HAND OUT #7

By: Representative Moak

To: Judiciary A

HOUSE BILL NO. 624

AN ACT TO AMEND SECTION 79-29-1203, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FEES CHARGED BY THE SECRETARY OF STATE FOR THE FILING OF DOCUMENTS UNDER THE MISSISSIPPI LIMITED LIABILITY COMPANY ACT SHALL BE SET BY RULE RATHER THAN STATUTE; TO CREATE NEW CODE SECTION 79-29-215, MISSISSIPPI CODE OF 1972, TO REQUIRE DOMESTIC AND FOREIGN LIMITED LIABILITY COMPANIES TO FILE AN ANNUAL REPORT; TO CREATE NEW CODE SECTION 79-29-809, MISSISSIPPI CODE OF 1972, TO PROVIDE GROUNDS FOR ADMINISTRATIVE DISSOLUTION; TO CREATE NEW CODE SECTION 79-29-810, MISSISSIPPI CODE OF 1972, TO PROVIDE THE PROCEDURE FOR AND EFFECT OF ADMINISTRATION DISSOLUTION; TO CREATE NEW CODE SECTION 79-29-811, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REINSTATEMENT FOLLOWING DISSOLUTION; TO CREATE NEW CODE SECTION 79-29-812, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPEAL FROM DENIAL OF REINSTATEMENT; TO CREATE NEW CODE SECTION 79-29-1011, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REVOCATION OF A CERTIFICATE OF AUTHORITY; TO CREATE NEW CODE SECTION 79-29-1012, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE PROCEDURE AND EFFECT OF CERTIFICATE REVOCATION; TO CREATE NEW CODE SECTION 79-29-1013, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPEAL AND REINSTATEMENT FOLLOWING REVOCATION; TO CREATE NEW CODE SECTION 79-29-1014, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR FURTHER REVIEW FOLLOWING DENIAL OF REINSTATEMENT; TO AMEND SECTION 79-29-926, MISSISSIPPI CODE OF 1972, TO REVISE FOR APPEAL BY A FOREIGN LIMITED LIABILITY COMPANY FOLLOWING REVOCATION OF A CERTIFICATE OF AUTHORITY; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 79-29-1203, Mississippi Code of 1972, is amended as follows:

79-29-1203. <u>(1)</u> The Secretary of State shall <u>prescribe by rule the fees for filing the documents described in this subsection and shall collect such fees as prescribed by rule when the documents described in this subsection are delivered to him for filing</u>:

(a) Filing of Reservation of Limited Liability Company Name * * *<u>;</u>

(b) Filing of Change of Address of Registered Agent * * *<u>;</u>

(c) Filing of Resignation of Registered Agent * * *;

(d) Filing of Certificate of Formation * * *;

(e) Filing of Amendment to Certificate of Formation * * *;

(f) Filing of Certificate of Dissolution * * *;

(g) Filing of Certificate of Cancellation * * *;

(h) Filing of Restated Certificate of Formation or Amended and Restated Certificate of Formation * * *;

(i) Filing of Certificate of Withdrawal * * *;

(j) Filing of Application for Registration of Foreign Limited Liability Company * * *;

(k) Filing of Certificate Correcting Application for Registration of Foreign Limited Liability Company * * *;

(l) Filing of Certificate of Cancellation of Registration of Foreign Limited Liability Company * * *;

(m) Filing of Annual Report;

(n) Certificate of Administrative Dissolution;

(o) Certificate of Revocation of Authority to Transact Business;

(p) Filing of Application for Reinstatement Following Administrative Dissolution or Administrative Revocation;

(q) Certificate of Reinstatement; and

(r) Any other document required or permitted to be filed under this chapter * * *.

(2) The Secretary of State shall collect a fee as prescribed by rule each time process is served on him under Section 79-29-1 et seq. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(3) The Secretary of State may promulgate rules to:

(a) Reduce the filing fees or provide for discounts of fees to encourage online filing of documents or for other reasons as determined by the Secretary; and

(b) Provide for documents to be filed and accepted on an expedited basis upon the request of the applicant. The Secretary of State may promulgate rules to provide for an additional reasonable filing fee to be paid by the applicant and collected by the Secretary for such expedited filing services.

SECTION 2. The following shall be codified as Section 79-29-215, Mississippi Code of 1972:

79-29-215. (1) Each domestic limited liability company, and each foreign limited liability company authorized to transact business in this state, shall deliver for filing within sixty (60) days of each anniversary date of its formation with respect to a domestic limited liability company or its authorization to transact business in this state with respect to a foreign limited liability company, or such other date as may be established by the Secretary of State, to the Secretary of State an annual report that sets forth:

(a) The name of the limited liability company and the state or country under whose law it is organized;

(b) The name and address of its registered agent in this state;

(c) The address of its principal office;

(d) The names and business addresses of the managers if manager-managed and the name and address of at least one (1) member if member-managed;

(e) The name and business address of an individual or the individuals who are authorized by the limited liability company to execute documents filed with the Secretary of State's office on behalf of the limited liability company and whether such individuals are members of the limited liability company; and

(f) A brief description of the nature of its business.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) If an annual report does not contain the information required by this section, the Secretary of State shall notify promptly the reporting domestic or foreign limited liability company in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

SECTION 3. The following shall be codified as Section 79-29-809, Mississippi Code of 1972:

79-29-809. The Secretary of State may commence a proceeding under Section 79-29-810 to administratively dissolve a limited liability company if:

(a) The company does not pay within sixty (60) days after they are due any fees, taxes, or penalties imposed by this chapter or other law;

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

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

(d) The company does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(e) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the company pursuant to this chapter.

SECTION 4. The following shall be codified as Section 79-29-810, Mississippi Code of 1972:

79-29-810. (1) If the Secretary of State determines that one or more grounds exist under Section 79-29-809 for administratively dissolving a limited liability company, the Secretary of State shall serve the limited liability company with

written notice of his determination under Section 79-29-111, except that such determination may be served by first-class mail.

(2) If the company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice, the Secretary of State shall administratively dissolve the company by signing a certification of the dissolution that recites the ground for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve the company with a copy of the certificate under Section 79-29-111, except that such certificate may be served by first-class mail.

(3) A company administratively dissolved continues its existence but may carry on only business necessary to wind up and liquidate its business and affairs under Section 79-29-803 and to notify claimants under Sections 79-29-806 and 79-29-807.

(4) The administrative dissolution of a company does not terminate the authority of its agent for service of process.

SECTION 5. The following shall be codified as Section 79-29-811, Mississippi Code of 1972:

79-29-811. (1) A limited liability company administratively dissolved under Section 79-29-810 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application must:

(a) Recite the name of the company and the effective date of its administrative dissolution;

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

(c) State that the company's name satisfies the requirements of Section 79-29-104; and

(d) Contain a certificate from the Mississippi State Tax Commission reciting that all taxes owed by the company have been paid.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate under Section 79-29-111.

(3) When the reinstatement is effective:

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

(b) Any liability incurred by a member after the administrative dissolution and before the reinstatement shall be determined as if the administrative dissolution had never occurred; and

(c) The company may resume its business as if the administrative dissolution had never occurred.

SECTION 6. The following shall be codified as Section 79-29-812, Mississippi Code of 1972:

79-29-812. (1) If the Secretary of State denies a limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall serve the company under Section 79-29-111 with a record that explains the reason or reasons for denial.

(2) The company may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County, Mississippi, within thirty (30) days after service of the notice of denial is perfected. The company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the company's application for reinstatement, and the Secretary of State's notice of denial.

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

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

SECTION 7. The following shall be codified as Section 79-29-1011, Mississippi Code of 1972:

79-29-1011. (1) The Secretary of State may commence a proceeding under Section 79-29-1012 to revoke the certificate of authority of a foreign limited liability company authorized to transact business in this state if:

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

(b) The foreign limited liability company does not pay within sixty (60) days after they are due any fees, taxes or penalties imposed by this chapter or other law;

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

(d) The company does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(e) The Secretary of State receives a duly authenticated certificate from a secretary of state or other official having custody of corporate records in the state or country under whose law the foreign limited liability company is organized stating that it has been dissolved or disappeared as the result of a merger; or

(f) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the company pursuant to this chapter.

(2) The Secretary of State may not revoke a certificate of authority of a foreign limited liability company unless the Secretary of State sends the company notice of the revocation under Section 79-29-1012, at least sixty (60) days before its effective date, by a record addressed to its registered agent, or if the company fails to appoint and maintain a proper agent in this state, addressed to the office required to be maintained by Section 79-29-106. The notice must specify the cause for the revocation of the certificate of authority. The authority of the company to transact business in this state ceases on the effective date of the revocation unless the foreign limited liability company cures the failure before that date.

SECTION 8. The following shall be codified as Section 79-29-1012, Mississippi Code of 1972:

79-29-1012. (1) If the Secretary of State determines that one or more grounds exist under Section 79-29-1011 for revocation of a certificate of authority, he shall serve the foreign limited liability company with written notice of his determination under Section 79-29-111, except that such determination may be served by first-class mail.

(2) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected under Section 79-29-111, the Secretary of State may revoke the foreign limited liability company's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign limited liability company under Section 79-29-111, except that such certificate may be served by first-class mail.

(3) The authority of a foreign limited liability company to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The Secretary of State's revocation of a foreign limited liability company's certificate of authority appoints the Secretary of State the foreign limited liability company's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign limited liability company was authorized to transact business in this state. Service of process on the Secretary of State under this subsection is service on the foreign limited liability company. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign limited liability company at its principal office shown in its most recent annual report or in any subsequent communication received from the company stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(5) Revocation of a foreign limited liability company's certificate of authority does not terminate the authority of the registered agent of the company.

SECTION 9. The following shall be codified as Section 79-29-1013, Mississippi Code of 1972:

79-29-1013. (1) A foreign limited liability company whose certificate of authority is administratively revoked under Section 79-29-1011 may apply to the Secretary of State for reinstatement at any time after the effective date of such revocation. The application must:

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

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

(c) State that the limited liability company's name satisfies the requirements of Section 79-29-104; and

(d) Contain a certificate from the Mississippi State Tax Commission reciting that the company has properly filed all reports and paid all taxes and penalties required by revenue laws of this state.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) and that the information is correct, he shall reinstate the certificate of authority, prepare a certificate that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the limited liability company under Section 79-29-111.

(3) When the reinstatement is effective:

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

(b) Any liability incurred by a member after the administrative revocation and before the reinstatement shall be determined as if the administrative revocation had never occurred; and

(c) The company may resume its business as if the administrative revocation had never occurred.

SECTION 10. The following shall be codified as Section 79-29-1014, Mississippi Code of 1972:

79-29-1014. (1) If the Secretary of State denies a foreign limited liability company's application for reinstatement of the certificate of authority following administrative revocation, he shall serve the company, under Section 79-29-111, with a written communication that explains the reason or reasons for denial.

(2) The limited liability company may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County, Mississippi, within thirty (30) days after service of the communication of denial is perfected. The limited liability company appeals by petitioning the court to set aside

the revocation and attaching to the petition copies of the Secretary of State's communication of denial.

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

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

SECTION 11. Section 79-29-926, Mississippi Code of 1972, is amended as follows:

79-29-926. (1) 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. * * *

(2) A foreign professional limited liability company whose certificate of authority is administratively revoked under this section may apply to the Secretary of State for reinstatement at any time after the effective date of such revocation. The application must:

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

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

(c) State that the professional limited liability company's name satisfies the requirements of Section 79-29-104; and

(d) Contain a certificate from the Mississippi State Tax Commission reciting that the company has properly filed all

reports and paid all taxes and penalties required by revenue laws of this state.

(3) If the Secretary of State determines that the application contains the information required by subsection (2) and that the information is correct, he shall reinstate the certificate of authority, prepare a certificate that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the professional limited liability company under Section 79-29-111.

(4) When the reinstatement is effective:

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

(b) Any liability incurred by a member after the administrative revocation and before the reinstatement shall be determined as if the administrative revocation had never occurred; and

(c) The company may resume its business as if the administrative revocation had never occurred.

SECTION 12. This act shall take effect and be in force from and after July 1, 2009.

Mississippi Legislature
2009 Regular Session

House Bill 624

House Calendar | Senate Calendar | Main Menu
Code Sections | Additional Information

Bill Text for All Versions Explanation
As Introduced

Description: Limited Liability Act; revise (ULC).

Background Information:
Disposition: Dead
Deadline: General Bill/Constitutional Amendment
Revenue: No
Vote type required: Three/Fifths
Effective date: July 1, 2009

History of Actions:

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1  01/14 (H) Referred To Judiciary A
2  02/03 (H) Died In Committee
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Code Section: A 079-0029-1203, A 079-0029-0926

----- Additional Information -----

House Committee: Judiciary A*

Principal Author: Moak

Title: AN ACT TO AMEND SECTION 79-29-1203, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FEES CHARGED BY THE SECRETARY OF STATE FOR THE FILING OF DOCUMENTS UNDER THE MISSISSIPPI LIMITED LIABILITY COMPANY ACT SHALL BE SET BY RULE RATHER THAN STATUTE; TO CREATE NEW CODE SECTION 79-29-215, MISSISSIPPI CODE OF 1972, TO REQUIRE DOMESTIC AND FOREIGN LIMITED LIABILITY COMPANIES TO FILE AN ANNUAL REPORT; TO CREATE NEW CODE SECTION 79-29-809, MISSISSIPPI CODE OF 1972, TO PROVIDE GROUNDS FOR ADMINISTRATIVE DISSOLUTION; TO CREATE NEW CODE SECTION 79-29-810, MISSISSIPPI CODE OF 1972, TO PROVIDE THE PROCEDURE FOR AND EFFECT OF ADMINISTRATION DISSOLUTION; TO CREATE NEW CODE SECTION 79-29-811, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REINSTATEMENT FOLLOWING DISSOLUTION; TO CREATE NEW CODE SECTION 79-29-812, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPEAL FROM DENIAL OF REINSTATEMENT; TO CREATE NEW CODE SECTION 79-29-1011, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REVOCATION OF A CERTIFICATE OF AUTHORITY; TO CREATE NEW CODE SECTION 79-29-1012, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE PROCEDURE AND EFFECT OF CERTIFICATE REVOCATION; TO CREATE NEW CODE SECTION 79-29-1013, MISSISSIPPI CODE OF 1972,

TO PROVIDE FOR APPEAL AND REINSTATEMENT FOLLOWING REVOCATION; TO CREATE NEW CODE SECTION 79-29-1014, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR FURTHER REVIEW FOLLOWING DENIAL OF REINSTATEMENT; TO AMEND SECTION 79-29-926, MISSISSIPPI CODE OF 1972, TO REVISE FOR APPEAL BY A FOREIGN LIMITED LIABILITY COMPANY FOLLOWING REVOCATION OF A CERTIFICATE OF AUTHORITY; AND FOR RELATED PURPOSES.

Information pertaining to this measure was last updated on 02/03/09 at 18:55
End Of Document

By: Senator(s) Powell To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2879

AN ACT TO AMEND SECTION 79-29-1203, MISSISSIPPI CODE OF 1972, TO REVISE FEES CHARGED BY THE SECRETARY OF STATE FOR THE FILING OF DOCUMENTS UNDER THE MISSISSIPPI LIMITED LIABILITY COMPANY ACT; TO CREATE NEW CODE SECTION 79-29-215, MISSISSIPPI CODE OF 1972, TO REQUIRE DOMESTIC AND FOREIGN LIMITED LIABILITY COMPANIES TO FILE AN ANNUAL REPORT; TO CREATE NEW CODE SECTION 79-29-809, MISSISSIPPI CODE OF 1972, TO PROVIDE GROUNDS FOR ADMINISTRATIVE DISSOLUTION; TO CREATE NEW CODE SECTION 79-29-810, MISSISSIPPI CODE OF 1972, TO PROVIDE THE PROCEDURE FOR AND EFFECT OF ADMINISTRATION DISSOLUTION; TO CREATE NEW CODE SECTION 79-29-811, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REINSTATEMENT FOLLOWING DISSOLUTION; TO CREATE NEW CODE SECTION 79-29-812, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPEAL FROM DENIAL OF REINSTATEMENT; TO CREATE NEW CODE SECTION 79-29-1011, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REVOCATION OF A CERTIFICATE OF AUTHORITY; TO CREATE NEW CODE SECTION 79-29-1012, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE PROCEDURE AND EFFECT OF CERTIFICATE REVOCATION; TO CREATE NEW CODE SECTION 79-29-1013, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPEAL AND REINSTATEMENT FOLLOWING REVOCATION; TO CREATE NEW CODE SECTION 79-29-1014, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR FURTHER REVIEW FOLLOWING DENIAL OF REINSTATEMENT; TO AMEND SECTION 79-29-926, MISSISSIPPI CODE OF 1972, TO REVISE FOR APPEAL BY A FOREIGN LIMITED LIABILITY COMPANY FOLLOWING REVOCATION OF A CERTIFICATE OF AUTHORITY; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 79-29-1203, Mississippi Code of 1972, is amended as follows:

79-29-1203. (1) 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) Filing of Annual Report, Twenty-five Dollars ($25.00).

(n) Certificate of Administrative Dissolution (no fee).

(o) Filing of Application for Reinstatement Following Administrative Dissolution, Fifty Dollars ($50.00).

(p) Certificate of Revocation of Authority to Transact Business (no fee).

(q) Filing of Application for Reinstatement Following Administrative Revocation, One Hundred Dollars ($100.00).

(r) Certificate of Reinstatement (no fee).

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

(2) The Secretary of State shall collect a fee of Twenty-five Dollars ($25.00) each time process is served on him under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(3) The Secretary of State may promulgate rules to:

(a) Reduce the filing fees set forth in this section or provide for discounts of those fees to encourage online filing of documents or for other reasons as determined by the Secretary of State; and

(b) Provide for documents to be filed and accepted on an expedited basis upon the request of the applicant. The Secretary of State may promulgate rules to provide for an additional reasonable filing fee to be paid by the applicant and collected by the Secretary of State for the expedited filing services.

SECTION 2. The following shall be codified as Section 79-29-215, Mississippi Code of 1972:

79-29-215. (1) Each domestic limited liability company, and each foreign limited liability company authorized to transact business in this state, shall deliver for filing within sixty (60) days of each anniversary date of its formation with respect to a domestic limited liability company or its authorization to transact business in this state with respect to a foreign limited liability company, or such other date as may be established by the Secretary of State, to the Secretary of State an annual report that sets forth:

(a) The name of the limited liability company and the state or country under whose law it is organized;

(b) The name and address of its registered agent in this state;

(c) The address of its principal office;

(d) The names and business addresses of the managers if manager-managed and the name and address of at least one (1) member if member-managed;

(e) The name and business address of an individual or the individuals who are authorized by the limited liability company to execute documents filed with the Secretary of State's office on behalf of the limited liability company and whether such individuals are members of the limited liability company; and

(f) A brief description of the nature of its business.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) If an annual report does not contain the information required by this section, the Secretary of State shall notify promptly the reporting domestic or foreign limited liability company in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

SECTION 3. The following shall be codified as Section 79-29-809, Mississippi Code of 1972:

79-29-809. The Secretary of State may commence a proceeding under Section 79-29-810 to administratively dissolve a limited liability company if:

(a) The company does not pay within sixty (60) days after they are due any fees, taxes, or penalties imposed by this chapter or other law;

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

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

(d) The company does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(e) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the company pursuant to this chapter.

SECTION 4. The following shall be codified as Section 79-29-810, Mississippi Code of 1972:

79-29-810. (1) If the Secretary of State determines that one or more grounds exist under Section 79-29-809 for administratively dissolving a limited liability company, the Secretary of State shall serve the limited liability company with written notice of his determination under Section 79-29-111, except that such determination may be served by first-class mail.

(2) If the company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice, the Secretary of State shall administratively dissolve the company by signing a certification of the dissolution that recites the ground for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve the company with a copy of the certificate under Section 79-29-111, except that such certificate may be served by first class mail.

(3) A company administratively dissolved continues its existence but may carry on only business necessary to wind up and liquidate its business and affairs under Section 79-29-803 and to notify claimants under Sections 79-29-806 and 79-29-807.

(4) The administrative dissolution of a company does not terminate the authority of its agent for service of process.

SECTION 5. The following shall be codified as Section 79-29-811, Mississippi Code of 1972:

166 79-29-811. (1) A limited liability company administratively
167 dissolved under Section 79-29-810 may apply to the Secretary of
168 State for reinstatement at any time after the effective date of
169 dissolution. The application must:
170 (a) Recite the name of the company and the effective
171 date of its administrative dissolution;
172 (b) State that the ground or grounds for dissolution
173 either did not exist or have been eliminated;
174 (c) State that the company's name satisfies the
175 requirements of Section 79-29-104; and
176 (d) Contain a certificate from the Mississippi State
177 Tax Commission reciting that all taxes owed by the company have
178 been paid.
179 (2) If the Secretary of State determines that the
180 application contains the information required by subsection (1)
181 and that the information is correct, the Secretary of State shall
182 cancel the certificate of dissolution and prepare a certificate of
183 reinstatement that recites this determination and the effective
184 date of reinstatement, file the original of the certificate, and
185 serve the company with a copy of the certificate under Section
186 79-29-111.
187 (3) When the reinstatement is effective:
188 (a) The reinstatement relates back to and takes effect
189 as of the effective date of the administrative dissolution;
190 (b) Any liability incurred by a member after the
191 administrative dissolution and before the reinstatement shall be
192 determined as if the administrative dissolution had never
193 occurred; and
194 (c) The company may resume its business as if the
195 administrative dissolution had never occurred.
196 **SECTION 6.** The following shall be codified as Section
197 79-29-812, Mississippi Code of 1972:

79-29-812. (1) If the Secretary of State denies a limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall serve the company under Section 79-29-111 with a record that explains the reason or reasons for denial.

(2) The company may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County, Mississippi, within thirty (30) days after service of the notice of denial is perfected. The company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the company's application for reinstatement, and the Secretary of State's notice of denial.

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

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

SECTION 7. The following shall be codified as Section 79-29-1011, Mississippi Code of 1972:

79-29-1011. (1) The Secretary of State may commence a proceeding under Section 79-29-1012 to revoke the certificate of authority of a foreign limited liability company authorized to transact business in this state if:

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

(b) The foreign limited liability company does not pay within sixty (60) days after they are due any fees, taxes or penalties imposed by this chapter or other law;

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

(d) The company does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(e) The Secretary of State receives a duly authenticated certificate from a secretary of state or other official having custody of corporate records in the state or country under whose law the foreign limited liability company is organized stating that it has been dissolved or disappeared as the result of a merger; or

(f) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the company pursuant to this chapter.

(2) The Secretary of State may not revoke a certificate of authority of a foreign limited liability company unless the Secretary of State sends the company notice of the revocation under Section 79-29-1012, at least sixty (60) days before its effective date, by a record addressed to its registered agent, or if the company fails to appoint and maintain a proper agent in this state, addressed to the office required to be maintained by Section 79-29-106. The notice must specify the cause for the revocation of the certificate of authority. The authority of the company to transact business in this State ceases on the effective date of the revocation unless the foreign limited liability company cures the failure before that date.

SECTION 8. The following shall be codified as Section 79-29-1012, Mississippi Code of 1972:

79-29-1012. (1) If the Secretary of State determines that one or more grounds exist under Section 79-29-1011 for revocation of a certificate of authority, he shall serve the foreign limited liability company with written notice of his determination under Section 79-29-111, except that such determination may be served by first-class mail.

(2) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected under Section 79-29-111, the Secretary of State may revoke the foreign limited liability company's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign limited liability company under Section 79-29-111, except that such certificate may be served by first class mail.

(3) The authority of a foreign limited liability company to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The Secretary of State's revocation of a foreign limited liability company's certificate of authority appoints the Secretary of State the foreign limited liability company's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign limited liability company was authorized to transact business in this state. Service of process on the Secretary of State under this subsection is service on the foreign limited liability company. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign limited liability company at its principal office shown in its most recent annual report or in any subsequent communication received from the company stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(5) Revocation of a foreign limited liability company's certificate of authority does not terminate the authority of the registered agent of the company.

SECTION 9. The following shall be codified as Section 79-29-1013, Mississippi Code of 1972:

79-29-1013. (1) A foreign limited liability company whose certificate of authority is administratively revoked under Section 79-29-1011 may apply to the Secretary of State for reinstatement at any time after the effective date of such revocation. The application must:

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

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

(c) State that the limited liability company's name satisfies the requirements of Section 79-29-104; and

(d) Contain a certificate from the Mississippi State Tax Commission reciting that the company has properly filed all reports and paid all taxes and penalties required by revenue laws of this state.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) and that the information is correct, he shall reinstate the certificate of authority, prepare a certificate that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the limited liability company under Section 79-29-111.

(3) When the reinstatement is effective:

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

(b) Any liability incurred by a member after the administrative revocation and before the reinstatement shall be determined as if the administrative revocation had never occurred; and

(c) The company may resume its business as if the administrative revocation had never occurred.

SECTION 10. The following shall be codified as Section 79-29-1014, Mississippi Code of 1972:

79-29-1014. (1) If the Secretary of State denies a foreign limited liability company's application for reinstatement of the certificate of authority following administrative revocation, he shall serve the company, under Section 79-29-111, with a written communication that explains the reason or reasons for denial.

(2) The limited liability company may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County within thirty (30) days after service of the communication of denial is perfected. The limited liability company appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State's communication of denial.

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

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

SECTION 11. Section 79-29-926, Mississippi Code of 1972, is amended as follows:

79-29-926. (1) 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. * * *

(2) A foreign professional limited liability company whose certificate of authority is administratively revoked under this section may apply to the Secretary of State for reinstatement at

361 any time after the effective date of such revocation. The
362 application must:
363 (a) Recite the name of the professional limited
364 liability company and the effective date of the administrative
365 revocation;
366 (b) State that the ground or grounds for revocation
367 either did not exist or have been eliminated;
368 (c) State that the professional limited liability
369 company's name satisfies the requirements of Section 79-29-104;
370 and
371 (d) Contain a certificate from the Mississippi State
372 Tax Commission reciting that the company has properly filed all
373 reports and paid all taxes and penalties required by revenue laws
374 of this state.
375 (3) If the Secretary of State determines that the
376 application contains the information required by subsection (2)
377 and that the information is correct, he shall reinstate the
378 certificate of authority, prepare a certificate that recites his
379 determination and the effective date of reinstatement, file the
380 original of the certificate, and serve a copy on the professional
381 limited liability company under Section 79-29-111.
382 (4) When the reinstatement is effective:
383 (a) The reinstatement relates back to and takes effect
384 as of the effective date of the administrative revocation;
385 (b) Any liability incurred by a member after the
386 administrative revocation and before the reinstatement shall be
387 determined as if the administrative revocation had never occurred;
388 and
389 (c) The company may resume its business as if the
390 administrative revocation had never occurred.
391 **SECTION 12.** This act shall take effect and be in force from
392 and after July 1, 2009.

Mississippi Legislature
2009 Regular Session

Senate Bill 2879

Senate Calendar | House Calendar | Main Menu
Code Sections | Additional Information

Bill Text for All Versions Explanation

Committee Substitute
As Introduced

Description: Limited Liability Company Act; revise.

Background Information:
Disposition: Dead
Deadline: General Bill/Constitutional Amendment
Revenue: No
Vote type required: Three/Fifths
Effective date: July 1, 2009

History of Actions:

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1  01/19 (S) Referred To Judiciary, Division A
2  01/28 (S) Title Suff Do Pass Comm Sub
3  02/05 (S) Committee Substitute Adopted
4  02/05 (S) Recommitted to Committee
5  02/05 (S) Died In Committee
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Code Section: A 079-0029-1203, A 079-0029-0926

----- Additional Information -----

Senate Committee: Judiciary, Division A*

Principal Author: Powell

Title: AN ACT TO AMEND SECTION 79-29-1203, MISSISSIPPI CODE OF 1972, TO REVISE FEES CHARGED BY THE SECRETARY OF STATE FOR THE FILING OF DOCUMENTS UNDER THE MISSISSIPPI LIMITED LIABILITY COMPANY ACT; TO CREATE NEW CODE SECTION 79-29-215, MISSISSIPPI CODE OF 1972, TO REQUIRE DOMESTIC AND FOREIGN LIMITED LIABILITY COMPANIES TO FILE AN ANNUAL REPORT; TO CREATE NEW CODE SECTION 79-29-809, MISSISSIPPI CODE OF 1972, TO PROVIDE GROUNDS FOR ADMINISTRATIVE DISSOLUTION; TO CREATE NEW CODE SECTION 79-29-810, MISSISSIPPI CODE OF 1972, TO PROVIDE THE PROCEDURE FOR AND EFFECT OF ADMINISTRATION DISSOLUTION; TO CREATE NEW CODE SECTION 79-29-811, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR REINSTATEMENT FOLLOWING DISSOLUTION; TO CREATE NEW CODE SECTION 79-29-812, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPEAL FROM DENIAL OF REINSTATEMENT; TO CREATE NEW CODE SECTION 79-29-1011, MISSISSIPPI CODE OF

1972, TO PROVIDE FOR REVOCATION OF A CERTIFICATE OF AUTHORITY; TO CREATE NEW CODE SECTION 79-29-1012, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE PROCEDURE AND EFFECT OF CERTIFICATE REVOCATION; TO CREATE NEW CODE SECTION 79-29-1013, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPEAL AND REINSTATEMENT FOLLOWING REVOCATION; TO CREATE NEW CODE SECTION 79-29-1014, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR FURTHER REVIEW FOLLOWING DENIAL OF REINSTATEMENT; TO AMEND SECTION 79-29-926, MISSISSIPPI CODE OF 1972, TO REVISE FOR APPEAL BY A FOREIGN LIMITED LIABILITY COMPANY FOLLOWING REVOCATION OF A CERTIFICATE OF AUTHORITY; AND FOR RELATED PURPOSES.

Information pertaining to this measure was last updated on 02/05/09 at 15:54
End Of Document

700 NORTH STREET
POST OFFICE BOX 136
JACKSON, MISSISSIPPI 39205-1036

STATE OF MISSISSIPPI
SECRETARY OF STATE
DELBERT HOSEMANN
DIVISION OF POLICY AND RESEARCH

TELEPHONE (601) 359-3101
FACSIMILE (601) 359-1499
www.sos.state.ms.us/policy_research

TALKING POINTS HOUSE BILL 624 AND SENATE BILL 2879
AMENDMENTS TO LIMITED LIABILITY COMPANY ACT

These bills provide as follows:

A. **The Secretary of State should have the Authority adopt Rules to provide for discounted fees for services, such as for online filings and additional fees for expedited filing services.**

B. **The Secretary of State shall be authorized to charge a $25 fee to accept service of process on defendant limited liability companies.** The corporation laws permit the Secretary to charge a $25 fee to accept service of process on corporations, but the LLC Act does not specifically grant this authority. This will allow the agency to recoup the costs it incurs in accepting service of process and sending notice to the LLC by registered mail and will bring LLCs into parity with corporations.

C. **Limited Liability Companies organized in Mississippi or registered to transact business in Mississippi should file annual reports and pay the same annual fee that corporations pay ($25)**. The Groups acknowledged that because LLCs do not file periodic reports, many defunct LLCs are never formally dissolved. There are almost 80,000 registered LLCs (domestic and foreign) compared to 64,000 (domestic and foreign) registered corporations. Periodic reports provide needed information on LLCs for other businesses involved in commerce. The Group recommends that Mississippi join the 39 states that require LLCs to file annual report and require domestic and foreign LLCs registered with the Mississippi Secretary of State to file annual reports. The Group also acknowledges the potential revenue associated with these annual filings and supports the use of a portion of this potential revenue to fund a business court.

D. **Amend the LLC Act to provide for:**

Administrative dissolution of domestic LLC and administration revocation of a certificate of authority of a foreign LLC for failure to file their annual report. These provisions will be similar to the corporation law administrative dissolution and revocation provisions; and

Reinstatement of an LLC after administrative dissolution or revocation. These provisions will provide, among other things, that members of the reinstated LLC will be able to reinstate their limited liability at any time, which would be effective back to the date of the dissolution or revocation. The look-back" statutes will protect members from losing their limited liability in the event of an administrative dissolution or revocation.

STATE OF MISSISSIPPI
SECRETARY OF STATE

POST OFFICE BOX 136
JACKSON MISSISSIPPI 39205-0136
TELEPHONE (601) 359-1633
WWW.SOS.MS.GOV

DUTIES AND RESPONSIBILITIES FOLLOWING THE FORMATION OF A MISSISSIPPI LLC

1. The Limited Liability Company ("LLC") may need to obtain a Federal Employer Identification Number from the Internal Revenue Service. You should check with the LLC's tax advisor as to whether the LLC is required to obtain this number.

2. The LLC may be required to register with the Mississippi State Tax Commission ("MSTC"). While the LLC may only be required to file an informational return for income tax purposes, the LLC should examine what other tax liabilities (such as sales taxes) the LLC or its members may have by visiting the MSTC website at http://www.mstc.state.ms.us. Professional tax advice can assist you in making these determinations. Please see the MSTC website for additional information.

3. If the LLC has employee(s), the LLC needs to register for unemployment insurance with the Mississippi Department of Employment Security. If you are not sure about the need for unemployment insurance, seek professional financial or legal advice. Additional information can be found online at: http://www.mdes.ms.gov.

4. Once the LLC is formed, the LLC is required to keep the following records: (1) a current list of the full name and last known address of each member and/or manager; (2) a copy of the certificate of formation and any amendments to it, along with any executed copies of powers of attorney granted; (3) a copy of the limited liability company agreement; and (4) unless the following items are contained in the certificate of formation or any operating agreement, a written record of: (a) the contributions of each member, along with a record of those contributions; (b) the times or events at which any member agreeing to make an additional contribution made that contribution; and (c) any event(s) that would cause the LLC to be dissolved and have its affairs wound up.

5. If you intend to sell on behalf of your LLC membership interests in the LLC to investors, or if you receive a fee for selling securities to investors or publicly advertise or solicit for the sale of securities, you may need to register with the Business Regulation and Enforcement Division of the Secretary of State's Office and/or the U.S. Securities and Exchange Commission. If any of these activities apply to you, the Secretary of State strongly recommends that you consult with an attorney knowledgeable in securities law to advise you on your ability to do so.

This list of duties and responsibilities does not show everything there is to know about the law relative to LLCs. Its main purpose is to give some basic requirements for organizing the LLC. Any legal assistance needed relative to the Mississippi Limited Liability Company Act should be obtained from your private attorney.

If we can be of further assistance to you please call us at (601) 359-1633 between the hours of 8:00 a.m. and 5:00 p.m. (Central Time) Monday through Friday.

RECOMMENDATIONS FOR THE MISSISSIPPI LLC

1. While it is not required, it is recommended that those forming an LLC in Mississippi seek legal advice in obtaining a **written operating agreement** that will govern the LLC. The purposes and membership interests of each LLC vary and generic operating agreement forms may not meet the needs of your LLC. If legal advice is not sought in the formation of the LLC, it is still recommended that the members obtain a written operating agreement to govern the LLC and the rights and duties of its members.

The following is a non-exhaustive list of terms that you may want to include in a written operating agreement:

- The LLC's state of formation and organization
- The duties and responsibilities of the LLC's members
- Delegations of responsibility to managers
- Voting rights and classes of members
- Indemnification of members or managers
- The contributions of each member
- How items such as profits, losses, deductions, distributions, and expenses are to be shared among the members
- How distributions are made and limitations on distributions
- Limitations of liability of members and managers
- Liability for contributions and obligations to make contributions
- How assets will be distributed upon winding up
- Restrictions on assignment of membership interest, if any, and the rights of members or the LLC to buy a member's membership interests upon the occurrence of certain events such as death, disability, or attempted transfers
- What is required to withdraw from membership
- What leads to the LLC being dissolved
- When member meetings are required
- Which members or managers have the ability to bind the LLC
- Records that must be kept, how they must be kept, and by whom
- Whether members have unlimited access to the records of the LLC, or any restrictions on access to such records

This is not an exhaustive list of items that may be contained in an LLC operating agreement, and does not intend to include everything that an operating agreement should, or must, contain. The Secretary of State strongly advises independent legal advice in the formation of your LLC, and in obtaining a written operating agreement.

2. If your LLC is for a professional services business (certified public accountants, dentists, architects, veterinarians, osteopaths, physicians, surgeons and attorneys-at-law), you may want to become a Professional Limited Liability Company by making an appropriate election with the Secretary of State's Office. Contact your private attorney or financial advisor for advice.

3. If the LLC will be selling products or services in Mississippi and will be using a mark to advertise them, you may want to register your trademark or service mark with the Mississippi Secretary of State or the U.S. Patent and Trademark Office. You can contact the Business Services Division of the Secretary of State at (601) 359-1633 for assistance; or additional information is available online at: http://www.sos.ms.gov under the "Business Services" icon. For registration with the U.S. Patent and Trademark Office, information is available at http://www.uspto.gov/ under the "Trademark" icon.

This guide only provides basic information on some of the legal and practical issues to consider when forming an LLC. The guide is not a substitute for professional advice. The Secretary of State strongly advises persons contemplating starting a business to engage the services of private legal, financial, and tax advisors.