HAND OUT #12

Mississippi Limited Liability Company Act

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§ 79-29-101. Short title

This chapter shall be known and may be cited as the "Mississippi Limited Liability Company Act."

§ 79-29-102. Reservation of power to amend or repeal

The Mississippi Legislature has the power to amend or repeal all or part of this chapter at any time and all domestic and foreign limited liability companies subject to this chapter are governed by the amendment or repeal.

§ 79-29-103. Definitions

As used in this chapter, unless the context otherwise requires:

(a) "Certificate of formation" means the certificate referred to in Section 79-29-201, and the certificate as amended or restated.

(b) "Contribution" means any cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in his capacity as a member.

(c) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission. If delivery is to the Secretary of State, delivery may be made by electronic transmission, if, to the extent, and in the manner permitted by the Secretary of State.

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

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

(f) "Entity" means any association or legal entity organized to conduct business, including, without limitation, for profit and nonprofit corporations, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, and business trusts.

(g) "Event of dissociation" means an event that causes a person to cease to be a member as provided in Section 79-29-307.

(h) "Foreign limited liability company" means an entity that is an unincorporated association organized under laws other than the laws of this state that affords to each of its members, pursuant to the laws under which it is organized, limited liability with respect to liabilities of the entity.

(i) "Interests" means the proprietary interests in an entity.

(j) "Limited liability company" and "domestic limited liability company" mean an entity having one or more members that is an unincorporated association that is formed and existing under this chapter.

(k) "Limited liability company agreement" means an agreement of the members as to the affairs of a limited liability company and the conduct of its business.

(l) "Limited liability company interest" means a member s share of the profits and losses of a limited liability company and the right to receive distributions of limited liability company assets.

(m) "Manager" or "managers" means a person or persons who are named in or selected or designated pursuant to, the certificate of formation or limited liability company agreement to manage the limited liability company to the extent and as provided in the certificate of formation or limited liability company agreement.

(n) "Member" means a person that has been admitted to a limited liability company as provided in Section 79-29-301 or, in the case of a foreign limited liability company, in accordance with the laws under which the foreign limited liability company is organized, and that has not dissociated from the limited liability company.

(o) "Merger" means a business combination pursuant to Section 79-29-209.

(p) "Organizational documents" means the basic document or documents that create, or determine the internal governance of, an entity.

(q) "Person" means an individual, corporation, nonprofit corporation, business trust, estate, trust, partnership, limited partnership, association, joint venture, limited liability company, government, governmental subdivision or agency, any other legal or commercial entity, nominee or any individual or entity in any representative capacity.

(r) "Professional limited liability company" is a limited liability company formed and existing under Article 9 of this chapter.

(s) "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature.

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

§ 79-29-104. Name

(1) The name of each limited liability company as set forth in its certificate of formation:

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

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

(c) Except as authorized by subsection (2) of this section, must be distinguishable upon the records of the

Secretary of State from (i) the name of any domestic or foreign corporation, nonprofit corporation, limited partnership or limited liability company organized or registered under the laws of this state; and (ii) a name reserved or registered in the office of the Secretary of State for any of the entities named in paragraph (1)(c)(i) of this section; and

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

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

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

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

§ 79-29-105. Reservation of name

(1) The exclusive right to the use of a name may be reserved by:

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

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

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

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

(2) The reservation shall be made by delivering to the office of the Secretary of State for filing an application, signed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic or foreign limited liability company, he shall reserve the name for the exclusive use of the applicant for a period of one hundred eighty (180) days. Once having so reserved a name, the same applicant may not again reserve the same name until more than sixty (60) days after the expiration of the last 180-day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to any other person by delivering to the office of the Secretary of State a notice of the transfer, signed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

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

§ 79-29-106. Registered office and registered agent

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

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

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

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

(a) The name of the limited liability company;

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

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

(d) The name of its current registered agent;

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

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

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

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

(4) The registered agent of one or more limited liability companies may resign its agency appointment by delivering a certificate to the office of the Secretary of State for filing stating that it resigns as registered agent for the limited liability companies identified in the certificate, but the resignation shall not become effective until ninety (90) days after the certificate is filed by the Secretary of State. There shall be attached to such certificate an affidavit of the registered agent that at least thirty (30) days prior to the filing of the certificate notices were sent by certified or registered mail to each limited liability company for which such registered agent is resigning as registered agent of the resignation of such registered agent. This notice shall be delivered to the last known principal office of each limited liability company identified in the certificate. After receipt of the notice of resignation of its registered agent, the limited liability company for which such registered agent was acting shall obtain and designate a new registered agent. After the resignation of the registered agent has become effective, if the limited liability company fails to obtain and designate a new registered agent, service of legal process against the limited liability company for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with subsection (2) of 79-29-111.

§ 79-29-107. Records to be kept

(1) Each limited liability company shall keep at its principal place of business the following: (a) a current list of the

full name and last known street address of each member and manager; (b) a copy of the certificate of formation and all certificates of amendment and restatement thereof, together with executed copies of any powers of attorney pursuant to which any certificate has been executed; (c) copies of any then effective limited liability company agreement; and (d) unless contained in the certificate of formation or the limited liability company agreement, a writing setting out: (i) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each member and which each member has agreed to contribute; (ii) the times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made; and (iii) any events upon the happening of which the limited liability company is to be dissolved and its affairs wound up.

(2) The records specified under this section are subject to inspection and copying at the reasonable request, and at the expense, of any member or manager during ordinary business hours.

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

§ 79-29-108. Nature of business; powers

(1) Subject to the provisions of its certificate of formation and subject to any other laws of this state which govern or limit the conduct of a particular business or activity, a limited liability company may carry on any lawful business, purpose or activity.

(2) Unless its certificate of formation provides otherwise, every limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

(a) To sue and be sued, complain and defend in its name;

(b) To purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, real and personal property, and any legal or equitable interest in property, wherever located;

(c) To sell, convey, option, mortgage, pledge, lease, exchange and otherwise dispose of all or any part of its property;

(d) To purchase, receive, subscribe for, otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;

(e) To make contracts and guarantees, including guarantees of persons which, directly or indirectly, own, are owned by, or are under common ownership with the limited liability company, incur liabilities, borrow money, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;

(f) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(g) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust, limited liability company, foreign limited liability company or other entity;

(h) To conduct its business, locate offices and exercise the powers granted by this chapter within or without this state;

(i) To have and select employees and agents, define their duties, fix their compensation and lend them money and credit;

(j) To pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, and benefit or incentive plans for any or all of its and its subsidiaries' current or former managers, members, employees and agents;

(k) To make donations for the public welfare or for charitable, scientific or educational purposes;

(l) To transact any lawful business that will aid governmental policy; and

(m) To do any other act, not inconsistent with law, that furthers its business and affairs.

§ 79-29-109. Business transactions of member or manager with the limited liability company

Except as provided in the certificate of formation or the limited liability company agreement, a member or manager may lend money to and transact other business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a member or manager.

§ 79-29-110. Indemnification

(1) Except as provided in subsection (4) of this section, a limited liability company may indemnify and hold harmless any member, manager or other person made a party to a proceeding because he is or was a member, manager or agent of the limited liability company against liability incurred in the proceeding if:

(a) He conducted himself in good faith; and

(b) He reasonably believed:

(i) In the case of conduct in his official capacity with the limited liability company, that his conduct was in its best interests; and

(ii) In all other cases, that his conduct was at least not opposed to its best interests; and

(c) In the case of any criminal proceeding, he had no reasonable cause to believe that his conduct was unlawful.

(2) A member's, manager's or other person's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of paragraph (1)(b)(ii) of this section.

(3) The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the member, manager or person did not meet the standard of conduct described in this section.

(4) A limited liability company may not indemnify a member, manager or other person under this section:

(a) In connection with a proceeding by or in the right of the limited liability company in which the member, manager or other person was adjudged liable to the limited liability company; or

(b) In connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the limited liability company is limited to reasonable expenses incurred in connection with the proceeding.

(6) Unless otherwise provided in its certificate of formation or limited liability company agreement, a limited liability company shall indemnify a member, manager or other person who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he is or was a member, manager or agent of the limited liability company against reasonable expenses incurred by him in connection with the proceeding.

(7)(a) A limited liability company may pay for or reimburse the reasonable expenses incurred by a member, manager or other person who is a party to a proceeding in advance of final disposition of the proceeding if:

(i) The member, manager or other person furnishes the limited liability company a written affirmation of his good faith belief that he has met the standard of conduct described in subsection (1) of this section;

(ii) The member, manager or other person furnishes the limited liability company a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and

(iii) A determination is made that the facts then known to those making the determination would not preclude indemnification under this section.

(b) The undertaking required by paragraph (7)(a)(ii) of this section must be an unlimited general obligation of the member, manager or other person but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payment under this subsection shall be made in the manner specified in subsection (9) of this section.

(8) Unless a limited liability company's certificate of formation or limited liability company agreement provides otherwise, a member, manager or other person who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification if it determines:

(a) The member, manager or other person is entitled to mandatory indemnification under subsection (6), in which case the court shall also order the limited liability company to pay the member, manager or other person's reasonable expenses incurred to obtain court-ordered indemnification; or

(b) The member, manager or other person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances whether or not he met the standard of conduct set forth in subsection (1) or was adjudged liable as described in subsection (4), but if he was adjudged so liable his indemnification is limited to reasonable expenses incurred.

(9)(a) A limited liability company may not indemnify a member, manager or other person under subsection (1) unless authorized in the specific case after a determination has been made that indemnification of the member, manager or other person is permissible in the circumstance because he has met the standard of conduct set forth in subsection (1).

(b) Unless otherwise provided in the certificate of formation or limited liability company agreement, the determination shall be made:

(i) If management of the limited liability company is vested in a manager or managers, by majority vote of a quorum of the managers consisting of persons not at the time parties to the proceeding;

(ii) If management of the limited liability company is not vested in a manager or managers, by majority vote of

a quorum of members consisting of persons not at the time parties to the proceeding;

(iii) If a quorum cannot be obtained under paragraph (9)(b)(i) or (ii), by majority vote of a committee consisting of two (2) or more managers not at the time parties to the proceeding duly designated by the managers (in which designation managers who are parties may participate), or, if management is not vested in a manager or managers, by majority vote of a committee consisting of two (2) or more members not at the time parties to the proceeding duly designated by the members (in which designation members who are parties may participate); or

(iv) By special legal counsel:

(A) Selected by the manager or managers, or members if management is not vested in a manager or managers, or a committee selected in the manner prescribed in paragraph (9)(b)(iii); or

(B) If a quorum cannot be obtained under paragraph (9)(b)(i) or (ii) and a committee cannot be designated under paragraph (9)(b)(iii), selected by a majority vote of all members (in which selection, members who are parties may participate).

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under paragraph (9)(b)(iv) to select counsel.

(10) A limited liability company may purchase and maintain insurance on behalf of a person who is or was a member, manager or agent of the limited liability company, or who, while a member, manager or agent of the limited liability company is or was serving at the request of the limited liability company as a manager, director, officer, partner, trustee, employee or agent of another foreign or domestic limited liability company, corporation, nonprofit corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a manager, director, officer, employee or agent, whether or not the limited liability company would have power to indemnify him against the same liability under subsection (1) or (2) of this section.

(11)(a) Unless the certificate of formation or limited liability company agreement provides otherwise, any authorization of indemnification in the certificate of formation or limited liability company agreement shall not be deemed to prevent the limited liability company from providing the indemnity permitted or mandated by this section.

(b) Any limited liability company shall have the power to make any further indemnity, including advance of expenses, to and enter contracts of indemnity with any manager, member or other person that may be authorized by the certificate of formation or limited liability company agreement or any resolution adopted, before or after the event, by the members, except an indemnity against his gross negligence or willful misconduct. Unless the certificate of formation or limited liability company agreement or resolution provides otherwise, any determination as to any further indemnity shall be made in accordance with paragraph (9)(b)(ii) or (iii). Each such indemnity may continue as to a person who has ceased to have the capacity referred to above and may inure to the benefit of the heirs, executors and administrators of such person.

(c) This section does not limit a limited liability company's power to pay or reimburse expenses incurred by a member, manager or other person in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent to the proceeding.

§ 79-29-111. Service on limited liability company

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

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

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

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

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

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

§ 79-29-112. Taxation

Domestic limited liability companies and foreign limited liability companies shall be classified as an entity for purposes of the income tax laws of this state in the same manner as they are classified for federal income tax purposes.

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§ 79-29-201. Certificate of formation

(1) In order to form a limited liability company, a certificate of formation must be signed and delivered to the office of the Secretary of State. The certificate must set forth:

(a) The name of the limited liability company;

(b) The street and mailing address of the registered office and the name and the street and mailing address of the registered agent for service of process, required to be maintained by Section 79-29-106;

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

(d) If full or partial management of the limited liability company is vested in a manager or managers, a statement to that effect;

(e) Any other matters the managers or members determine to include therein.

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

(3) For all purposes, a copy of the certificate of formation duly certified by the Secretary of State is conclusive evidence of the formation of a limited liability company and prima facie evidence of its existence.

§ 79-29-202. Amendment to certificate

(1) A certificate of formation is amended by delivering a certificate of amendment thereto to the office of the Secretary of State for filing. The certificate shall set forth:

(a) The name of the limited liability company;

(b) The future effective date of the amendment, which must be a date certain not later than the ninetieth day after the date it is filed by the Secretary of State, unless it is effective upon the filing of the certificate of amendment; and

(c) The amendment to the certificate.

(2) A manager or, if there is no manager, any member who becomes aware that any statement in a certificate of formation was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

(3) A certificate of formation may be amended at any time for any other proper purpose.

(4) Except for an amendment required by subsection (2) of this section, unless otherwise provided in the certificate of formation or limited liability company agreement, all members must agree to any amendment of the certificate of formation.

§ 79-29-203. Restated certificates of formation

(1) A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of formation which are then in effect and operative, and it may at the same time also further amend its certificate of formation by adopting a restated certificate of formation.

(2) If the restated certificate of formation merely restates and integrates but does not further amend the certificate of formation then in effect and operative, it shall be specifically designated in its heading as a "restated certificate of formation" together with such other words as the limited liability company may deem appropriate. If the restated certificate restates and integrates and also further amends in any respect the certificate of formation then in effect and operative, it shall be specifically designated in its heading as an "amended and restated certificate of formation" together with such other words as the limited liability company may deem appropriate. Both "amended and restated" and "restated" certificates of formation shall be signed and delivered to the office of the Secretary of State for filing and shall be effective in the same manner as are certificates of amendment pursuant to Section 79-29-202.

(3) Any amendment or change effected in connection with the restatement and integration of the certificate of formation shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

§ 79-29-204. Certificates of dissolution and cancellation

A certificate of dissolution must be delivered to the office of the Secretary of State for filing upon the dissolution and the commencement of winding up of the limited liability company pursuant to Article 8 of this chapter. A certificate of cancellation must be delivered to the office of the Secretary of State for filing upon completion of the winding up of the affairs of the limited liability company. Certificates of dissolution and cancellation must be delivered to the office of the Secretary of State for filing and must set forth:

(a) The name of the limited liability company;

(b) The reason for filing the certificate of dissolution or cancellation;

(c) The future effective date of dissolution or cancellation, which must be a date certain not later than the ninetieth day after it is filed by the Secretary of State, unless it is effective upon the filing of the certificate; and

(d) Any other information the person delivering the certificate for filing determines.

§ 79-29-205. Signing of certificates

(1) Unless otherwise specified in any other section of this chapter, any document required by this chapter to be delivered to the office of the Secretary of State for filing shall be signed:

(a) By any manager, if management of the limited liability company is vested in one or more managers, or by a member if management of the limited liability company is reserved to the members;

(b) If the limited liability company has not been formed, by any person forming the limited liability company; or

(c) If the limited liability company is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(2) The person signing the document shall state beneath or opposite his signature his name, the capacity in which he signs and his street and mailing address. A document required or permitted to be delivered to the office of the Secretary of State for filing under this chapter which contains a copy of a signature, however made, is acceptable for filing by the Secretary of State.

(3) Any person may sign a certificate, a limited liability company agreement or any amendment to either by an agent, including an attorney-in-fact.

(4) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the office of the Secretary of State for filing. An offense under this provision is a misdemeanor punishable by a fine not to exceed Five Hundred Dollars ($500.00).

§ 79-29-206. Amendment, dissolution or cancellation by judicial act

If a person required by this Article 2 to sign a certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the chancery court of the county in which the principal office (or, if none in this state, the registered office) of the limited liability company is located to direct the signing of the certificate. If the court finds that it is proper for the certificate to be signed and that any person so designated has failed or refused to sign the certificate, it shall order appropriate relief, including an order to the Secretary of State to file an appropriate certificate.

§ 79-29-207. Filing with the Secretary of State

(1) One (1) original of the certificate of formation and of any certificate of amendment, dissolution, cancellation or merger and any restated certificate or of any judicial decree of amendment, dissolution, cancellation or merger or restated certificate and any certificate filed by the Secretary of State pursuant to Section 79-29-106 must be delivered to the office of the Secretary of State. A person who signs a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing by the Secretary of State. Unless the Secretary of State finds that a certificate is not acceptable for filing, upon receipt of all filing fees required by Section 79-29-1203 he shall:

(a) Endorse on the original the word "Filed" and the day, month and year of the filing thereof;

(b) File the original in his office; and

(c) Return a copy to the person who delivered it for filing or his representative.

(2) Upon the filing of a certificate of amendment or judicial decree of amendment or an amended and restated certificate by the Secretary of State or upon the future effective date of a certificate of amendment or judicial decree thereof or an amended and restated certificate, as provided for therein, the certificate of formation shall be amended as set forth therein. Upon the filing of a certificate of dissolution or cancellation or a judicial decree thereof by the Secretary of State or upon the future effective date of a certificate of dissolution or cancellation or a judicial decree thereof, the certificate of formation is dissolved or canceled, as the case may be.

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

§ 79-29-208. Notice

The fact that a certificate of formation is on file in the office of the Secretary of State is notice that the entity formed in connection with the filing of the certificate is a limited liability company formed under the laws of this state.

§ 79-29-209. Merger of limited liability company

(1) Unless otherwise provided in the certificate of formation or limited liability company agreement, one or more domestic limited liability companies may merge with a domestic or foreign entity pursuant to a plan of merger.

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

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

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

(3) The plan of merger must include:

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

(b) The terms and conditions of the merger;

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

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

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

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

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

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

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

(c) Change any of the other terms or conditions of the plan if the change would adversely affect such members in any material respect.

§ 79-29-210. Action on a plan of merger

In the case of a limited liability company that is a party to a merger:

(a) Unless otherwise provided in the certificate of formation or limited liability company agreement, the plan of merger must be adopted by the members.

(b) Unless the plan of merger is not required to be approved by the members, the limited liability company must notify each member and each owner of a limited liability company interest, whether or not entitled to vote, of the meeting of members at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan, If the limited liability company is to be merged into an existing entity, the notice shall also include or be accompanied by a copy or summary of the organizational documents of that entity. If the limited liability company is to be merged into an entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the organizational documents of the new entity.

(c) Unless otherwise provided in the certificate of formation or limited liability company agreement, approval of the plan of merger

requires the approval of at least a majority of the votes entitled to be cast on the plan, and, if any class or series of interests is entitled to vote as a separate group on the plan of merger, the approval of at least a majority of the votes entitled to be cast on the merger by that voting group.

(d) Unless otherwise provided in the certificate of formation or limited liability company agreement, separate voting by voting groups is required:

(i) On a plan of merger, by each class or series of interests that (A) are to be converted, pursuant to the provisions of the plan of merger, into shares or other securities, interests, obligations, rights to acquire interests or other securities, cash, other property, or any combination of the foregoing, or (B) would have a right to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to the certificate of formation or limited liability company agreement, would require action by separate voting groups under the certificate of formation or limited liability company agreement;

(ii) On a plan of merger, if the voting group is entitled under the certificate of formation or limited liability company agreement, to vote as a voting group to approve a plan of merger.

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

§ 79-29-211. Certificate of merger

After a plan of merger has been adopted and approved as required by the Mississippi Limited Liability Company Act, a certificate of merger shall be executed on behalf of each party to the merger by any manager, if management of the limited liability company is vested in one or more managers, or by a member if management of the limited liability company is reserved to the members. The certificate shall set forth:

(a) The names of the parties to the merger and the date on which the merger occurred or is to be effective;

(b) If the organizational documents of the survivor of a merger are amended, or if a new entity is created as a result of a merger, the amendments to the organizational documents of the survivor or the organizational documents of the new entity;

(c) A statement that the plan was duly approved by the members and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by the Mississippi Limited Liability Company Act and the certificate of formation and limited liability company agreement;

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

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

(f) The plan of merger.

§ 79-29-212. Effect of merger

(1) When a merger becomes effective:

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

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

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

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

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

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

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

(h) The interests in an entity that is a party to a merger that are to be converted under the plan of merger into shares interests, obligations, rights to acquire securities, other securities, cash, other property, or any combination of the foregoing, are converted, and the former holders of such interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under Section 79-29-214.

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

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

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

(b) Agree that it will promptly pay the amount, if any, to which such members and owners of a limited liability company interest are entitled under Section 79-29-214, Mississippi Code of 1972.

§ 79-29-213. Abandonment of a merger

(1) Unless otherwise provided in a plan of merger or in the laws under which a domestic or foreign entity that is a party to a merger is organized or by which it is governed, after the plan has been adopted and approved as required by the Mississippi Limited Liability Company Act, and at any time before the merger has become effective, it may be abandoned by any party thereto without action by the party's owners of interests, in accordance with any procedures set forth in the plan of merger or, if no such procedures are set forth in the plan, in the manner determined by the entity subject to any contractual rights of other parties to the merger.

(2) If a merger is abandoned under subsection (1) after a certificate of merger has been filed with the Secretary of State but before the merger has become effective, a statement that the merger has been abandoned in accordance with this subsection, executed on behalf of a party to the merger by any manager, if management of the limited liability company is vested in one or more managers, or by a member if management of the limited liability company is reserved to the members, shall be delivered to the Secretary of State for filing prior to the effective date of the merger. Upon filing, the statement shall take effect and the merger shall be deemed abandoned and shall not become effective.

§ 79-29-214. Appraisal rights

(1) **Definitions.** In this section:

(a) "Beneficial holder" means a person who is the beneficial owner of interests held in a voting trust or by a nominee on the beneficial owner's behalf.

(b) "Fair value" means the value of the limited liability company's interests determined:

(i) Immediately before the effectuation of the action to which the member or owner of a limited liability company interest objects;

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

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

(c) "Record holder" means the person in whose name interests are registered in the records of the entity or the beneficial owner of interests to the extent of the rights granted by a nominee certificate on file with the entity.

(d) "Holder" means both a record holder and a beneficial holder.

(2) **Right to appraisal.** (a) Unless otherwise provided in the certificate of formation or limited liability company agreement, each member and owner of a limited liability company interest is entitled to appraisal rights, and to obtain payment of the fair value of that member or owner of a limited liability company's interest, in the event of any of the following actions:

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

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

(iii) Any other action to the extent provided by the certificate of formation or limited liability company agreement.

(b) A member or owner of a limited liability company interest entitled to appraisal rights under this section may not challenge a completed action for which appraisal rights are available unless such action:

(i) Was not effectuated in accordance with the applicable provisions of the Mississippi Limited Liability Company Act or the limited liability company's certificate of formation or limited liability company agreement; or

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

(3) **Notice of appraisal rights.** If a proposed action described in subsection (2) of this section is to be submitted to a vote, the meeting notice must state that the limited liability company has concluded that members and owners of limited liability company interests are entitled to assert appraisal rights under this section and a copy of this section must accompany the meeting notice sent to the members and owners of limited liability company interests.

(4) **Notice of intent to demand payment.** (a) If a proposed action requiring appraisal rights under subsection (2)(a) of this section is submitted to a vote, members and owners of limited liability company interests who wish to assert appraisal rights with respect to any class or series of interests:

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

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

(b) A member or owner of a limited liability company interest who does not satisfy the requirements of subsection (4)(a) of this section is not entitled to payment under this section.

(5) **Appraisal notice and form.** (a) If a proposed action requiring appraisal rights under subsection (2) of this section becomes effective, the limited liability company must deliver a written appraisal notice and form required by this subsection (5) to all members and owners of limited liability company interests who satisfied the requirements of subsection (4) of this section.

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

(i) Supply a form that specifies the date of the first announcement to members and owners of limited liability company interests of

the principal terms of the proposed action and requires the person asserting appraisal rights to certify (A) whether beneficial ownership of those interests for which appraisal rights are asserted was acquired before that date, and (B) that the person did not vote for the transaction;

(ii) State:

(A) Where the form must be sent and where certificates for certificated interests must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subsection (5)(b)(ii)(B) of this section;

(B) A date by which the limited liability company must receive the form which date may not be fewer than forty (40) nor more than sixty (60) days after the date the subsection (5)(a) appraisal notice and form are sent, and state that the person shall have waived the right to demand appraisal with respect to the interests unless the form is received by the limited liability company by such specified date;

(C) The limited liability company's estimate of the fair value of the interests;

(D) That, if requested in writing, the limited liability company will provide to the person so requesting, within ten (10) days after the date specified in subsection (5)(b)(ii)(B), the number of persons who return the forms by the specified date and the aggregate interests owned by them; and

(E) The date by which the notice to withdraw under subsection (6) must be received, which date must be within twenty (20) days after the date specified in subsection (5)(b)(ii)(B) of this section; and

(c) Be accompanied by a copy of this section.

(6) **Perfection of rights; right to withdraw.** (a) A person who receives notice pursuant to subsection (5) and who wishes to exercise appraisal rights must certify on the form sent by the limited liability company whether the beneficial owner of such interests acquired beneficial ownership thereof before the date required to be set forth in the notice pursuant to subsection (5)(b) of this section. If a person fails to make this certification, the limited liability company may elect to treat the person's interests as after-acquired interests under subsection (8). In addition, a person who wishes to exercise appraisal rights must execute and return the form and, in the case of certificated interests, deposit the person's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subsection (5)(b)(ii)(B) of this section. Once a person deposits that person's certificates or, in the case of uncertificated interests, returns the executed forms, that member or owner of a limited liability company interest loses all rights as a member or owner of a limited liability company interest, unless the person withdraws pursuant to subsection (6)(b) of this section.

(b) A person who has complied with subsection (6)(a) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the limited liability company in writing by the date set forth in the appraisal notice pursuant to subsection (5)(b)(ii)(E) of this section. A person who fails to so withdraw from the appraisal process may not thereafter withdraw without the limited liability company's written consent.

(c) A person who does not execute and return the form and, in the case of certificated interests, deposit that person's certificates where required, each by the date set forth in the notice described in subsection (5)(b)(ii)(B) of this section, shall not be entitled to payment under this subsection.

(7) **Payment.** (a) Except as provided in subsection (6), within thirty (30) days after the form required by subsection (5)(b)(ii)(B) of this section is due, the limited liability company shall pay in cash to those persons who complied with subsection (6)(a) of this section the amount the limited liability company estimates to be the fair value of their interests, plus interest at the legal rate.

(b) The payment to each person pursuant to subsection (7)(a) of this section must be accompanied by:

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

(ii) A statement of the limited liability company's estimate of the fair value of the interests, which estimate must equal or exceed the limited liability company's estimate given pursuant to subsection (5)(b)(ii)(C) of this section;

(iii) A statement that persons described in this subsection (7) have the right to demand further payment under subsection (9) and that if any such person does not do so within the time period specified therein, such person shall be deemed to have accepted such payment in full satisfaction of the limited liability company's obligations under this section.

(8) **After-acquired interests.** (a) A limited liability company may elect to withhold payment required by subsection (7) of this section from any person who did not certify that beneficial ownership of all of the person's interests for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to subsection (5)(b)(i) of this section.

(b) If the limited liability company elected to withhold payment under subsection (8)(a) of this section, it must, within thirty (30) days after the form required by subsection (5)(b)(ii)(B) of this section is due, notify all persons who are described in subsection (8)(a) of this section:

(i) Of the information required by subsection (7)(b)(i) of this section;

(ii) Of the limited liability company's estimate of fair value pursuant to subsection (7)(b)(ii) of this section;

(iii) That they may accept the limited liability company's estimate of fair value, plus interest at the legal rate, in full satisfaction of their demands or demand appraisal under subsection (9) of this section,

(iv) That those persons who wish to accept such offer must so notify the limited liability company of their acceptance of the limited liability company's offer within thirty (30) days after receiving the offer; and

(v) That those persons who do not satisfy the requirements for demanding appraisal under subsection (9) of this section shall be deemed to have accepted the limited liability company's offer.

(c) Within ten (10) days after receiving the person's acceptance pursuant to subsection (8)(b) of this section, the limited liability company must pay in cash the amount it offered under subsection (8)(b)(ii) of this section to each person who agreed to accept the limited liability company's offer in full satisfaction of the person's demand.

(d) Within forty (40) days after sending the notice described in subsection (8)(b) of this section, the limited liability company must pay in cash the amount it offered to pay under subsection (7)(b) of this section to each person described in subsection (8)(b)(ii) of this section.

(9) **Procedure if person dissatisfied with payment or offer.** (a) A person paid pursuant to subsection (7) of this section who is dissatisfied with the amount of the payment must notify the limited liability company in writing of that person's estimate of the fair value of the interests and demand payment of that estimate plus interest at the legal rate less any payment under subsection (7) of this section. A person offered payment under subsection (8) who is dissatisfied with that offer must reject the offer and demand payment of the person's stated estimate of the fair value of the shares plus interest at the legal rate.

(b) A person who fails to notify the limited liability company in writing of that person's demand to be paid the person's stated estimate of the fair value plus interest at the legal rate under subsection (9)(a) of this section within thirty (30) days after receiving the limited liability company's payment or offer of payment under subsections (7) or (8) of this section, respectively, waives the right to demand payment under this subsection (9) and shall be entitled only to the payment made or offered pursuant to those respective subsections.

(10) **Court action.** (a) If a person makes demand for payment under subsection (9) of this section which remains unsettled, the limited liability company shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the interests and accrued interest at the legal rate. If the limited liability company does not commence the proceeding within the sixty (60) day period, it shall pay in cash to each such person the amount the person demanded pursuant to subsection (9)(a) of this section plus interest at the legal rate.

(b) The limited liability company shall commence the proceeding in the chancery court of the county where the limited liability company's registered office is located. If the limited liability company is a foreign limited liability company without a registered

office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic limited liability company merged with the foreign limited liability company was located at the time of the transaction.

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

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (10)(b) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The persons demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each person made a party to the proceeding is entitled to judgment: (i) for the amount, if any, by which the court finds the fair value of the person's interests, plus interest at the legal rate, exceeds the amount paid by the limited liability company to the person for such interests, or (ii) for the fair value, plus interest at the legal rate, of the person's interests for which the limited liability company elected to withhold payment under subsection (8) of this section.

(11) **Court costs and counsel fees.** (a) The court in an appraisal proceeding commenced under subsection (10) of this section shall determine all costs of the proceeding including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess costs against all or some of the persons demanding appraisal, in amounts the court finds equitable, to the extent the court finds such persons acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by this subsection.

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

(i) Against the limited liability company and in favor of any or all persons demanding appraisal if the court finds the limited liability company did not substantially comply with the requirements of subsections (3) (5), (7) or (8) of this section; or

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

(c) If the court in an appraisal proceeding finds that the services of counsel for any member or owner of a limited liability company interest were of substantial benefit to other persons similarly situated, and that the fees for those services should not be assessed against the limited liability company, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the persons who were benefited.

(d) To the extent the limited liability company fails to make a required payment pursuant to subsections (7), (8) or (9) of this section, the person may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the limited liability company all costs and expenses of the suit, including counsel fees.

Article 3. Members

§ 79-29-301. Admission of members
§ 79-29-302. Management of limited liability company
§ 79-29-303. Agency power of members and managers
§ 79-29-304. Classes and voting
§ 79-29-305. Liability to third parties
§ 79-29-306. Limited liability company agreement
§ 79-29-307. Events of dissociation
§ 79-29-308. Information

§ 79-29-301. Admission of members

(1) A person becomes a member on the later of:

(a) The date the original certificate of formation is filed by the Secretary of State; or

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

(2) After the filing by the Secretary of State of a limited liability company's original certificate of formation, a person may be admitted as a member:

(a) In the case of a person acquiring a limited liability company interest directly from the limited liability company, upon the compliance with the certificate of formation or the limited liability company agreement or, if the certificate of formation or the limited liability company agreement does not so provide, upon the written consent of all members; and

(b) In the case of an assignee of a limited liability company interest, upon compliance with subsection (1) of Section 79-29-704.

§ 79-29-302. Management of limited liability company

Except to the extent that the certificate of formation provides for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members. The certificate of formation or limited liability company agreement may impose limitations on the powers and authorities of the manager or managers of the limited liability company.

§ 79-29-303. Agency power of members and managers

(1) Except as provided in subsection (2) of this section, every member is an agent of the limited liability company for the purpose of conducting its business and affairs, and the act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is a member, binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom he is dealing has knowledge of the fact that the member has no such authority.

(2) If the certificate of formation provides that management of the limited liability company is vested in a manager or managers:

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

(b) Every manager is an agent of the limited liability company for the purpose of its business and affairs, and the act of any manager, including, but not limited to, the execution in the name of the limited liability company of any instrument for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is the manager, binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom he is dealing has knowledge of the fact that the manager has no such authority.

(3) An act of a manager or a member which is not apparently for the carrying on in the usual way the business of the limited liability company does not bind the limited liability company unless authorized in accordance with the limited liability company agreement.

(4) No act of a manager or member in contravention of a restriction on authority shall bind the limited liability company to persons

having knowledge of the restriction.

§ 79-29-304. Classes and voting

(1) Unless otherwise provided in the certificate of formation or limited liability company agreement, each member of a limited liability company shall be entitled to one vote on any matter entitled to be voted on by the members.

(2) Unless otherwise provided in this chapter, in the certificate of formation or the limited liability company agreement, any action required or permitted to be taken by the members of a limited liability company may be taken upon a majority vote of all of the members.

(3) A certificate of formation or limited liability company agreement may provide for classes or groups of members having such relative rights, powers and duties as may be provided therein, and may make provision for the future creation in the manner provided therein of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members.

(4) The certificate of formation or limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote (on a per capita or any other basis) separately or with all or any class or group of the members, on any matter.

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

§ 79-29-305. Liability to third parties

(1) A person who is a member of a limited liability company is not liable, by reason of being a member, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the limited liability company, whether arising in contract, tort or otherwise or for the acts or omissions of any other member, manager, agent or employee of the limited liability company.

(2) A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company, by reason of being a member of the limited liability company, except:

(a) Where the object of the proceeding is to enforce a member's right against or liability to the limited liability company; or

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

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

§ 79-29-306. Limited liability company agreement

(1) The members of a limited liability company may enter into a limited liability company agreement to regulate or establish the affairs of the limited liability company, the conduct of its business and the relations of its members. A limited liability company agreement may contain any provisions regarding the affairs of a limited liability company and the conduct of its business to the extent that such provisions are not inconsistent with the laws of this state or the certificate of formation.

(2)(a) A limited liability company agreement must initially be agreed to by all of the members.

(b) If the certificate of formation or limited liability company agreement does not provide for the method by which a limited liability company agreement may be amended, then all of the members must agree to any amendment of a limited liability company agreement, including an amendment that occurs as the result of a merger with a domestic or foreign limited liability company.

(3)(a) A court of equity may enforce a limited liability company agreement by injunction or by such other relief that the court in its discretion determines to be fair and appropriate in the circumstances.

(b) As an alternative to injunctive or other equitable relief, when the provisions of Section 79-29-802 are applicable, the court may order dissolution of the limited liability company.

§ 79-29-307. Events of dissociation

<Text of section effective for all domestic limited liability companies formed on or before June 30, 1998, and which do not duly elect to come under the second tier of this section>

(1) A person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(a) The member withdraws by voluntary act from the limited liability company as provided in subsection (3) of this section;

(b) The member ceases to be a member of the limited liability company as provided in Section 79-29-702;

(c) The member is removed as a member in accordance with the certificate of formation or limited liability company agreement;

(d) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, the member (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of the nature described in this paragraph (1)(d); or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties.

(e) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, if one hundred twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within ninety (90) days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties, the appointment is not vacated or stayed or within ninety (90) days after the expiration of any stay, the appointment is not vacated;

(f) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of a member who is an individual:

(i) His death; or

(ii) The entry of an order by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

(g) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of a member who is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

(h) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of a member that is a partnership, limited partnership or limited liability company, the dissolution and commencement of winding up thereof;

(i) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of a member that is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the revocation of its charter and the lapse of one hundred eighty (180) days after notice to the corporation of revocation without a reinstatement of its charter; or

(j) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

(2) The certificate of formation or limited liability company agreement may provide for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

(3) Unless the certificate of formation or limited liability company agreement provides in writing that a member has no power to withdraw by voluntary act from a limited liability company, the member may do so at any time by giving thirty (30) days' written

notice to the other members, or such other notice as is provided for in the certificate of formation or limited liability company agreement. If the member has the power to withdraw but the withdrawal is a breach of the certificate of formation or limited liability company agreement, or the withdrawal occurs as a result of otherwise wrongful conduct of the member, the limited liability company may recover from the withdrawing member damages for breach of the certificate of formation or limited liability company agreement, and may offset the damages against the amount otherwise distributable to him, in addition to pursuing any remedies provided for in the certificate of formation or limited liability company agreement or otherwise available under applicable law. Unless otherwise provided in the certificate of formation or limited liability company agreement, in the case of a limited liability company for a definite term or particular undertaking, a withdrawal by a member before the expiration of that term is a breach of the certificate of formation or limited liability company agreement.

§ 79-29-307. Events of dissociation

<Text of section effective for all domestic limited liability companies formed on or after July 1, 1998, or for those previously formed such companies which elect to come under the following provisions by filing with the Secretary of State a certificate of amendment specifically stating that the limited liability company is electing to be subject to the following provisions>

(1) A person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(a) The member withdraws by voluntary act from the limited liability company in accordance with the limited liability company agreement;

(b) The member ceases to be a member of the limited liability company as provided in Section 79-29-702;

(c) The member is removed as a member in accordance with the certificate of formation or limited liability company agreement;

(d) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, the member (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of the nature described in this paragraph (1)(d); or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties;

(e) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, if one hundred twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within ninety (90) days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties, the appointment is not vacated or stayed or within ninety (90) days after the expiration of any stay, the appointment is not vacated;

(f) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of a member who is an individual:

(i) His death; or

(ii) The entry of an order by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

(g) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of a member who is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

(h) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of a member that is a partnership, limited partnership or limited liability company, the dissolution and commencement of winding up thereof;

(i) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of a member that is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the revocation of its charter and the lapse of one hundred eighty (180) days after notice to the corporation of revocation without a reinstatement of its charter; or

(j) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

(2) The certificate of formation or limited liability company agreement may provide for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

(3) Unless the certificate of formation or limited liability company agreement provides that a member has the power to do so, a member has no power to withdraw from a limited liability company.

§ 79-29-308. Information

(1) Each member has the right to:

(a) Inspect and copy any of the limited liability company records required to be maintained by Section 79-29-107; and

(b) Subject to such reasonable standards as may be set forth in writing in the certificate of formation or limited liability company agreement, obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member in the limited liability company: (i) true and full information regarding the state of the business and financial condition of the limited liability company; (ii) promptly after becoming available, a copy of the limited liability company's federal, state, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited liability company as is just and reasonable.

(2) In addition to any other remedies, a court of competent jurisdiction may enforce the duty of making available the information and financial statements required by this section.

(3) In any action under this section, if the court finds that the limited liability company has failed to comply with the requirements of this section, the court may award an amount sufficient to reimburse the members bringing the action for the reasonable expenses incurred by the members, including attorneys' fees, in connection with the action or proceeding.

(4) Any waiver by a member of the rights provided in this section shall be unenforceable.

END OF DOCUMENT

Article 4. Management

§ 79-29-401. Management of a limited liability company by a manager or managers
§ 79-29-402. General standards of conduct for a manager
§ 79-29-403. Limitation of liability of members and managers

§ 79-29-401. Management of a limited liability company by a manager or managers

(1) The certificate of formation of a limited liability company may delegate responsibility for managing a limited liability company to or among one or more managers to the extent provided therein or in the limited liability company agreement.

(2) Managers need not be residents of this state or members of the limited liability company unless the certificate of formation or the limited liability company agreement so requires. The certificate of formation or the limited liability company agreement may prescribe other qualifications for managers.

(3) The number of managers shall be fixed by or in the manner provided in the certificate of formation or the limited liability company agreement. The number of managers may be increased or decreased by amendment to, or in the manner provided in, the certificate of formation or the limited liability company agreement.

(4) Unless otherwise provided in the certificate of formation or limited liability company agreement, managers shall be elected by the members.

(5) Unless otherwise provided in the certificate of formation or the limited liability company agreement, any vacancy occurring in the office of manager shall be filled by the vote of the members.

(6) All managers or any lesser number may be removed in the manner provided in the certificate of formation or the limited liability company agreement. If the certificate of formation or the limited liability company agreement does not provide for the removal of managers, then all managers or any lesser number may be removed with or without cause by the vote of the members.

(7) Unless otherwise provided in the certificate of formation or the limited liability company agreement, any action required or permitted to be taken by the managers of a limited liability company may be taken upon a majority vote of the managers.

§ 79-29-402. General standards of conduct for a manager

(1) A manager shall discharge his duties as a manager:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he reasonably believes to be in the best interests of the limited liability company.

(2) In discharging his duties, a manager is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more managers or employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the manager reasonably believes are within the person's professional or expert competence; or

(c) A committee of the managers of which he is not a member if the manager reasonably believes the committee merits confidence.

(3) A manager is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A manager is not liable for any action taken as a manager, or any failure to take any action, if he performed the duties of his office

in compliance with this section.

§ 79-29-403. Limitation of liability of members and managers

The certificate of formation or limited liability company agreement may contain a provision eliminating or limiting the liability of a manager or a member to the limited liability company or its members for money damages for any action taken, or any failure to take any action, as a manager or member, except liability for:

(a) The amount of a financial benefit received by a member or manager to which he is not entitled;

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

(c) An intentional violation of criminal law; or

(d) A violation of Section 79-29-606.

Article 5. Finance

§ 79-29-501. Form of contribution
§ 79-29-502. Liability for contributions
§ 79-29-503. Sharing of profits and losses
§ 79-29-504. Sharing of distributions

§ 79-29-501. Form of contribution

The contribution of a member may be in cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

§ 79-29-502. Liability for contributions

(1) A promise by a member to contribute to the limited liability company is not enforceable unless set out in a writing signed by the member.

(2) Except as provided in the certificate of formation or limited liability company agreement, a member is obligated to the limited liability company to perform an enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, he is obligated at the option of the limited liability company to contribute cash equal to that portion of the value of the stated contribution that has not been made.

(3) Unless otherwise provided in the certificate of formation or limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by specific consent of all the members. However, a creditor of a limited liability company who extends credit, or otherwise acts in reliance on that obligation after the member signs a writing that reflects the obligation and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation to the same extent as the limited liability company could pursuant to this section.

(4) A certificate of formation or limited liability company agreement may provide that the interest of any member who fails to make any contribution that he is obligated to make, shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing the defaulting member's proportionate interest in the limited liability company, subordinating his limited liability company interest to that of nondefaulting members, forcing a sale of his limited liability company interest, forfeiting his limited liability company interest, the lending by other members of the amount necessary to meet his commitment, fixing the value of his limited liability company interest by appraisal or by formula and redeeming or selling of his limited liability company interest at such value, or other penalty or consequence.

§ 79-29-503. Sharing of profits and losses

The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in the certificate of formation or limited liability company agreement. If the certificate of formation or limited liability company agreement does not so provide, profits and losses must be allocated on the basis of the value, as stated in the limited liability company records required to be kept pursuant to Section 79-29-107, of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

§ 79-29-504. Sharing of distributions

Distributions of cash or other assets of a limited liability company must be allocated among the members, and among classes of members, in the manner provided in the certificate of formation or limited liability company agreement. If the certificate of formation or limited liability company agreement does not so provide distributions must be made on the basis of the value, as stated in the limited liability company records required to be kept pursuant to Section 79-29-107, of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

Article 6. Distributions

§ 79-29-601. Interim distributions
§ 79-29-602. Distribution upon dissociation
§ 79-29-603. Distribution in kind
§ 79-29-604. Right to distribution
§ 79-29-605. Limitations on distribution
§ 79-29-606. Liability for wrongful distribution

§ 79-29-601. Interim distributions

Except as provided in this article, a member is entitled to receive distributions from a limited liability company before his dissociation from the limited liability company and before the dissolution and winding up thereof, to the extent and at the times or upon the occurrence of the events specified in the certificate of formation or limited liability company agreement.

§ 79-29-602. Distribution upon dissociation

Except as provided in this chapter, upon dissociation any dissociating member is entitled to receive any distribution to which he is entitled under the certificate of formation or limited liability company agreement and, if not otherwise provided therein the dissociating member is entitled to receive, within a reasonable time after the dissociation, the fair value of his interest in the limited liability company as of the date of dissociation based upon his right to share in distributions from the limited liability company.

§ 79-29-603. Distribution in kind

Except as provided in the certificate of formation or limited liability company agreement, a member, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in the certificate of formation or limited liability company agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited liability company.

§ 79-29-604. Right to distribution

Subject to Sections 79-29-605 and 79-29-805, at the time a member becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

§ 79-29-605. Limitations on distribution

(1) No distribution may be made if, after giving effect to the distribution:

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

(b) The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the certificate of formation or limited liability company agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution which are superior to the rights of the member receiving the distribution.

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

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

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

(3) Except as provided in subsection (4) of this section, the effect of a distribution under subsection (1) of this section is measured as of (a) the date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of

authorization; or (b) the date payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

(4) If terms of any indebtedness of the limited liability company provide that any payment thereon is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, such indebtedness of a limited liability company, and any indebtedness issued as a distribution, is not a liability for purposes of determinations made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

§ 79-29-606. Liability for wrongful distribution

(1) A member or manager who votes for or assents to a distribution in violation of the certificate of formation or limited liability company agreement or Section 79-29-605 is personally liable to the limited liability company for the amount of the distribution that exceeds what could have been distributed without violating Section 79-29-605 or the certificate of formation or limited liability company agreement if it is established that such member or manager did not act in compliance with Section 79-29-605.

(2) Each member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution:

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

(b) From each member for the amount the member received knowing that the distribution was made in violation of Section 79-29-605, the certificate of formation or the limited liability company agreement.

(3) A proceeding under this section is barred unless it is commenced within two (2) years after the date on which the effect of the distribution is measured under Section 79-29-605.

Article 7. Assignment of Limited Liability Company Interests

§ 79-29-701. Nature of limited liability company interest
§ 79-29-702. Assignment of limited liability company interest
§ 79-29-703. Rights of creditor
§ 79-29-704. Right of assignee to become a member
§ 79-29-705. Power of estate of deceased or incompetent member

§ 79-29-701. Nature of limited liability company interest

A limited liability company interest is personal property. A member has no interest in specific limited liability company property.

§ 79-29-702. Assignment of limited liability company interest

Except as provided in the certificate of formation or limited liability company agreement, a limited liability company interest is assignable in whole or in part. An assignment of a limited liability company interest does not dissolve a limited liability company or entitle the assignee to become or to exercise any rights of a member. An assignment entitles the assignee, to the extent assigned, to share in such profits and losses, to receive such distribution or distributions, and to receive such allocations of income, gain, loss, deduction, credit or similar items to which the assignor would have been entitled. Except as provided in the certificate of formation or limited liability company agreement, a member ceases to be a member upon assignment of the member's entire limited liability company interest. Unless otherwise provided in the certificate of formation or limited liability company agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the limited liability company interest of the member shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

§ 79-29-703. Rights of creditor

On application to a court of competent jurisdiction by a judgment creditor of a member, the court may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment, with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest. This article does not deprive any member of the benefit of any exemption laws applicable to his limited liability company interest.

§ 79-29-704. Right of assignee to become a member

(1) An assignee of a limited liability company interest may become a member if and to the extent that (a) the certificate of formation or limited liability company agreement so provides or (b) all other members consent.

(2) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the certificate of formation or limited liability company agreement and this chapter. An assignee who becomes a member also is liable for the obligations of his assignor to make and return contributions as provided in Articles 5 and 6 of this chapter. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a member and which could not be ascertained from the records required to be kept pursuant to Section 79-29-107.

(3) Unless otherwise provided in the certificate of formation or limited liability company agreement, whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from his liability to the limited liability company under Articles 5 and 6 of this chapter.

§ 79-29-705. Power of estate of deceased or incompetent member

If a member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the member's rights for the purpose of settling his estate or administering his property, including any power the member had to give an assignee the right to become a member. If a member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

Article 8. Dissolution

§ 79-29-801. Nonjudicial dissolution
§ 79-29-802. Judicial dissolution
§ 79-29-803. Winding up
§ 79-29-804. Agency power of managers or members after dissolution
§ 79-29-805. Distribution of assets
§ 79-29-806. Known claims against dissolved limited liability company
§ 79-29-807. Unknown claims against dissolved limited liability company

§ 79-29-801. Nonjudicial dissolution

<Text of section effective for all domestic limited liability companies formed on or before June 30, 1998, and which do not duly elect to come under the second tier of this section>

A limited liability company is dissolved and its affairs must be wound up upon the first of the following to occur:

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

(b) Upon the occurrence of the event specified in the certificate of formation or limited liability company agreement;

(c) Upon the written consent of all members, or such lesser number as may be provided in the certificate of formation or limited liability company agreement;

(d) Upon an event of dissociation of a member as provided in Section 79-29-307, unless the business of the limited liability company is continued by the consent of all the remaining members within ninety (90) days following the occurrence of any such event or as otherwise provided in the certificate of formation or limited liability company agreement; or

(e) Upon the entry of a decree of judicial dissolution under Section 79-29-802.

§ 79-29-801. Nonjudicial dissolution

<Text of section effective for all domestic limited liability companies formed on or after July 1, 1998, or for those previously formed such companies which elect to come under the following provisions by filing with the Secretary of State a certificate of amendment specifically stating that the limited liability company is electing to be subject to the following provisions>

A limited liability company is dissolved and its affairs must be wound up upon the first of the following to occur:

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

(b) Upon the occurrence of the event specified in the certificate of formation or limited liability company agreement;

(c) Upon the consent of all members, or such lesser number as may be provided in the certificate of formation or limited liability company agreement;

(d) Upon an event of dissociation of a member as provided in Section 79-29-307, if a majority of the remaining members, or such other number as may be provided in the certificate of formation or limited liability company agreement, consent to do so; or

(e) Upon the entry of a decree of judicial dissolution under Section 79-29-802.

§ 79-29-802. Judicial dissolution

On application by or for a member, the chancery court for the county in which the registered office of the limited liability company is located may decree dissolution of a limited liability company whenever any of the following occurs:

(a) It is not reasonably practicable to carry on the business in conformity with the certificate of formation or the limited liability company agreement; or

(b) The managers or the members in control of the limited liability company have been guilty of or have knowingly countenanced persistent and pervasive fraud or abuse of authority or persistent unfairness toward any member, or the property of the limited liability company is being misapplied or wasted by such persons.

§ 79-29-803. Winding up

(1) Unless otherwise provided in the certificate of formation or limited liability company agreement, the manager or managers, or, if management of the limited liability company is not vested in a manager or managers, the members who have not wrongfully dissolved a limited liability company, may wind up the limited liability company's affairs; but the chancery court for the county in which the registered office of the limited liability company is located, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, his legal representative or assignee, and in connection therewith, may appoint a liquidating trustee or receiver.

(2) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in Section 79-29-204, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company, all without affecting the liability of the members.

(3) Unless otherwise provided in the certificate of formation or limited liability company agreement, the persons winding up the affairs of the limited liability company pursuant to this section shall be entitled to reasonable compensation.

§ 79-29-804. Agency power of managers or members after dissolution

(1) Except as provided in subsections (3), (4) and (5) of this section, after an event causing dissolution of the limited liability company any member can bind the limited liability company:

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

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

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

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

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

(5) If the certificate of formation vests management of the limited liability company in a manager or managers, the manager or managers shall have the authority of a member provided for in subsection (1), and no member shall have such authority if he is acting solely in the capacity of a member.

§ 79-29-805. Distribution of assets

Upon the winding up of a limited liability company, the assets must be distributed as follows:

(a) To creditors, including members and managers who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or by establishment of reserves) other than liabilities for distributions to members under Section 79-29-601 or 79-29-604;

(b) Except as provided in the certificate of formation or limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under Section 79-29-601 or 79-29-604; and

(c) Except as provided in the certificate of formation or limited liability company agreement, to members first for the return of their contributions and secondly respecting their limited liability company interests, in the proportions in which the members share in distributions.

§ 79-29-806. Known claims against dissolved limited liability company

(1) A dissolved limited liability company may dispose of the known claims against it by filing a certificate of dissolution pursuant to Section 79-29-204 and following the procedure described in this section.

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

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

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

(c) State the deadline, which may not be fewer than one hundred twenty (120) days from the latter of the mailing date of the written notice or the filing of a certificate of dissolution pursuant to Section 79-29-204, by which the dissolved limited liability company must receive the claim; and

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

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

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

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

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

§ 79-29-807. Unknown claims against dissolved limited liability company

(1) A dissolved limited liability company may publish notice of its dissolution pursuant to this section which requests that persons with claims against the limited liability company present them in accordance with the notice.

(2) The notice must:

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

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

(c) State that a claim against the limited liability company not otherwise barred will be barred unless a proceeding to enforce the claim is commenced within five (5) years after the latter of the publication of the notice or the filing of a certificate of dissolution with respect to the limited liability company.

(3) If the dissolved limited liability company publishes a newspaper notice in accordance with subsection (2) and files a certificate of dissolution pursuant to Section 79-29-204, the claim of each of the following claimants which is not otherwise barred is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company within five (5) years after the latter of the publication date of the newspaper notice or the filing of the certificate of dissolution:

(a) A claimant who did not receive written notice under Section 79-29-806;

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

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

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

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

(b) If the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of the member's pro rata share of the claim or the assets of the limited liability company distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

Article 9. Professional Limited Liability Companies

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§ 79-29-901. Applicability of remaining articles of chapter

The other provisions of this chapter apply to professional limited liability companies, both domestic and foreign, to the extent not inconsistent with the provisions of this article.

§ 79-29-902. Article definitions

As used in this article, unless the context requires otherwise:

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

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

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

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

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

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

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

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

§ 79-29-903. Election of professional limited liability company status

(1) One or more persons may form a professional limited liability company by delivering to the Secretary of State for filing a certificate of formation which includes a statement that (a) it is a professional limited liability company, and (b) its purpose is to render the specified professional services.

(2) A limited liability company formed under this chapter (other than a professional limited liability company in existence on July 1, 1995, which is subject to the provisions of Section 79-29-933) may elect professional limited liability company status by amending its certificate of formation to comply with subsection (1) and Section 79-29-908.

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

§ 79-29-904. Purposes

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

(2) A limited liability company may elect professional limited liability company status under Section 79-29-903 for the purpose of rendering professional services within two (2) or more professions, and for the purpose of engaging in any lawful business authorized by Section 79-29-108(1) to the extent the combination of professional purposes or of professional and business purposes is not prohibited by the licensing law of this state applicable to each profession in the combination.

§ 79-29-905. General powers

(1) Except as provided in subsection (2) of this section, a professional limited liability company has the powers enumerated in Section 79-29-108(2).

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

§ 79-29-906. Rendering professional services

(1) A domestic or foreign limited liability company may render professional services in this state only through individuals licensed or otherwise authorized in this state to render the services.

(2) Subsection (1) does not:

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

(b) Prohibit a licensed individual from rendering professional services in his individual capacity although he is a member, manager, employee or agent of a domestic or foreign professional limited liability company;

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

§ 79-29-907. Prohibited activities

(1) A professional limited liability company may not render any professional service other than the professional service authorized by its certificate of formation.

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

§ 79-29-908. Corporate name

(1) The name of a domestic professional limited liability company and of a foreign professional limited liability company authorized to transact business in this state, in addition to satisfying the requirements of Sections 79-29-104 and 79-29-1004:

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

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

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

(2) Sections 79-29-104 and 79-29-1004 do not prevent the use of a name otherwise prohibited by those sections if it is the personal name of a member or former member of the domestic or foreign professional limited liability company or the name of an individual who was associated with a predecessor of the limited liability company.

§ 79-29-909. Who may become members

(1) No professional limited liability company organized under the provisions of this article may have as a member any person other than:

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

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

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

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

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

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

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

§ 79-29-910. Membership interest transfer restrictions

(1) A member of a professional limited liability company may transfer his membership interests only to qualified persons. A member of a professional limited liability company may pledge his membership interest to a qualified person or to a disqualified person.

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

§ 79-29-911. Compulsory acquisition of membership interests after death or disqualification of a member

(1) A professional limited liability company must acquire (or cause to be acquired by a qualified person) a member's membership interest if:

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

(b) The member becomes a disqualified person, except as provided in subsection (3); or

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

(2) If a price for the membership interest is established in accordance with the certificate of formation or limited liability company agreement or by private agreement, that price controls. If the price is not so established, the limited liability company shall acquire the membership interest in accordance with Section 79-29-912. If the disqualified person rejects the limited liability company's purchase offer made pursuant to Section 79-29-912, either the person or the limited liability company may commence a proceeding under Section 79-29-913 to determine the price of the membership interest.

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

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

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

§ 79-29-912. Acquisition procedure

(1) If membership interests must be acquired under Section 79-29-911, the professional limited liability company shall deliver a written notice to the executor or administrator of the estate of its deceased member, or to the disqualified person or transferee, offering to purchase the membership interest at a price the limited liability company believes represents the membership interests' fair value as of the date of death, disqualification or transfer. The offer notice must be accompanied by the limited liability company's balance sheet for the most recent fiscal year ending prior to the date of death or disqualification, an income statement for that fiscal year, a reconciliation of members' capital accounts for that fiscal year, and the latest available interim financial statements, if any.

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

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

§ 79-29-913. Court action to appraise membership interests

(1) If the disqualified member does not accept the professional limited liability company's offer under Section 79-29-912(2) within the thirty-day period, the member during the following thirty-day period may deliver a written notice to the limited liability company demanding that it commence a proceeding to determine the fair value of the membership interest. The limited liability company may commence a proceeding at any time during the sixty (60) days following the effective date of its offer notice. If it does not do so, the member may commence a proceeding against the limited liability company to determine the fair value of his membership interest.

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

shall make the disqualified person a party to the proceeding as in an action against his membership interest. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

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

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

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

§ 79-29-914. Court costs and fees of experts

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

(2) The court may also assess the fees and expenses of counsel and experts for the disqualified member against the limited liability company and in favor of the member if the court finds that the fair value of his membership interest substantially exceeded the amount offered by the limited liability company or that the limited liability company did not make an offer.

§ 79-29-915. Cancellation of disqualified membership interests

If the membership interest of a disqualified person is not acquired under Section 79-29-912 or 79-29-913 within ten (10) months after the death of the member or within five (5) months after the disqualification or transfer, the professional limited liability company shall immediately cancel the membership interest on its books and the disqualified person has no further interest as a member in the limited liability company other than his right to payment of the fair value of the membership interest under Section 79-29-912 or 79-29-913.

§ 79-29-917. Voting of membership interests

(1) Only a qualified person may be appointed a proxy to vote the membership interest of a professional limited liability company.

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

§ 79-29-918. Confidential relationship

(1) The relationship between an individual rendering professional services as an employee of a domestic or foreign professional limited liability company and his client or patient is the same as if the individual were rendering the services as a sole practitioner.

(2) The relationship between a domestic or foreign professional limited liability company and the client or patient for whom its employee is rendering professional services is the same as that between the client or patient and the employee.

§ 79-29-919. Privileged communications

A privilege applicable to communications between an individual rendering professional services and the person receiving the services recognized under the statute or common law of this state is not affected by this article. The privilege applies to a domestic or foreign professional limited liability company and to its employees in all situations in which it applies to communications between an individual rendering professional services on behalf of the limited liability company and the person receiving the services.

§ 79-29-920. Responsibility for professional services

(1) Each individual who renders professional services as an employee of a domestic or foreign professional limited liability company is liable for a negligent or wrongful act or omission in which he personally participates to the same extent as if he rendered the services as a sole practitioner. A member or an employee of a domestic or foreign professional limited liability company is not liable,

however, for the conduct of other members or employees of the limited liability company, except a person under his direct supervision and control, while rendering professional services on behalf of the professional limited liability company to the person for whom such professional services were being rendered.

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

§ 79-29-921. Merger

(1) If all the members of the disappearing and surviving limited liability companies are qualified to be members of the surviving limited liability company, a professional limited liability company may merge with another domestic or foreign professional limited liability company or with a domestic or foreign limited liability company.

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

§ 79-29-922. Termination of professional activities

If a professional limited liability company ceases to render professional services, it must amend its certificate of formation to delete references to rendering professional services and to conform its name to the requirements of Section 79-29-104. After the amendment becomes effective the limited liability company may continue in existence as a limited liability company under the Mississippi Limited Liability Company Act other than the provisions of this article.

§ 79-29-923. Judicial dissolution

The Attorney General may commence a proceeding under Section 79-29-802 to dissolve a professional limited liability company if:

(a) The Secretary of State or a licensing authority with jurisdiction over a professional service described in the limited liability company's certificate of formation serves written notice on the limited liability company under Section 79-29-111 that it has violated or is violating a provision of this article;

(b) The limited liability company does not correct each alleged violation, or demonstrate to the reasonable satisfaction of the Secretary of State or licensing authority that it did not occur, within sixty (60) days after service of the notice is perfected under Section 79-29-111; and

(c) The Secretary of State or licensing authority certifies to the Attorney General a description of the violation, that it notified the limited liability company of the violation, and that the limited liability company did not correct it, or demonstrate that it did not occur, within sixty (60) days after perfection of service of the notice.

§ 79-29-924. Authority to transact business

(1) A foreign professional limited liability company may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

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

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

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

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

§ 79-29-925. Application for certificate of authority

The application of a foreign professional limited liability company for a certificate of authority to render professional services in this state must contain the information called for by Section 79-29-1002 and in addition include a statement that all of its members meet the requirements of Section 79-29-924.

§ 79-29-926. Revocation of certificate of authority

The Secretary of State may administratively revoke the certificate of authority of a foreign professional limited liability company authorized to transact business in this state if a licensing authority with jurisdiction over a professional service described in the limited liability company's certificate of formation certifies to the Secretary of State that the limited liability company has violated or is violating a provision of this article and describes the violation. Such administrative revocation may be challenged by the foreign professional limited liability company in the chancery court of the county where the foreign professional limited liability company maintains its principal place of business in this state.

§ 79-29-930. Rulemaking by licensing authority

Each licensing authority is empowered to promulgate rules expressly authorized by this article if the rules are consistent with the public interest or required by the public health or welfare or by generally recognized standards of professional conduct.

§ 79-29-931. Licensing authority's regulatory jurisdiction

This article does not restrict the jurisdiction of a licensing authority over individuals rendering a professional service within the jurisdiction of the licensing authority, nor does it affect the interpretation or application of any law pertaining to standards of professional conduct.

§ 79-29-933. Application to existing professional limited liability companies

(1) Except as otherwise provided in this section, this article applies to professional limited liability companies in existence on July 1, 1995. A professional limited liability company in existence on July 1, 1995, may, but is not required to, amend its certificate of formation to comply with this article. If a professional limited liability company in existence on July 1, 1995, amends its certificate of formation for any purpose after July 1, 1995, it must also amend its certificate of formation to comply with this article.

(2) This article does not apply to a limited liability company now existing or later formed under a law of this state that is not a professional limited liability company unless the limited liability company elects professional limited liability company status under Section 79-29-903.

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

(4) Unless otherwise specifically provided by an amendment to the certificate of formation, for professional limited liability companies in existence on July 1, 1995, Sections 79-29-912, 79-29-913 and 79-29-914, Mississippi Code of 1972, shall be applied by substituting the term "book value" for the term "fair value" in such sections only. Book value shall be determined from the books and records of the professional limited liability company in accordance with the regular method of accounting used by the professional limited liability company and shall be determined as of the end of the month immediately preceding the death or disqualification of the member.

Article 10. Foreign Limited Liability Companies

§ 79-29-1001. Law governing
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§ 79-29-1001. Law governing

Subject to the Constitution of this state, the laws of the state or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members, and a foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this state.

§ 79-29-1002. Registrations; application to register foreign limited companies

(1) Before transacting business in this state, a foreign limited liability company, including a foreign limited liability company formed to render professional services, shall register with the Secretary of State. In order to register, a foreign limited liability company shall deliver to the office of the Secretary of State for filing one (1) original application for registration as a foreign limited liability company, signed by a person with authority to do so under the laws of the state or other jurisdiction of its formation and setting forth:

(a) The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;

(b) The state or other jurisdiction and date of its formation;

(c) The name and street and mailing address of the registered agent for service of process on the foreign limited liability company which the foreign limited liability company has elected to appoint and who meets the requirements of subsection (1)(b) of Section 79-29-106;

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

(e) The address of the office required to be maintained in the state or other jurisdiction of its organization by the laws of that state or other jurisdiction or, if not so required, the address of the principal office of the foreign limited liability company; and

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

(g) If management of the limited liability company is vested in a manager or managers, a statement to that effect; and

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

(2) A foreign limited liability company properly registered as such with the Secretary of State before July 1, 1994, shall not be required to submit a new application for registration, nor to pay any related application fee, in order to continue to transact business in this state, but shall otherwise be subject to the provisions of this chapter, including but not limited to Section 79-29-1005.

§ 79-29-1003. Issuance of registration

If the Secretary of State finds that an application for registration meets the requirements of Section 79-29-1002 and all requisite fees as provided in Section 79-29-1203 have been paid, he shall:

(a) Endorse on the original the word "Filed" and the month, day and year of the filing thereof;

(b) File in his office the original of the application; and

(c) Return a copy to the person who delivered it for filing or his representative.

§ 79-29-1004. Name

A foreign limited liability company may register with the Secretary of State under any name (whether or not it is the name under which it is registered in its state of organization) that includes the words "limited liability company" or the abbreviation "L.L.C." or "LLC" and that could be registered by a domestic limited liability company.

§ 79-29-1005. Changes and amendments

If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly deliver to the office of the Secretary of State for filing a certificate, signed and acknowledged by a person authorized to do so under the laws of the state or other jurisdiction of its formation, correcting such statement, together with a fee as set forth in Section 79-29-1203.

§ 79-29-1006. Cancellation of registration

(1) A foreign limited liability company registered under this chapter shall cancel its registration upon completion of the winding up of its affairs.

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

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

(4) A cancellation revokes the authority of the registered agent for service of process designated pursuant to Section 79-29-1002 and operates as a consent that the Secretary of State may accept service of process on the foreign limited liability company with respect to causes of action arising out of the transaction of business in this state.

§ 79-29-1007. Transaction of business without registration

(1) A foreign limited liability company transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it has registered in this state.

(2) The failure of a foreign limited liability company to register in this state does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from de-fending any action, suit, or proceeding in any court of this state.

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

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

§ 79-29-1008. Transactions not constituting transacting business

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

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

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

(c) Maintaining bank accounts;

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

(e) Selling through independent contractors;

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

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

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

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

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

(k) Transacting business in interstate commerce.

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

(a) Owns a controlling interest in a corporation or a foreign corporation that transacts business in this state;

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

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

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

(4) A foreign limited liability company which is a general partner of any general or limited partnership, joint venture, syndicate, pool or other association of any kind (other than a limited liability company), whether or not such foreign limited liability company shares with or delegates to others control of such entity, which entity is transacting business in this state, is hereby declared to be transacting business in this state.

§ 79-29-1009. Action by Attorney General

The Attorney General may bring an action to restrain a foreign limited liability company from transacting business in this state in violation of this article.

§ 79-29-1010. Execution; liability

Section 79-29-205(4) shall be applicable to foreign limited liability companies as if they were domestic limited liability companies.

Article 11. Derivative Actions

§ 79-29-1101. Proper plaintiff
§ 79-29-1102. Demand
§ 79-29-1103. Stay of proceedings
§ 79-29-1104. Dismissal
§ 79-29-1105. Discontinuance or settlement
§ 79-29-1106. Payment of expenses
§ 79-29-1107. Applicability to foreign limited liability companies

§ 79-29-1101. Proper plaintiff

A member may not commence or maintain a derivative proceeding unless the member:

(a) Was a member of the limited liability company at the time of the act or omission complained of or became a member through transfer by operation of law from one who was a member at that time; and

(b) Fairly and adequately represents the interests of the limited liability company in enforcing the right of the limited liability company.

§ 79-29-1102. Demand

No member may commence a derivative proceeding until:

(a) A written demand has been made upon the limited liability company to take suitable action; and

(b) Ninety (90) days have expired from the date the demand was made unless the member has earlier been notified that the demand has been rejected by the limited liability company or unless irreparable injury to the limited liability company would result by waiting for the expiration of the ninety-day period.

§ 79-29-1103. Stay of proceedings

If the limited liability company commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

§ 79-29-1104. Dismissal

(1) A derivative proceeding shall be dismissed by the court on motion by the limited liability company if one of the groups specified in subsection (2) or (6) of this section has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the limited liability company.

(2) Unless a panel is appointed pursuant to subsection (6), the determination in subsection (1) shall be made by one (1) of the following:

(a) A majority vote of independent managers present at a meeting of managers if independent managers constitute a majority of all managers;

(b) A majority vote of independent members at a meeting of the members, whether or not such independent members constituted a majority of all members; or

(c) A majority vote of a committee consisting of two or more independent managers appointed by the majority vote of independent managers present at a meeting of managers, whether or not such independent managers constituted a majority of all managers.

(3) None of the following shall by itself cause a manager or member to be considered not independent for purposes of this section:

(a) The nomination or election of the manager by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) The naming of the manager or member as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(c) The approval by the manager or member of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the manager or member.

(4) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a member, the complaint shall allege with particularity facts establishing either:

(a) That a majority of the persons making the determination under subsection (2) of this section were not independent at the time the determination was made; or

(b) That the requirements of subsection (1) of this section have not been met.

(5) If the determination in subsection (1) is made by a committee pursuant to paragraph (2)(c) of this section and a majority of managers are not independent at the time the determination is made, or if the determination in subsection (1) is made by the members pursuant to paragraph (2)(b) of this section and a majority of the members are not independent at the time the determination is made, then the limited liability company shall have the burden of proving that the requirements of subsection (1) have been met. In all other cases, the plaintiff shall have the burden of proving that the requirements of subsection (1) have not been met.

(6) The court may appoint a panel of one or more independent persons upon motion by the limited liability company to make a determination whether the maintenance of the derivative proceeding is in the best interests of the limited liability company. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (1) have not been met.

§ 79-29-1105. Discontinuance or settlement

A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the limited liability company's members or a class of members, the court shall direct that notice be given to the members affected.

§ 79-29-1106. Payment of expenses

On termination of the derivative proceeding the court may:

(a) Order the limited liability company to pay the plaintiff's reasonable expenses (including attorney fees) incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the limited liability company; or

(b) Order the plaintiff to pay any defendant's reasonable expenses (including attorney fees) incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

§ 79-29-1107. Applicability to foreign limited liability companies

In any derivative proceeding brought in the courts of this state in the right of a foreign limited liability company, the matters covered by this article shall be governed by the laws of the jurisdiction of formation of the foreign limited liability company, except for matters covered by Sections 79-29-1103, 79-29-1104 and 79-29-1105.

Article 12. Miscellaneous

§ 79-29-1201. Construction and application
§ 79-29-1202. Severability
§ 79-29-1203. Fees
§ 79-29-1204. Powers of Secretary of State

§ 79-29-1201. Construction and application

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

(3) Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to the singular. The use of any gender shall be applicable to all genders. The captions contained herein are for the purposes of convenience only and shall not control or affect the construction of this chapter.

§ 79-29-1202. Severability

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§ 79-29-1203. Fees

The Secretary of State shall charge and collect a fee for:

(a) Filing of Reservation of Limited Liability Company Name, Twenty-Five Dollars ($25.00).

(b) Filing of Change of Address of Registered Agent, Twenty-Five Dollars ($25.00).

(c) Filing of Resignation of Registered Agent, Five Dollars ($5.00).

(d) Filing of Certificate of Formation, Fifty Dollars ($50.00).

(e) Filing of Amendment to Certificate of Formation, Fifty Dollars ($50.00).

(f) Filing of Certificate of Dissolution, Twenty-Five Dollars ($25.00).

(g) Filing of Certificate of Cancellation, Twenty-Five Dollars ($25.00).

(h) Filing of Restated Certificate of Formation or Amended and Restated Certificate of Formation, Twenty-Five Dollars ($25.00).

(i) Filing of Certificate of Withdrawal, Twenty-Five Dollars ($25.00).

(j) Filing of Application for Registration of Foreign Limited Liability Company, Two Hundred Fifty Dollars ($250.00).

(k) Filing of Certificate Correcting Application for Registration of Foreign Limited Liability Company, Fifty Dollars ($50.00).

(l) Filing of Certificate of Cancellation of Registration of Foreign Limited Liability Company, Twenty-Five Dollars ($25.00).

(m) Any other document required or permitted to be filed under this chapter, Twenty-Five Dollars ($25.00).

§ 79-29-1204. Powers of Secretary of State

The Secretary of State shall have the powers reasonably necessary to perform the duties required of him under the provisions of this chapter.