any defendant's reasonable
3831 expenses, including reasonable attorney fees, incurred in
3832 defending the proceeding if it finds that the proceeding was
3833 commenced or maintained without reasonable cause or for an
3834 improper purpose.

3835 **Section 79-29-1115. Applicability to foreign limited**
3836 **liability companies.** In any derivative proceeding brought in the
3837 courts of this state in the right of a foreign limited liability
3838 company, the matters covered by this article shall be governed by
3839 this chapter.

3840 ARTICLE 12.

3841 MISCELLANEOUS.

3842 **Section 79-29-1201. Construction and application.** (1) The
3843 rule that statutes in derogation of the common law are to be
3844 strictly construed shall have no application to this chapter.

3845 (2) It is the policy of this chapter to give the maximum
3846 effect to the principle of freedom of contract and to the
3847 enforceability of operating agreements.

3848 (3) Unless the context otherwise requires, as used herein,
3849 the singular shall include the plural and the plural may refer to
3850 the singular. The captions contained herein are for the purposes
3851 of convenience only and shall not control or affect the
3852 construction of this chapter.

3853 (4) As used herein, the words "include," "includes" and
3854 "including" will be deemed to be followed by the phrase "without
3855 limitation," whether or not such phrase is included therein.

3856 **Section 79-29-1203. Fees.** (1) No document required to be
3857 filed under this chapter shall be effective until the applicable
3858 fee required by this section is paid. The following fees shall be
3859 paid to and collected by the Secretary of State for the use of the
3860 State of Mississippi:



3861 (a) Filing of Reservation of Limited Liability Company
3862 Name or Transfer of Reservation, Twenty-five Dollars (\$25.00).
3863 (b) Filing of Change of Address of Registered Agent,
3864 Twenty-five Dollars (\$25.00).
3865 (c) Filing of Resignation of Registered Agent, Five
3866 Dollars (\$5.00).
3867 (d) Filing of Certificate of Formation, Fifty Dollars
3868 (\$50.00).
3869 (e) Filing of Amendment to Certificate of Formation,
3870 Fifty Dollars (\$50.00).
3871 (f) Filing of Certificate of Dissolution, Fifty Dollars
3872 (\$50.00).
3873 (g) Filing of Application for Registration of Foreign
3874 Limited Liability Company, Two Hundred Fifty Dollars (\$250.00) and
3875 Ten Dollars (\$10.00) for each day, but not to exceed a total of
3876 One Thousand Dollars (\$1,000.00) for each year the foreign limited
3877 liability company transacts business in this state without a
3878 registration as a foreign limited liability company.
3879 (h) Filing of Certificate of Correction, Fifty Dollars
3880 (\$50.00).
3881 (i) Filing of Certificate of Cancellation of
3882 Registration of Foreign Limited Liability Company, Fifty Dollars
3883 (\$50.00).
3884 (j) Filing of an Annual Report of Domestic Limited
3885 Liability Company, (no fee).
3886 (k) Filing of an Annual Report of Foreign Limited
3887 Liability Company, to be deposited in the Elections Support Fund
3888 created in Section 2 of House Bill No. 683, 2010 Regular Session,
3889 Two Hundred Fifty Dollars (\$250.00).
3890 (l) Certificate of Administrative Dissolution, (no
3891 fee).
3892 (m) Filing of Application for Reinstatement Following
3893 Administrative Dissolution, Fifty Dollars (\$50.00).



3894 (n) Certificate of Administrative Revocation of
3895 Authority to Transact Business, (no fee).

3896 (o) Filing of Application for Reinstatement Following
3897 Administrative Revocation, One Hundred Dollars (\$100.00).

3898 (p) Certificate of Reinstatement Following
3899 Administrative Dissolution, (no fee).

3900 (q) Certificate of Reinstatement Following
3901 Administrative Revocation of Authority to Transact Business, (no
3902 fee).

3903 (r) Filing of Certificate of Revocation of Dissolution,
3904 Twenty-five Dollars (\$25.00).

3905 (s) Application for Certificate of Existence or
3906 Authorization, Twenty-five Dollars (\$25.00).

3907 (t) Any other document required or permitted to be
3908 filed under this chapter, Twenty-five Dollars (\$25.00).

3909 (2) The Secretary of State shall collect a fee of
3910 Twenty-five Dollars (\$25.00) each time process is served on the
3911 Secretary of State under Section 79-29-101 et seq.

3912 (3) The Secretary of State shall collect the following fees
3913 for copying and certifying the copy of any filed document relating
3914 to a domestic or foreign limited liability company:

3915 (a) One Dollar (\$1.00) a page for copying; and
3916 (b) Ten Dollars (\$10.00) for the certificate.

3917 (4) The Secretary of State may promulgate rules to:

3918 (a) Reduce the filing fees set forth in this section or
3919 provide for discounts of fees as set forth in this section to
3920 encourage online filing of documents or for other reasons as
3921 determined by the Secretary; and

3922 (b) Provide for documents to be filed and accepted on
3923 an expedited basis upon the request of the applicant. The
3924 Secretary may promulgate rules to provide for an additional
3925 reasonable filing fee to be paid by the applicant and collected by
3926 the Secretary for the expedited filing services.



3927 (5) This section shall stand repealed on July 1, 2012.

3928 **Section 79-29-1205. Severability.** If any provision of this
3929 chapter or its application to any person or circumstance is held
3930 invalid by a court of competent jurisdiction, the invalidity shall
3931 not affect other provisions or applications of this chapter which
3932 can be given effect without the invalid provision or application,
3933 and to this end the provisions of this chapter are severable.

3934 **Section 79-29-1207. Powers of the Secretary of State.** The
3935 Secretary of State shall have the powers reasonably necessary to
3936 perform the duties required of the Office of the Secretary of
3937 State under the provisions of this chapter.

3938 **Section 79-29-1209. Relation to Electronic Signatures in**
3939 **Global and National Commerce Act.** This chapter modifies, limits,
3940 and supersedes the federal Electronic Signatures in Global and
3941 National Commerce Act, 15 USCS Section 7001 et seq., but does not
3942 modify, limit or supersede Section 101(c) of that act, 15 USCS
3943 Section 7001(c), or authorize electronic delivery of any of the
3944 notices described in Section 103(b) of that act, 15 USCS Section
3945 7003(b).

3946 **Section 79-29-1211. Enforceability of written agreements to**
3947 **choose forum, authorize arbitration and to choose prescribed**
3948 **manner of service of process.** In a written operating agreement or
3949 other writing, a manager, member or officer may consent to be
3950 subject to the nonexclusive jurisdiction of the courts of, or
3951 arbitration in, a specified jurisdiction, or the exclusive
3952 jurisdiction of the courts of this state, or the exclusivity of
3953 arbitration in a specified jurisdiction or in this state, and to
3954 be served with legal process in the manner prescribed in such
3955 operating agreement or other writing. Except by agreeing to
3956 arbitrate any arbitrable matter in a specified jurisdiction or in
3957 this state, a member who is not a manager may not waive its right
3958 to maintain a legal action or proceeding in the courts of this



3959 state with respect to matters relating to the organization or
3960 internal affairs of a limited liability company.

3961 ARTICLE 13.

3962 TRANSITION PROVISIONS

3963 **Section 79-29-1301. Applicability upon effective date.** On
3964 or after the effective date of this chapter, this chapter applies
3965 to:

3966 (a) A domestic limited liability company formed on or
3967 after the effective date of this chapter; and

3968 (b) A foreign limited liability company entity that is
3969 not registered with the Secretary of State to transact business in
3970 this state before the effective date of this chapter.

3971 **Section 79-29-1303. Early effectiveness of fees and annual**
3972 **reports.** (1) On or after the effective date of this chapter, the
3973 fees required by Section 79-29-1203 apply to all filings made with
3974 the Secretary of State, including comparable filings under prior
3975 law, regardless of whether a limited liability company is subject
3976 to or has adopted this chapter. The intent of this section is to
3977 require a filing fee for all documents filed under either this
3978 chapter or the prior law without regard to the difference in
3979 designation of the document.

3980 (2) On or after the effective date of this chapter, Sections
3981 79-29-215, 79-29-219, 79-29-821, 79-29-823, 79-29-825, 79-29-827
3982 and 79-29-831, shall apply to all domestic limited liability
3983 companies formed before or after the effective date of this
3984 chapter and Sections 79-29-215, 79-29-1021, 79-29-1023,
3985 79-29-1025, 79-29-1027 and 79-29-1029 shall apply to all foreign
3986 limited liability companies registered with the Secretary of State
3987 before or after the effective date of this chapter.

3988 **Section 79-29-1305. Early adoption of this chapter by**
3989 **existing limited liability company.** A domestic limited liability
3990 company formed before the effective date of this chapter may
3991 voluntarily elect to adopt and become subject to this chapter by:



3992 (a) Adopting the chapter by complying with the
3993 procedures for approval, under prior law and its organizational
3994 documents, of an amendment to its certificate of formation;

3995 (b) Amending any noncomplying organizational documents
3996 to comply with this chapter if any of its organizational
3997 documents, including its certificate of formation, do not comply
3998 with this chapter by complying with the procedures, under prior
3999 law and its organizational documents, to amend the noncomplying
4000 organizational documents to comply with this chapter, including
4001 filing with the Secretary of State in accordance with Section
4002 79-29-203 a certificate of amendment to cause its certificate of
4003 formation to comply with this chapter; and

4004 (c) Filing with the Secretary of State in accordance
4005 with Section 79-29-203 a statement that the domestic limited
4006 liability company is electing to adopt this chapter.

4007 **Section 79-29-1307. Early adoption of chapter by registered**
4008 **foreign limited liability company.** A foreign limited liability
4009 company registered with the Secretary of State to transact
4010 business in this state before the effective date of this chapter
4011 may voluntarily elect to adopt and become subject to this chapter
4012 by filing with the Secretary of State in accordance with Section
4013 79-29-203:

4014 (a) A statement that the foreign limited liability
4015 company is electing to adopt this chapter; and

4016 (b) An amendment to its registration of foreign limited
4017 liability company that would cause its certificate of registration
4018 of foreign limited liability company to comply with this chapter.

4019 **Section 79-29-1309. Applicability to existing limited**
4020 **liability companies.** On or after January 1, 2012, such date
4021 referred to in this article as the "mandatory application date,"
4022 if a domestic limited liability company formed before January 1,
4023 2011, or a foreign limited liability company registered with the
4024 Secretary of State to transact business in this state before



4025 January 1, 2011, has not taken the actions specified by Section
4026 79-29-1305 or 79-29-1307 to elect to adopt this chapter:

4027 (a) This chapter applies to the domestic or foreign
4028 limited liability company and all actions taken by the managers,
4029 officers, or members of the limited liability company, except as
4030 otherwise expressly provided by this article;

4031 (b) A domestic or foreign limited liability company
4032 shall not be considered to have failed to comply with this chapter
4033 if the entity's certificate of formation or application for
4034 registration of foreign limited liability company, as appropriate,
4035 does not comply with the chapter;

4036 (c) A domestic limited liability company shall conform
4037 its certificate of formation to the requirements of this chapter
4038 when it next files an amendment to its certificate of formation;
4039 and

4040 (d) A foreign limited liability company shall conform
4041 its registration of foreign limited liability company to the
4042 requirements of this chapter when it next files an amendment to
4043 its registration of foreign limited liability company.

4044 **Section 79-29-1311. Applicability to certain acts,**
4045 **contracts, and transactions.** All of the provisions of this
4046 chapter govern the acts, contracts, or other transactions by a
4047 limited liability company subject to Section 79-29-1301 or by its
4048 managers, members or officers that occur on or after January 1,
4049 2011. Unless the limited liability company that is formed or
4050 registered before January 1, 2011, has elected to be subject to
4051 the Revised Act prior to the mandatory application date the prior
4052 law governs the acts, contracts, or transactions of the limited
4053 liability company that is formed or registered before January 1,
4054 2011, or its managers, members or officers that occur before the
4055 mandatory application date.

4056 **Section 79-29-1313. Indemnification.** Section 79-29-123
4057 governs any proposed indemnification by a limited liability



4058 company after the mandatory application date, regardless of
4059 whether the events on which the indemnification is based occurred
4060 before or after the mandatory application date. In a case in
4061 which indemnification is permitted but not required under Section
4062 79-29-123, a provision relating to indemnification contained in
4063 the organizational documents of a limited liability company on the
4064 mandatory application date that would otherwise have the effect of
4065 limiting the nature or type of indemnification permitted by
4066 Section 79-29-123 may not be construed after the mandatory
4067 application date as limiting the indemnification authorized by
4068 Section 79-29-123 unless the provision so intended to limit or
4069 restrict permissive indemnification under applicable law.

4070 **Section 79-29-1315. Dissolution.** (1) (a) Section
4071 79-29-803 applies to an action for judicial dissolution commenced
4072 after the mandatory application date; or

4073 (b) Section 79-29-801 applies to a voluntary
4074 dissolution initiated after the mandatory application date.

4075 (2) The prior law governs:

4076 (a) An action described by subsection (1)(a) of this
4077 section that is pending on the mandatory application date; or

4078 (b) A proceeding described by subsection (1)(b) of this
4079 section initiated before the mandatory application date.

4080 **Section 79-29-1317. Maintenance of prior action.** Except as
4081 expressly provided by this article, this chapter does not apply to
4082 an action or proceeding commenced before the mandatory application
4083 date. Prior law applies to the action or proceeding.

4084 **SECTION 2.** (1) There is created in the State Treasury a
4085 special fund to be known as the Elections Support Fund. Monies
4086 derived from annual report fees imposed upon limited liability
4087 companies under Section 79-29-1203 shall be deposited into the
4088 Elections Support Fund. Unexpended amounts remaining in the fund
4089 at the end of the fiscal year shall not lapse into the State
4090 General Fund, and any interest earned or investment earnings on



4091 amounts in the fund shall be disbursed as provided in subsection
4092 (2) of this section. The expenditure of monies in the fund shall
4093 be under the direction of the Secretary of State as provided by
4094 subsection (2) of this section, and such funds shall be paid by
4095 the State Treasurer upon warrants issued by the Department of
4096 Finance and Administration.

4097 (2) (a) Monies in the fund shall be used as follows:

4098 (i) Fifty percent (50%) of the monies in the
4099 special fund shall be distributed annually to the counties, based
4100 on the proportion that the population of a county bears to the
4101 total population in all counties of the state population according
4102 to the most recent information from the United States Census
4103 Bureau, for the purpose of acquiring, upgrading, maintaining or
4104 repairing voting equipment, systems and supplies, hiring temporary
4105 technical support, conducting elections using such voting
4106 equipment or systems and training election officials; and

4107 (ii) The remaining fifty percent (50%) of the
4108 monies in the special fund shall be allocated annually to the
4109 Secretary of State and expended for the purpose of maintaining,
4110 upgrading or equipping the Statewide Elections Management System.

4111 (b) The Secretary of State shall create standard
4112 training guidelines to assist counties in training election
4113 officials with the funds authorized under subsection (2)(a)(ii) of
4114 this section. Any criteria established by the Secretary of State
4115 for the purposes of this section shall be used in addition to any
4116 other training or coursework prescribed by the Secretary of State
4117 to train circuit clerks, poll managers and any other election
4118 officials participating in county elections.

4119 (c) Notwithstanding any other provision of law, no
4120 monies from the Elections Support Fund shall be used by the
4121 Secretary of State or any person associated with the Office of the
4122 Secretary of State to provide or otherwise support expert



4123 testimony in any manner for any hearing, trial or election
4124 contest.

4125 **SECTION 3.** Sections 79-29-101, 79-29-102, 79-29-103,
4126 79-29-104, 79-29-105, 79-29-106, 79-29-107, 79-29-108, 79-29-109,
4127 79-29-110, 79-29-111, 79-29-112, 79-29-201, 79-29-202, 79-29-203,
4128 79-29-204, 79-29-205, 79-29-206, 79-29-207, 79-29-208, 79-29-209,
4129 79-29-210, 79-29-211, 79-29-212, 79-29-213, 79-29-214, 79-29-301,
4130 79-29-302, 79-29-303, 79-29-304, 79-29-305, 79-29-306, 79-29-307,
4131 79-29-308, 79-29-401, 79-29-402, 79-29-403, 79-29-501 79-29-502,
4132 79-29-503, 79-29-504, 79-29-601, 79-29-602, 79-29-603, 79-29-604,
4133 79-29-605, 79-29-606, 79-29-701, 79-29-702, 79-29-703, 79-29-704,
4134 79-29-705, 79-29-801, 79-29-802, 79-29-803, 79-29-804, 79-29-805,
4135 79-29-806, 79-29-807, 79-29-901, 79-29-902, 79-29-903, 79-29-904,
4136 79-29-905, 79-29-906, 79-29-907, 79-29-908, 79-29-909, 79-29-910,
4137 79-29-911, 79-29-912, 79-29-913, 79-29-914, 79-29-915, 79-29-917,
4138 79-29-918, 79-29-919, 79-29-920, 79-29-921, 79-29-922, 79-29-923,
4139 79-29-924, 79-29-925, 79-29-926, 79-29-930, 79-29-931, 79-29-933,
4140 79-29-1001, 79-29-1002, 79-29-1003, 79-29-1004, 79-29-1005,
4141 79-29-1006, 79-29-1007, 79-29-1008, 79-29-1009, 79-29-1010,
4142 79-29-1101, 79-29-1102, 79-29-1103, 79-29-1104, 79-29-1105,
4143 79-29-1106, 79-29-1107, 79-29-1201, 79-29-1202, 79-29-1203 and
4144 79-29-1204, Mississippi Code of 1972, which comprise the
4145 Mississippi Limited Liability Company Act, are hereby repealed.

4146 **SECTION 4.** This act shall take effect and be in force from
4147 and after January 1, 2011.

