

By: Senator(s) Fillingane

To: Judiciary, Division A

SENATE BILL NO. 2981

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

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

29 **SECTION 1.** The following is the revised Mississippi Limited
30 Liability Company Act, and shall be codified in Title 79, Chapter
31 29, Mississippi Code of 1972, to replace Title 79, Chapter 29,
32 that is repealed in Section 2 of this act:

33 ARTICLE 1.

34 GENERAL PROVISIONS

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



38 **Section 79-29-103. Reservation of power to amend or repeal.**

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40 repealed and all rights of members, managers and officers are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

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

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

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

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

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



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

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

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

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



102 in part, except as otherwise provided by a limited liability
103 company's certificate of formation or operating agreement.

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

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

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

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

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



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

137 (o) "Limited liability company" and "domestic limited
138 liability company" mean an entity having one or more members
139 formed and existing under this chapter.

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

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

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

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



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

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

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

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



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

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

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

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

222 (x) "Professional limited liability company" is a
223 limited liability company formed and existing under Article 9 of
224 this chapter.

225 (y) "Sign" or "signature" includes any manual,
226 facsimile, conformed or electronic signature.

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

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



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

247 **Section 79-29-107. Form of notice and written consents.** (1)
248 Notice under this chapter shall be in writing unless oral notice
249 is reasonable under the circumstances. Notice by electronic
250 transmission is written notice.

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

257 (3) Electronically-transmitted written notice by a limited
258 liability company to its members or managers, if in a
259 comprehensible form, is effective when electronically transmitted
260 to the member or manager in a manner authorized by the member or
261 manager, as applicable.

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



266 (a) When received;
267 (b) Five (5) days after its deposit in the United
268 States mail, if mailed postpaid and correctly addressed to the
269 recipients shown in the limited liability company's current list
270 of members and managers;
271 (c) On the date shown on the return receipt, if sent by
272 registered or certified mail, return receipt requested, and the
273 receipt is signed by or on behalf of the addressee.

274 (5) Oral notice is effective when communicated if
275 communicated in a comprehensible manner.

276 (6) Any notice permitted or required to be made under this
277 chapter or under the operating agreement may be waived at any
278 time.

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

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

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

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

287 (c) Except as authorized by subsection (3) of this
288 section, must be distinguishable upon the records of the Secretary
289 of State from (i) the name of any domestic or foreign corporation,
290 nonprofit corporation, limited partnership, limited liability
291 partnership or limited liability company that is organized or
292 registered under the laws of this state and which has not been
293 dissolved; and (ii) a name that is reserved or registered in the
294 Office of the Secretary of State for any of the entities named in
295 paragraph (1)(c)(i) of this section which reservation or
296 registration has not expired; and

297 (d) May not contain the following words: "bank,"
298 "banker," "bankers," "banking," "trust company," "insurance,"



299 "trust," "corporation," "incorporated," "partnership," "limited
300 partnership," or any combination or abbreviation thereof, or any
301 words or abbreviations of similar import.

302 (2) The Secretary of State shall reject any certificate of
303 formation that does not comply with subsection (1) of this
304 section.

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

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

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

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

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

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

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



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

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

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

355 (4) Unless the Secretary of State finds that any
356 application, notice of transfer, or notice of cancellation filed
357 with the Secretary of State as required by this section does not
358 conform to law, upon receipt of all filing fees required by law
359 the Secretary shall prepare and return to the person who filed the
360 instrument a copy of the filed instrument with a notation thereon
361 of the action taken by the Secretary of State.

362 (5) A fee as set forth in Section 79-29-1203 of this chapter
363 shall be paid at the time of the reservation of any name and at



364 the time of the filing of a notice of the transfer or cancellation
365 of any such reservation.

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

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

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

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

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

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

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

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

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

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

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

394 (3) A registered agent may change its address to another
395 address in this state by delivering to the Office of the Secretary
396 of State for filing a certificate, signed by the registered agent,



397 setting forth: (a) the names of all the limited liability
398 companies represented by the registered agent, (b) the address at
399 which the registered agent has maintained its office for each of
400 such limited liability companies, and (c) its new address which
401 the registered agent will thereafter maintain for each of the
402 limited liability companies recited in the certificate.

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

416 (4) The registered agent of one or more limited liability
417 companies may resign its agency appointment by delivering a
418 certificate to the Office of the Secretary of State for filing
419 stating that it resigns as registered agent for the limited
420 liability companies identified in the certificate, but the
421 resignation shall not become effective until ninety (90) days
422 after the certificate is filed by the Secretary of State. There
423 shall be attached to the certificate an affidavit of the
424 registered agent that at least thirty (30) days prior to the
425 filing of the certificate notices were sent by certified or
426 registered mail to each limited liability company for which the
427 registered agent is resigning as registered agent of the
428 resignation of the registered agent. This notice shall be
429 delivered to the last known principal office of each limited



430 liability company identified in the certificate. After receipt of
431 the notice of resignation of its registered agent, the limited
432 liability company for which the registered agent was acting shall
433 obtain and designate a new registered agent. After the
434 resignation of the registered agent has become effective, if the
435 limited liability company fails to obtain and designate a new
436 registered agent, service of legal process against the limited
437 liability company for which the resigned registered agent had been
438 acting shall thereafter be upon the Secretary of State in
439 accordance with Section 79-29-125(2).

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

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

460 **Section 79-29-117. Nature of business; powers.** (1) Subject
461 to the provisions of its certificate of formation or the operating
462 agreement and subject to any other laws of this state which govern



463 or limit the conduct of a particular business or activity, a
464 limited liability company may carry on any lawful business,
465 purpose or activity.

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

469 **Section 79-29-119. Governing law.** The law of this state
470 governs:

471 (a) The internal affairs of a limited liability
472 company; and

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

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

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

489 (a) The affairs of a limited liability company, the
490 conduct of its business and the relations of its members among the
491 members as members and between the members and the limited
492 liability company;

493 (b) The rights, powers and duties under this chapter of
494 a person in the capacity of member, manager, officer or other



495 person who is a party to or is otherwise bound by the operating
496 agreement;

497 (c) The activities of the limited liability company and
498 the conduct of those activities; and

499 (d) The means and conditions for amending the operating
500 agreement.

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

514 (3) Except as provided in this subsection (3), the
515 provisions of this chapter that relate to the matters described in
516 subsection (1) of this section may be waived, restricted, limited,
517 eliminated or varied by the certificate of formation or operating
518 agreement. In addition to the restrictions set forth in
519 subsections (4) and (5) of this section, the certificate of
520 formation or the operating agreement may not:

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

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

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



527 (d) Vary the power of the court under Section
528 79-29-209;

529 (e) Restrict the right to approve a merger under
530 Section 79-29-223(e) to a member that will have personal liability
531 with respect to a survivor;

532 (f) restrict the right to approve an asset sale
533 agreement under Section 79-29-233(e) to a member that will have
534 personal liability with respect to any entity;

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

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

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

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

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

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

552 (m) Vary the requirements of Sections 79-29-817 and
553 79-29-819;

554 (n) Vary or modify any provision of Article 9 of this
555 chapter unless otherwise expressly provided in Article 9 that the
556 certificate of formation or the operating agreement may vary or
557 modify such provision;

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



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

563 (q) Vary any provision set forth in this chapter
564 relating to filing, fees or any action with or by the Secretary of
565 State's Office.

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

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

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

582 (c) An intentional violation of criminal law;

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

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

586 (f) Any act or omission that constitutes a bad faith
587 violation of the implied contractual covenant of good faith and
588 fair dealing.

589 (5) Indemnification. (a) A limited liability company may,
590 and shall have the power to, indemnify and hold harmless any
591 member, manager, officer or other person from and against any and
592 all claims and demands whatsoever, except a limited liability



593 company and an operating agreement shall not indemnify any member,
594 manager, officer or other person from and against any claims or
595 demands in connection with a proceeding by or in the right of the
596 limited liability company in which the member, manager or other
597 person was:

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

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

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

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

616 (6) General standards of conduct. Subject to the
617 certificate of formation or the terms of a written operating
618 agreement or other written agreement, which may expand, eliminate
619 or restrict the following, except as provided in subsection (4) (f)
620 of this section,

621 (a) A manager:

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

623 1. In good faith and with fair dealing;

624 2. With the care an ordinarily prudent person

625 in a like position would exercise under similar circumstances; and



626 3. In a manner the manager reasonably
627 believes to be in the best interests of the limited liability
628 company.

629 (ii) Shall not be liable to a limited liability
630 company or to another member or manager or to another person that
631 is a party to or is otherwise bound by an operating agreement for
632 the following:

633 1. For any action taken as a manager, or any
634 failure to take any action, if such manager performed the duties
635 of such manager in compliance with subsection (6) (a) (i) of this
636 section.

637 2. For breach of fiduciary duty for the
638 manager's good faith reliance on the provisions of the operating
639 agreement.

640 (b) An officer:

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

642 1. In good faith and with fair dealing;

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

645 3. In a manner the officer reasonably
646 believes to be in the best interests of the limited liability
647 company.

648 (ii) Shall not be liable to a limited liability
649 company or to another member or manager or to another person that
650 is a party to or is otherwise bound by an operating agreement for
651 the following:

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

656 2. For breach of fiduciary duty for the
657 officer's good faith reliance on the provisions of the operating
658 agreement.



659 (c) A member of a member-managed limited liability
660 company:

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

663 1. In good faith and with fair dealing;
664 2. With the care an ordinarily prudent person
665 in a like position would exercise under similar circumstances; and
666 3. In a manner the person reasonably believes
667 to be in the best interests of the limited liability company.

668 (ii) Shall not be liable to a limited liability
669 company or to another member or manager or to another person that
670 is a party to or is otherwise bound by an operating agreement for
671 the following:

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

676 2. For breach of fiduciary duty for the
677 member's good faith reliance on the provisions of the operating
678 agreement.

679 (d) To the extent that, at law or in equity, a member
680 of a manager-managed limited liability company or other person has
681 duties, including fiduciary duties set forth in this chapter, to a
682 limited liability company or to another member or manager or to
683 another person that is a party to or is otherwise bound by an
684 operating agreement, such member's or other person's fiduciary
685 duties may be expanded, restricted or eliminated by provisions in
686 the certificate of formation or the written operating agreement.

687 (e) The operating agreement may:

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

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



692 (ii) If not manifestly unreasonable, prescribe the
693 standards by which to measure the performance of the implied
694 contractual covenant of good faith and fair dealing under Section
695 79-29-123(3) (g).

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

- 701 (a) Section 79-29-123(4);
- 702 (b) Section 79-29-123(6);
- 703 (c) Section 79-29-231;
- 704 (d) Section 79-29-301(6);
- 705 (e) Section 79-29-303;
- 706 (f) Section 79-29-309;
- 707 (g) Section 79-29-313(1);
- 708 (h) Section 79-29-801; and
- 709 (i) Section 79-29-1211.

710 (8) A court of equity:

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

716 (b) Shall decide any claim under subsection (6) (e)
717 (iii) of this section that such standard is manifestly
718 unreasonable. The court:

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

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



725 1. The objective of the term is unreasonable;

726 or

727 2. The term is an unreasonable means to
728 achieve the provision's objective.

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

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

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

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

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

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

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

749 **Section 79-29-127. Taxation.** Domestic limited liability
750 companies and foreign limited liability companies shall be
751 classified as an entity for purposes of the income tax laws of
752 this state in the same manner as they are classified for federal
753 income tax purposes.

754 ARTICLE 2.

755 FORMATION, CERTIFICATE OF FORMATION

756 **Section 79-29-201. Certificate of formation.** (1) In order
757 to form a limited liability company, a certificate of formation



758 must be signed and delivered to the Office of the Secretary of
759 State. The certificate must set forth:

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

761 (b) The street and mailing address of the registered
762 office and the name and the street and mailing address of the
763 registered agent for service of process, required to be maintained
764 by Section 79-29-113; and

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

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

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

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

784 **Section 79-29-203. Amendment to or restatement of**

785 **certificate.** (1) A certificate of formation is amended or
786 restated by delivering a certificate of amendment thereto to the
787 Office of the Secretary of State for filing. The certificate
788 shall set forth:

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



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

795 (c) The amendment to or restatement of the certificate.

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

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

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

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

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

812 (c) Any other information the person delivering the
813 certificate for filing determines.

814 (2) The Secretary of State shall not issue a certificate of
815 existence with respect to a limited liability company after the
816 effective date of the certificate of dissolution of such limited
817 liability company.

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



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

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

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

839 **Section 79-29-209. Amendment or dissolution by judicial act.**
840 If a person required by this Article 2 to sign a certificate fails
841 or refuses to do so, any other person who is adversely affected by
842 the failure or refusal may petition the chancery court of the
843 county in which the principal office (or, if none in this state,
844 the registered office) of the limited liability company is located
845 to direct the signing of the certificate. If the court finds that
846 it is proper for the certificate to be signed and that any person
847 so designated has failed or refused to sign the certificate, it
848 shall order appropriate relief, including an order to the
849 Secretary of State to file an appropriate certificate.

850 **Section 79-29-211. Filing with the Secretary of State.** (1)
851 The certificate of formation and of any certificate of amendment,
852 dissolution, correction or merger and any restated certificate or
853 of any judicial decree of amendment, dissolution or merger or
854 restated certificate and any certificate filed by the Secretary of
855 State pursuant to Section 79-29-113 must be delivered to the



856 Office of the Secretary of State. A person who signs a
857 certificate as an agent or fiduciary need not exhibit evidence of
858 the person's authority as a prerequisite to filing by the
859 Secretary of State. Unless the Secretary of State finds that a
860 certificate is not acceptable for filing, upon receipt of all
861 filing fees required by Section 79-29-1203 and delivery of the
862 certificate the Secretary of State shall:

863 (a) Certify that the certificate has been filed in the
864 Secretary of State's office by endorsing upon the signed
865 certificate the word "Filed" and the date and time of the filing.
866 This endorsement is conclusive evidence of the date and time of
867 its filing in absence of actual fraud;

868 (b) File the certificate; and

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

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

883 (3) Each certificate delivered to the Office of the
884 Secretary of State for filing must be typewritten or printed, or,
885 if electronically transmitted, it must be in a format that can be
886 retrieved or reproduced by the Secretary of State in typewritten
887 or printed form, and must be in the English language. A limited



888 liability company name need not be in English if written in
889 English letters or Arabic or Roman numerals.

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

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

901 (b) The court may summarily order the Secretary of
902 State to file the document or take other action the court
903 considers appropriate.

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

906 (5) A certificate from the Secretary of State delivered with
907 a copy of the document filed by the Secretary of State is
908 conclusive evidence that the original document is on file with the
909 Secretary of State.

910 **Section 79-29-213. Correction of filings made with the**
911 **Secretary of State.** In the event that a manager or member becomes
912 aware that any statement in a certificate of formation or any
913 other filing was false or inaccurate when made, or that such
914 filing was defectively or erroneously executed, such member or
915 manager shall then promptly take one of the following actions, as
916 applicable, to correct such filing or certificate:

917 (a) If the correction is to be made within one (1) year of
918 the date of the filing to be corrected, then the certificate may
919 be corrected by filing a certificate of correction of the
920 certificate with the Office of the Secretary of State. The



921 certificate of correction shall specify the inaccuracy or defect
922 to be corrected, shall set forth the portion of the certificate in
923 corrected form, and shall be executed and filed as required by
924 this chapter. The certificate of correction shall be effective as
925 of the date the original certificate was filed, except as to those
926 persons who are substantially and adversely affected by the
927 correction, and as to those persons the certificate of correction
928 shall be effective from the filing date; or

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

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

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

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

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

946 (c) The address of its principal office;

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

950 (e) The names, titles and business addresses of its
951 principal officers, if any;

952 (f) A statement as to whether the limited liability
953 company has a written operating agreement; and



954 (g) A brief description of the nature of its business.

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

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

966 **Section 79-29-217. Notice.** Certificates of formation and
967 all other documents properly filed and of record with the Office
968 of the Secretary of State constitute notice to the public of all
969 information stated therein.

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

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

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

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

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



987 (e) Whether a certificate of administrative dissolution
988 has been filed;

989 (f) Whether a certificate of dissolution has been
990 filed; and

991 (g) Other facts of record in the Office of the
992 Secretary of State which are specified by the person requesting
993 the certificate.

994 (2) Subject to any qualification stated in the certificate,
995 a certificate of existence issued by the Secretary of State is
996 conclusive evidence that the limited liability company is in
997 existence.

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

999 One or more domestic limited liability companies may merge with a
1000 domestic or foreign entity pursuant to an agreement of merger.

1001 (2) A domestic or foreign entity may be a party to the
1002 merger, or may be created by the terms of the agreement of merger,
1003 only if:

1004 (a) The merger is permitted by the laws under which the
1005 entity is organized or by which it is governed; and

1006 (b) In effecting the merger, the entity complies with
1007 such laws and with its organizational documents.

1008 (3) The agreement of merger must include:

1009 (a) The name of each entity that will merge and the
1010 name of the entity that will be the survivor of the merger;

1011 (b) The terms and conditions of the merger;

1012 (c) The manner and basis of converting the interests of
1013 each merging entity into shares or other securities, interests,
1014 obligations, rights to acquire shares or other securities, cash,
1015 other property, or any combination of the foregoing;

1016 (d) The organizational documents of any entity to be
1017 created by the merger, or if a new entity is not to be created by
1018 the merger, any amendments to the survivor's organizational
1019 documents; and



1020 (e) Any other provisions required by the laws under
1021 which any party to the merger is organized or by which it is
1022 governed, or by the organizational documents of any such party.

1023 (4) The terms described in subsections (3)(b) and (3)(c) of
1024 this section may be made dependent on facts ascertainable outside
1025 the agreement of merger, provided that those facts are objectively
1026 ascertainable. The term "facts" includes, but is not limited to,
1027 the occurrence of any event, including a determination or action
1028 by any person, including the limited liability company.

1029 (5) The agreement of merger may also include a provision
1030 that the agreement of merger may be amended prior to filing the
1031 certificate of merger with the Secretary of State, provided that
1032 if the members of a domestic limited liability company that is a
1033 party to the merger are required or permitted to vote on the
1034 agreement of merger, the agreement of merger must provide that
1035 subsequent to approval of the agreement of merger by such members
1036 the agreement of merger may not be amended to:

1037 (a) Change the amount or kind of shares or other
1038 securities, interests, obligations, rights to acquire shares or
1039 other securities, cash, or other property to be received by the
1040 owners of interests in any party to the merger upon conversion of
1041 their interests under the agreement of merger;

1042 (b) Change the organizational documents of any other
1043 entity that will survive or be created as a result of the merger;
1044 or

1045 (c) Change any of the other terms or conditions of the
1046 agreement of merger if the change would adversely affect such
1047 members in any material respect.

1048 **Section 79-29-223. Action on an agreement of merger.** In the
1049 case of a limited liability company that is a party to a merger:

1050 (a) The agreement of merger must be adopted by the
1051 members in accordance with subsection (c) of this section.



1052 (b) Unless the agreement of merger is not required to
1053 be approved by the members, the limited liability company must
1054 notify each member and each owner of a financial interest, whether
1055 or not entitled to vote, of the meeting of members at which the
1056 agreement of merger is to be submitted for approval. The notice
1057 must state that the purpose, or one of the purposes, of the
1058 meeting is to consider the agreement of merger and must contain or
1059 be accompanied by a copy or summary of the agreement of merger, If
1060 the limited liability company is to be merged into an existing
1061 entity, the notice shall also include or be accompanied by a copy
1062 or summary of the organizational documents of that entity. If the
1063 limited liability company is to be merged into an entity that is
1064 to be created pursuant to the merger, the notice shall include or
1065 be accompanied by a copy or a summary of the organizational
1066 documents of the new entity.

1067 (c) Approval of the agreement of merger requires the
1068 approval of at least a majority of the votes entitled to be cast
1069 on the agreement of merger, and, if any class or series of
1070 interests is entitled to vote as a separate group on the agreement
1071 of merger, the approval of at least a majority of the votes
1072 entitled to be cast on the merger by that voting group.

1073 (d) Separate voting by voting groups is required:

1074 (i) On an agreement of merger, by each class or
1075 series of interests that: 1. are to be converted, pursuant to the
1076 provisions of the agreement of merger, into shares or other
1077 securities, interests, obligations, rights to acquire interests or
1078 other securities, cash, other property, or any combination of the
1079 foregoing; or 2. would have a right to vote as a separate group on
1080 a provision in the agreement of merger that, if contained in a
1081 proposed amendment to the certificate of formation or operating
1082 agreement, would require action by separate voting groups under
1083 the certificate of formation or operating agreement;



1084 (ii) On an agreement of merger, if the voting
1085 group is entitled under the certificate of formation or operating
1086 agreement, to vote as a voting group to approve an agreement of
1087 merger.

1088 (e) If as a result of a merger one or more members or
1089 owners of a financial interest of a domestic limited liability
1090 company would become subject to personal liability for the
1091 obligations or liabilities of any entity, approval of the
1092 agreement of merger shall require the execution, by each such
1093 member and owner of a financial interest, of a separate written
1094 consent to become subject to such personal liability.

1095 **Section 79-29-225. Certificate of merger.** After an
1096 agreement of merger has been adopted and approved as required by
1097 this chapter, a certificate of merger shall be executed on behalf
1098 of each party to the merger by an authorized person. The
1099 certificate shall set forth:

1100 (a) The names and jurisdictions of formation or
1101 organization of the parties to the merger and the date on which
1102 the merger occurred or is to be effective;

1103 (b) If the formation document of the survivor of a
1104 merger is amended, or if a new entity is created as a result of a
1105 merger, the amendments to the formation document of the survivor
1106 or the formation document of the new entity;

1107 (c) A statement that the agreement of merger was duly
1108 approved by the members and, if voting by any separate voting
1109 group was required, by each such separate voting group, in the
1110 manner required by the this chapter and the certificate of
1111 formation and operating agreement;

1112 (d) As to each entity that was a party to the merger, a
1113 statement that the agreement of merger and the performance of its
1114 terms were duly authorized by all action required by the laws
1115 under which the entity is organized, or by which it is governed,
1116 and by its organizational documents; and



1117 (e) The future effective date of the merger, which
1118 shall be a date or time certain not later than the ninetieth day
1119 after the date it is filed, if it is not to be effective upon the
1120 filing of the certificate of merger.

1121 **Section 79-29-227. Effect of merger.** (1) When a merger
1122 becomes effective:

1123 (a) The entity that is designated in the agreement of
1124 merger as the survivor continues or comes into existence, as the
1125 case may be;

1126 (b) The separate existence of every entity that is
1127 merged into the survivor ceases;

1128 (c) All property owned by, and every contract right
1129 possessed by, each entity that merges into the survivor is vested
1130 in the survivor without reversion or impairment;

1131 (d) All liabilities of each entity that is merged into
1132 the survivor are vested in the survivor;

1133 (e) The name of the survivor may, but need not be,
1134 substituted in any pending proceeding for the name of any party to
1135 the merger whose separate existence ceased in the merger;

1136 (f) The organizational documents of the survivor are
1137 amended to the extent provided in the agreement of merger;

1138 (g) The organizational documents of a survivor that is
1139 created by the merger become effective; and

1140 (h) The interests in an entity that is a party to a
1141 merger that are to be converted under the agreement of merger into
1142 shares interests, obligations, rights to acquire securities, other
1143 securities, cash, other property, or any combination of the
1144 foregoing, are converted, and the former holders of such interests
1145 are entitled only to the rights provided to them in the agreement
1146 of merger or to any rights they may have under Section 79-29-231.

1147 (2) Any member or owner of a financial interest of a
1148 domestic limited liability company that is a party to a merger
1149 who, prior to the merger, was liable for the liabilities or



1150 obligations of such limited liability company shall not be
1151 released from such liabilities or obligations by reason of the
1152 merger.

1153 (3) Upon a merger becoming effective, a foreign entity that
1154 is the survivor of the merger is deemed to:

1155 (a) Appoint the Secretary of State as its agent for
1156 service of process in a proceeding to enforce the rights of the
1157 members and owners of a financial interest of each domestic
1158 limited liability company that is a party to the merger who
1159 exercise appraisal rights; and

1160 (b) Agree that it will promptly pay the amount, if any,
1161 to which such members and owners of a financial interest are
1162 entitled under Section 79-29-231.

1163 **Section 79-29-229. Abandonment of a merger.** (1) Unless
1164 otherwise provided in an agreement of merger or in the laws under
1165 which a domestic or foreign entity that is a party to a merger is
1166 organized or by which it is governed, after the agreement of
1167 merger has been adopted and approved as required by this chapter,
1168 and at any time before the merger has become effective, it may be
1169 abandoned by any party thereto without action by the party's
1170 owners of interests, in accordance with any procedures set forth
1171 in the agreement of merger or, if no such procedures are set forth
1172 in the agreement of merger, in the manner determined by the entity
1173 subject to any contractual rights of other parties to the merger.

1174 (2) If a merger is abandoned under subsection (1) of this
1175 section after a certificate of merger has been filed with the
1176 Secretary of State but before the merger has become effective, a
1177 statement that the merger has been abandoned in accordance with
1178 this subsection, executed on behalf of a party to the merger by
1179 any authorized person shall be delivered to the Secretary of State
1180 for filing prior to the effective date of the merger. Upon
1181 filing, the statement shall take effect and the merger shall be
1182 deemed abandoned and shall not become effective.



1183 **Section 79-29-231. Appraisal rights.** (1) The certificate
1184 of formation or written operating agreement may eliminate, expand
1185 or restrict the appraisal rights granted in this section and may
1186 vary, modify, eliminate or expand any of the provisions of this
1187 section.

1188 (2) **Definitions.** In this section:

1189 (a) "Entitled persons" means all owners of financial
1190 interests. Financial interests may be owned by members and may
1191 also be owned by persons who are not members of the limited
1192 liability company. Members of the limited liability company who
1193 have no financial interests in the limited liability company are
1194 not entitled to appraisal rights pursuant to this section.

1195 (b) "Fair value" means the value of the financial
1196 interests of the limited liability company determined:

1197 (i) Immediately before the effectuation of the
1198 action to which the entitled person objects;

1199 (ii) Using customary and current valuation
1200 concepts and techniques generally employed for similar businesses
1201 in the context of the transaction requiring appraisal; and

1202 (iii) Without discounting for lack of
1203 marketability or minority status.

1204 (3) **Right to appraisal.** (a) Unless otherwise provided in
1205 the certificate of formation or written operating agreement or
1206 other written agreement each entitled person is entitled to
1207 appraisal rights, and to obtain payment of the fair value of the
1208 entitled person's financial interest in the event of any of the
1209 following actions:

1210 (i) Consummation of a merger to which the limited
1211 liability company is a party;

1212 (ii) Consummation of a sale, lease, exchange, or
1213 other disposition of assets if the disposition would leave the
1214 limited liability company without a significant continuing
1215 business activity. If a limited liability company retains a



1216 business activity that represented at least twenty-five percent
1217 (25%) of total assets at the end of the most recently completed
1218 fiscal year, and twenty-five percent (25%) of either income from
1219 continuing operations or revenues from continuing operations for
1220 that fiscal year, in each case of the limited liability company
1221 and its subsidiaries on a consolidated basis, the limited
1222 liability company will conclusively be deemed to have retained a
1223 significant continuing business activity;

1224 (iii) Any other action to the extent provided by
1225 the certificate of formation or written operating agreement.

1226 (b) An entitled person may not challenge a completed
1227 action for which appraisal rights are available unless such
1228 action:

1229 (i) Was not effectuated in accordance with the
1230 applicable provisions of this chapter or the limited liability
1231 company's certificate of formation or operating agreement; or

1232 (ii) Was procured as a result of fraud or material
1233 misrepresentation.

1234 (4) **Notice of appraisal rights.** If a proposed action
1235 described in subsection (3) of this section is to be submitted to
1236 a vote, the meeting notice must state that the limited liability
1237 company has concluded that entitled persons are entitled to assert
1238 appraisal rights under this section and a copy of this section or
1239 a copy of the appraisal rights and procedures as provided in the
1240 written operating agreement, as applicable, must accompany the
1241 meeting notice sent to the entitled persons.

1242 (5) **Notice of intent to demand payment.** (a) If a proposed
1243 action requiring appraisal rights under subsection (3) (a) of this
1244 section is submitted to a vote, entitled persons who wish to
1245 assert appraisal rights with respect to any class or series of
1246 financial interests:



1247 (i) Must deliver to the limited liability company
1248 before the vote is taken written notice of the person's intent to
1249 demand payment if the proposed action is effectuated; and

1250 (ii) Must not vote, or cause or permit to be
1251 voted, any of the person's financial interests in favor of the
1252 proposed action.

1253 (b) An entitled person who does not satisfy the
1254 requirements of subsection (5) (a) of this section is not entitled
1255 to payment under this section.

1256 (6) **Appraisal notice and form.** (a) If a proposed action
1257 requiring appraisal rights under subsection (3) of this section
1258 becomes effective, the limited liability company must deliver a
1259 written appraisal notice and form required by this subsection (6)
1260 to all entitled persons who satisfied the requirements of
1261 subsection (5) of this section.

1262 (b) The appraisal notice must be sent no earlier than
1263 the date the action became effective and no later than ten (10)
1264 days after such date and must:

1265 (i) Supply a form that specifies the date of the
1266 first announcement to entitled persons of the principal terms of
1267 the proposed action and requires the person asserting appraisal
1268 rights to certify: 1. whether the entitled person acquired
1269 ownership of the interests for which appraisal rights are asserted
1270 before that date; and 2. that the person did not vote for the
1271 transaction;

1272 (ii) State:

1273 1. Where the form must be sent and where
1274 certificates for certificated interests must be deposited and the
1275 date by which those certificates must be deposited, which date may
1276 not be earlier than the date for receiving the required form under
1277 subsection (6) (b) (ii)2 of this section;

1278 2. A date by which the limited liability
1279 company must receive the form which date may not be fewer than



1280 forty (40) nor more than sixty (60) days after the date the
1281 subsection (6) (a) appraisal notice and form are sent, and state
1282 that the person shall have waived the right to demand appraisal
1283 with respect to the interests unless the form is received by the
1284 limited liability company by such specified date;

1285 3. The limited liability company's estimate
1286 of the fair value of the financial interests;

1287 4. That, if requested in writing, the
1288 limited liability company will provide to the person so
1289 requesting, within ten (10) days after the date specified in
1290 subsection (6) (b) (ii)2 of this section, the number of persons who
1291 return the forms by the specified date and the aggregate interests
1292 owned by them; and

1293 5. The date by which the notice to withdraw
1294 under subsection (7) must be received, which date must be within
1295 twenty (20) days after the date specified in subsection
1296 (6) (b) (ii)2 of this section; and

1297 (c) Be accompanied by a copy of this section or by a
1298 copy of the appraisal rights and procedures as provided in the
1299 written operating agreement, as applicable.

1300 (7) **Perfection of rights; right to withdraw.** (a) An
1301 entitled person who receives notice pursuant to subsection (6) of
1302 this section and who wishes to exercise appraisal rights must
1303 certify on the form sent by the limited liability company whether
1304 the entitled person acquired ownership of the person's financial
1305 interests before the date required to be set forth in the notice
1306 pursuant to subsection (6) (b) of this section. If an entitled
1307 person fails to make this certification, the limited liability
1308 company may elect to treat the entitled person's financial
1309 interests as after-acquired interests under subsection (9). In
1310 addition, an entitled person who wishes to exercise appraisal
1311 rights must execute and return the form and, in the case of
1312 certificated interests, deposit the entitled person's certificates



1313 in accordance with the terms of the notice by the date referred to
1314 in the notice pursuant to subsection (6) (b) (ii)2 of this section.
1315 Once an entitled person deposits that person's certificates or, in
1316 the case of uncertificated interests, returns the executed forms,
1317 that entitled person loses all rights as a member or owner of a
1318 financial interest, unless the entitled person withdraws pursuant
1319 to subsection (7) (b) of this section.

1320 (b) An entitled person who has complied with subsection
1321 (7) (a) of this section may nevertheless decline to exercise
1322 appraisal rights and withdraw from the appraisal process by so
1323 notifying the limited liability company in writing by the date set
1324 forth in the appraisal notice pursuant to subsection (6) (b) (ii)5
1325 of this section. An entitled person who fails to so withdraw from
1326 the appraisal process may not thereafter withdraw from the
1327 appraisal process without the limited liability company's written
1328 consent.

1329 (c) An entitled person who does not execute and return
1330 the form and, in the case of certificated interests, deposit that
1331 person's certificates where required, each by the date set forth
1332 in the notice described in subsection (6) (b) (ii)2 of this section,
1333 shall not be entitled to payment under this subsection.

1334 (8) **Payment.** (a) Except as provided in subsection (7) of
1335 this section, within thirty (30) days after the form required by
1336 subsection (6) (b) (ii)2 of this section is due, the limited
1337 liability company shall pay in cash to those entitled persons who
1338 complied with subsection (7) (a) of this section the amount the
1339 limited liability company estimates to be the fair value of their
1340 financial interests, plus interest at the legal rate.

1341 (b) The payment to each person pursuant to subsection
1342 (8) (a) of this section must be accompanied by:

1343 (i) Financial statements of the limited liability
1344 company that issued the financial interests to be appraised,
1345 consisting of a balance sheet as of the end of a fiscal year



1346 ending not more than sixteen (16) months before the date of
1347 payment, an income statement for that year, a statement of changes
1348 in equity for that year, and the latest available interim
1349 financial statements, if any;

1350 (ii) A statement of the limited liability
1351 company's estimate of the fair value of the financial interests,
1352 which estimate must equal or exceed the limited liability
1353 company's estimate given pursuant to subsection (6) (b) (ii)3 of
1354 this section;

1355 (iii) A statement that persons described in this
1356 subsection (8) have the right to demand further payment under
1357 subsection (10) and that if any such person does not do so within
1358 the time period specified therein, the person shall be deemed to
1359 have accepted the payment in full satisfaction of the limited
1360 liability company's obligations under this section.

1361 (9) **After-acquired interests.** (a) A limited liability
1362 company may elect to withhold payment required by subsection (8)
1363 of this section from any entitled person who did not certify that
1364 ownership of all of the entitled person's financial interests for
1365 which appraisal rights are asserted was acquired before the date
1366 set forth in the appraisal notice sent pursuant to subsection (6)
1367 (b) (i) of this section.

1368 (b) If the limited liability company elected to
1369 withhold payment under subsection (9) (a) of this section, it must,
1370 within thirty (30) days after the form required by subsection
1371 (6) (b) (ii)2 of this section is due, notify all entitled persons
1372 who are described in subsection (9) (a) of this section:

1373 (i) Of the information required by subsection
1374 (8) (b) (i) of this section;

1375 (ii) Of the limited liability company's estimate
1376 of fair value pursuant to subsection (8) (b) (ii) of this section;

1377 (iii) That they may accept the limited liability
1378 company's estimate of fair value, plus interest at the legal rate,



1379 in full satisfaction of their demands, or demand appraisal under
1380 subsection (10) of this section;

1381 (iv) That those entitled persons who wish to
1382 accept the offer must so notify the limited liability company of
1383 the person's acceptance of the limited liability company's offer
1384 within thirty (30) days after receiving the offer; and

1385 (v) That those entitled persons who do not satisfy
1386 the requirements for demanding appraisal under subsection (10) of
1387 this section shall be deemed to have accepted the limited
1388 liability company's offer.

1389 (c) Within ten (10) days after receiving the entitled
1390 person's acceptance pursuant to subsection (9) (b) of this section,
1391 the limited liability company must pay in cash the amount it
1392 offered under subsection (9) (b) (ii) of this section to each person
1393 who agreed to accept the limited liability company's offer in full
1394 satisfaction of the person's demand.

1395 (d) Within forty (40) days after sending the notice
1396 described in subsection (9) (b) of this section, the limited
1397 liability company must pay in cash the amount it offered to pay
1398 under subsection (8) (b) of this section to each entitled person
1399 described in subsection (9) (b) (ii) of this section.

1400 (10) **Procedure if entitled person dissatisfied with payment**
1401 **or offer.** (a) An entitled person paid pursuant to subsection (8)
1402 of this section who is dissatisfied with the amount of the payment
1403 must notify the limited liability company in writing of that
1404 person's estimate of the fair value of the financial interests and
1405 demand payment of that estimate plus interest at the legal rate
1406 less any payment under subsection (8) of this section. An
1407 entitled person offered payment under subsection (9) of this
1408 section who is dissatisfied with that offer must reject the offer
1409 and demand payment of the person's stated estimate of the fair
1410 value of the financial interests plus interest at the legal rate.



1411 (b) An entitled person who fails to notify the limited
1412 liability company in writing of that entitled person's demand to
1413 be paid the entitled person's stated estimate of the fair value
1414 plus interest at the legal rate under subsection (10)(a) of this
1415 section within thirty (30) days after receiving the limited
1416 liability company's payment or offer of payment under subsections
1417 (8) or (9) of this section, respectively, waives the right to
1418 demand payment under this subsection (10) and shall be entitled
1419 only to the payment made or offered pursuant to those respective
1420 subsections.

1421 (11) **Court action.** (a) If an entitled person makes demand
1422 for payment under subsection (10) of this section which remains
1423 unsettled, the limited liability company shall commence a
1424 proceeding within sixty (60) days after receiving the payment
1425 demand and petition the court to determine the fair value of the
1426 financial interests and accrued interest at the legal rate. If
1427 the limited liability company does not commence the proceeding
1428 within the sixty-day period, it shall pay in cash to each the
1429 entitled person the amount the entitled person demanded pursuant
1430 to subsection (10)(a) of this section plus interest at the legal
1431 rate.

1432 (b) The limited liability company shall commence the
1433 proceeding in the chancery court of the county where the limited
1434 liability company's registered office is located. If the limited
1435 liability company is a foreign limited liability company without a
1436 registered office in this state, it shall commence the proceeding
1437 in the county in this state where the registered office of the
1438 domestic limited liability company merged with the foreign limited
1439 liability company was located at the time of the transaction.

1440 (c) The limited liability company shall make all
1441 entitled persons whose demands remain unsettled, whether or not
1442 residents of this state, parties to the proceeding as in an action
1443 against their interests, and all parties must be served with a



1444 copy of the complaint. Nonresidents may be served as otherwise
1445 provided by law.

1446 (d) The jurisdiction of the court in which the
1447 proceeding is commenced under subsection (11)(b) of this section
1448 is plenary and exclusive. The court may appoint one or more
1449 persons as appraisers to receive evidence and recommend a decision
1450 on the question of fair value. The appraisers shall have the powers
1451 described in the order appointing them, or in any amendment to it.
1452 The entitled persons demanding appraisal rights are entitled to
1453 the same discovery rights as parties in other civil proceedings.
1454 There shall be no right to a jury trial.

1455 (e) Each entitled person made a party to the proceeding
1456 is entitled to judgment: (i) for the amount, if any, by which the
1457 court finds the fair value of the entitled person's financial
1458 interests, plus interest at the legal rate, exceeds the amount
1459 paid by the limited liability company to the entitled person for
1460 such financial interests; or (ii) for the fair value, plus
1461 interest at the legal rate, of the entitled person's financial
1462 interests for which the limited liability company elected to
1463 withhold payment under subsection (9) of this section.

1464 (12) **Court costs and counsel fees.** (a) The court in an
1465 appraisal proceeding commenced under subsection (11) of this
1466 section shall determine all costs of the proceeding including the
1467 reasonable compensation and expenses of appraisers appointed by
1468 the court. The court shall assess the costs against the limited
1469 liability company, except that the court may assess costs against
1470 all or some of the entitled persons demanding appraisal, in
1471 amounts the court finds equitable, to the extent the court finds
1472 such persons acted arbitrarily, vexatiously or not in good faith
1473 with respect to the rights provided by this subsection.

1474 (a) The court in an appraisal proceeding may also
1475 assess the fees and expenses of counsel and experts for the
1476 respective parties, in amounts the court finds equitable:



1477 (i) Against the limited liability company and in
1478 favor of any or all entitled persons demanding appraisal if the
1479 court finds the limited liability company did not substantially
1480 comply with the requirements of subsections (4), (6), (8) or (9)
1481 of this section; or

1482 (ii) Against either the limited liability company
1483 or an entitled person demanding appraisal, in favor of any other
1484 party, if the court finds that the party against whom the fees and
1485 expenses are assessed acted arbitrarily, vexatiously, or not in
1486 good faith with respect to the rights provided by this subsection.

1487 (c) If the court in an appraisal proceeding finds that
1488 the services of counsel for any entitled person were of
1489 substantial benefit to other persons similarly situated, and that
1490 the fees for those services should not be assessed against the
1491 limited liability company, the court may award to such counsel
1492 reasonable fees to be paid out of the amounts awarded the entitled
1493 persons who were benefited.

1494 (d) To the extent the limited liability company fails
1495 to make a required payment pursuant to subsections (8), (9) or
1496 (10) of this section, the entitled person may sue directly for the
1497 amount owed and, to the extent successful, shall be entitled to
1498 recover from the limited liability company all costs and expenses
1499 of the suit, including counsel fees.

1500 **Section 79-29-233. Action on an agreement to sell, lease,**
1501 **exchange or otherwise dispose of assets** In the case of a limited
1502 liability company that is a party to an agreement outside the
1503 ordinary course of the limited liability company's activities to
1504 sell, lease, exchange, or otherwise dispose of assets if the
1505 disposition would leave the limited liability company without a
1506 significant continuing business activity, as such term is defined
1507 in Section 79-29-231(3) (a) (ii):



1508 (a) The agreement, referred to herein as the "asset
1509 sale agreement," must be approved by the members in accordance
1510 with subsection (c) of this section.

1511 (b) Unless the asset sale agreement is not required to
1512 be approved by the members, the limited liability company must
1513 notify each member and each owner of a financial interest, whether
1514 or not entitled to vote, of the meeting of members at which the
1515 asset sale agreement is to be submitted for approval. The notice
1516 must state that the purpose, or one of the purposes, of the
1517 meeting is to consider the asset sale agreement and must contain
1518 or be accompanied by a copy or summary of the asset sale
1519 agreement.

1520 (c) Approval of the asset sale agreement requires the
1521 approval of at least a majority of the votes entitled to be cast
1522 on the asset sale agreement, and, if any class or series of
1523 interests is entitled to vote as a separate group on the asset
1524 sale agreement, the approval of at least a majority of the votes
1525 entitled to be cast on the asset sale agreement by that voting
1526 group.

1527 (d) Separate voting by voting groups is required:

1528 (i) On an asset sale agreement, by each class or
1529 series of interests that would have a right to vote as a separate
1530 group on a provision in the asset sale agreement that, if
1531 contained in a proposed amendment to the certificate of formation
1532 or operating agreement, would require action by separate voting
1533 groups under the certificate of formation or operating agreement;

1534 (ii) On an asset sale agreement, if the voting
1535 group is entitled under the certificate of formation or operating
1536 agreement, to vote as a voting group to approve an asset sale
1537 agreement.

1538 (e) If as a result of the asset disposition one or more
1539 members or owners of a financial interest would become subject to
1540 personal liability for the obligations or liabilities of any



1541 entity, approval of the asset sale agreement shall require the
1542 execution, by each such member and owner of a financial interest,
1543 of a separate written consent to become subject to personal
1544 liability.

1545 ARTICLE 3.

1546 MEMBERS

1547 **Section 79-29-301. Admission of members.** (1) A person
1548 becomes a member on the later of:

1549 (a) The formation of the limited liability company; or

1550 (b) The date stated in the records of the limited
1551 liability company as the date that person becomes a member.

1552 (2) After the formation of the limited liability company, a
1553 person is admitted as a member of the limited liability company:

1554 (a) In the case of a person who is not an assignee of a
1555 financial interest, including a person acquiring an interest
1556 directly from the limited liability company and a person to be
1557 admitted as a member of the limited liability company without
1558 acquiring a financial interest in the limited liability company at
1559 the time provided in and upon the compliance with the certificate
1560 of formation or the operating agreement or, if the certificate of
1561 formation or the operating agreement does not so provide, upon the
1562 written consent of all members. If the parties do not specify an
1563 agreed admission date in writing, the admission shall be deemed to
1564 have occurred upon the date of the compliance with the conditions
1565 set forth in this subsection; and

1566 (b) In the case of an assignee of a financial interest,
1567 upon compliance with subsection (1) of Section 79-29-707. If the
1568 parties do not specify an agreed admission date in writing the
1569 admission shall be deemed to have occurred upon the date of the
1570 compliance with the conditions set forth in subsection (1) of
1571 Section 79-29-707.

1572 (c) In the case of a person being admitted as a member
1573 of a surviving limited liability company pursuant to a merger



1574 approved in accordance with Section 79-29-223 of this chapter, as
1575 provided in the operating agreement of the surviving limited
1576 liability company or in the agreement of merger, and in the event
1577 of any inconsistency, the terms of the agreement of merger shall
1578 control; and in the case of a person being admitted as a member of
1579 a limited liability company pursuant to a merger in which such
1580 limited liability company is not the surviving limited liability
1581 company in the merger, as provided in the operating agreement of
1582 such limited liability company.

1583 (d) In the case of a person who inherits an interest in
1584 a limited liability company from a deceased member, upon the
1585 distribution of the interest from the estate of the deceased
1586 member to the person.

1587 (e) In the case of a person who is the successor of a
1588 member that is an entity which has merged, upon the merger of the
1589 member.

1590 (3) A person may be admitted to a limited liability company
1591 as a member of the limited liability company and may receive an
1592 interest in the limited liability company without making a
1593 contribution or being obligated to make a contribution to the
1594 limited liability company.

1595 (4) A person may be admitted to a limited liability company
1596 as a member of the limited liability company without acquiring an
1597 interest in the limited liability company.

1598 (5) A person may be admitted as the sole member of a limited
1599 liability company without making a contribution or being obligated
1600 to make a contribution to the limited liability company or without
1601 acquiring an interest in the limited liability company.

1602 (6) A certificate of formation or written operating
1603 agreement may provide that a member or members shall have
1604 preemptive rights to subscribe to any additional issue of
1605 interests in a limited liability company.



1606 **Section 79-29-303. Withdrawal of member and expulsion of**
1607 **member.** A member may withdraw from a limited liability company
1608 only at the time or upon the happening of events specified in a
1609 written operating agreement and in accordance with the written
1610 operating agreement or upon the written consent of all the
1611 members. Notwithstanding anything to the contrary under
1612 applicable law, unless the certificate of formation or a written
1613 operating agreement provides otherwise, a member may not withdraw
1614 from a limited liability company prior to the dissolution and
1615 winding up of the limited liability company without the written
1616 consent of all of the members of the limited liability company.
1617 Unless otherwise provided by the certificate of formation or
1618 written operating agreement, a limited liability company has no
1619 power to expel a member. Except as otherwise provided by the
1620 certificate of formation or written operating agreement, a member
1621 who has withdrawn from or been expelled from a limited liability
1622 company ceases to be a member of the limited liability company and
1623 ceases to have any governance rights.

1624 **Section 79-29-305. Management of limited liability company.**
1625 The management of a limited liability company shall be vested in
1626 its members in proportion to the then current percentage or other
1627 interest of members in the profits of the limited liability
1628 company owned by all of the members, the decision of members
1629 owning more than fifty percent (50%) of the said percentage or
1630 other interest in the profits controlling; provided however, that
1631 if an operating agreement provides for the management, in whole or
1632 in part, of a limited liability company by a manager or managers,
1633 the management of the limited liability company, to the extent so
1634 provided, shall be vested in the manager or managers who shall be
1635 chosen in the manner provided in the operating agreement.

1636 A member of a member-managed limited liability company has
1637 the power and authority to delegate to one or more other persons
1638 the member's rights and powers to manage and control the business



1639 and affairs of the limited liability company, including to
1640 delegate to agents, officers and employees of a member or the
1641 limited liability company and to delegate by agreement to other
1642 persons. The delegation shall not cause the member to cease to be
1643 a member of the limited liability company or cause the person to
1644 whom any such rights and powers have been delegated to be a member
1645 or manager, as the case may be, of the limited liability company.

1646 **Section 79-29-307. Agency power of members, managers and**
1647 **officers.** (1) Except as provided in subsection (2) of this
1648 section, every member is an agent of the limited liability company
1649 for the purpose of conducting its business and affairs, and the
1650 act of any member, including, but not limited to, the execution in
1651 the name of the limited liability company of any instrument for
1652 apparently carrying on in the ordinary course the business or
1653 affairs of the limited liability company of which the person is a
1654 member, binds the limited liability company, unless the member so
1655 acting has, in fact, no authority to act for the limited liability
1656 company in the particular matter and the person with whom the
1657 member is dealing has knowledge of the fact that the member has no
1658 such authority.

1659 (2) If the certificate of formation or operating agreement
1660 provides that management of the limited liability company is
1661 vested in a manager or managers then except as otherwise provided
1662 in the certificate of formation or the operating agreement:

1663 (a) No member, acting solely in the capacity as a
1664 member, is an agent of the limited liability company; and

1665 (b) Every manager is an agent of the limited liability
1666 company for the purpose of its business and affairs, and the act
1667 of any manager, including, but not limited to, the execution in
1668 the name of the limited liability company of any instrument for
1669 apparently carrying on in the ordinary course the business or
1670 affairs of the limited liability company of which the person is
1671 the manager, binds the limited liability company, unless the



1672 manager so acting has, in fact, no authority to act for the
1673 limited liability company in the particular matter and the person
1674 with whom the manager is dealing has knowledge of the fact that
1675 the manager has no such authority.

1676 (3) Every officer is an agent of the limited liability
1677 company for the purpose of its business and affairs to the extent
1678 the agency authority has been delegated to the officer as provided
1679 by the operating agreement, and the act of any officer, including,
1680 but not limited to, the execution in the name of the limited
1681 liability company of any instrument for apparently carrying on in
1682 the ordinary course the business or affairs of the limited
1683 liability company of which the person is an officer, binds the
1684 limited liability company, unless the officer so acting has, in
1685 fact, no authority to act for the limited liability company in the
1686 particular matter and the person with whom the officer is dealing
1687 has knowledge of the fact that the officer has no such authority.

1688 (4) No act of a manager, member or officer in contravention
1689 of a restriction on authority shall bind the limited liability
1690 company to persons having knowledge of the restriction.

1691 **Section 79-29-309. Voting, classes and meetings.** (1) With
1692 respect to any matter to be voted on, consented to or approved by
1693 the members, or any action required or permitted to be taken by
1694 the members the vote of each member shall be based on the then
1695 current percentage held by such member in the profits of the
1696 limited liability company owned by all the members.

1697 (2) Unless a greater percentage is expressly required by
1698 another section of this chapter, with respect to any matter to be
1699 voted on, consented to or approved by the members or any action
1700 required or permitted to be taken by the members, the decision of
1701 members of a limited liability company owning more than fifty
1702 percent (50%) of the said percentage in the profits as described
1703 in subsection (1) of this section is controlling.



1704 (3) A certificate of formation or operating agreement may
1705 provide for classes or groups of members having such relative
1706 rights, powers and duties as may be provided therein, and may make
1707 provision for the future creation in the manner provided therein
1708 of additional classes or groups of members having such relative
1709 rights, powers and duties as may from time to time be established,
1710 including rights, powers and duties senior to existing classes and
1711 groups of members. A certificate of formation or written
1712 operating agreement may provide that any member or class or group
1713 of members shall have no voting rights.

1714 (4) The certificate of formation or operating agreement may
1715 grant to all or certain identified members or a specified class or
1716 group of the members the right to vote (on any basis) separately
1717 or with all or any class or group of the members, on any matter.

1718 (5) A certificate of formation or operating agreement may
1719 set forth provisions relating to notice of the time, place or
1720 purpose of any meeting at which any matter is to be voted on by
1721 any members, waiver of any such notice, action by consent without
1722 a meeting, the establishment of a record date, quorum
1723 requirements, voting in person or by proxy, or any other matter
1724 with respect to the exercise of any such right to vote.

1725 (6) (a) Meetings of members may be held by means of
1726 telephone or other communications equipment by means of which all
1727 persons participating in the meeting can speak to and hear each
1728 other, and participation in a meeting pursuant to this subsection
1729 shall constitute presence in person at the meeting;

1730 (b) On any matter that is to be voted on, consented to
1731 or approved by members, or any action required or permitted to be
1732 taken by the members the members may take such action without a
1733 meeting, without prior notice and without a vote if a consent or
1734 consents in writing, setting forth the action so taken, shall be
1735 signed by the members owning at least the percent of the interests
1736 which would be necessary to authorize or take such action at a



1737 meeting at which all members entitled to vote thereon were present
1738 and voted. If any action of the members is proposed to be taken
1739 pursuant to this subsection without the written consent of all of
1740 the members, the members who did not sign the written consent
1741 shall be provided with notice of the executed consent within
1742 twenty (20) days of the execution of the written consent. The
1743 execution of a written consent by any member shall constitute a
1744 waiver by such member of notice thereof.

1745 (c) On any matter that is to be voted on by members,
1746 the members may vote in person or by proxy, and the proxy may be
1747 granted in writing, by means of electronic transmission or as
1748 otherwise permitted by applicable law.

1749 (d) If a meeting of members has not been held during
1750 the immediately preceding fifteen (15) months, a member or members
1751 owning twenty percent (20%) or more of the voting power of all
1752 members entitled to vote may call a regular meeting of members by
1753 giving thirty (30) days written notice to the members, all at the
1754 expense of the limited liability company.

1755 **Section 79-29-311. Liability to third parties.** (1) Except
1756 as otherwise provided by this chapter, the debts, obligations and
1757 liabilities of a limited liability company, whether arising in
1758 contract, tort or otherwise, shall be solely the debts,
1759 obligations and liabilities of the limited liability company, and
1760 no member, manager or officer of a limited liability company shall
1761 be obligated personally for any such debt, obligation or liability
1762 of the limited liability company solely by reason of being a
1763 member, acting as a manager or acting as an officer of the limited
1764 liability company.

1765 (2) A member, manager or officer of a limited liability
1766 company is not a proper party to a proceeding by or against a
1767 limited liability company, by reason of being a member, manager or
1768 officer, as applicable, of the limited liability company, except:



1769 (a) Where the object of the proceeding is to enforce a
1770 member's, manager's or officer's right against or liability to the
1771 limited liability company; or

1772 (b) In a derivative action brought pursuant to Article
1773 11 of this chapter.

1774 (3) Notwithstanding the provisions of subsections (1) and
1775 (2) of this section, under an operating agreement or under another
1776 agreement, a member, manager or officer may agree to be obligated
1777 personally for any or all of the debts, obligations and
1778 liabilities of the limited liability company.

1779 **Section 79-29-313. Events of bankruptcy.** (1) The
1780 certificate of formation or the written operating agreement may
1781 provide for events the occurrence of which result in a member
1782 either (a) ceasing to have some or all governance rights; (b)
1783 ceasing to have some or all financial rights; or (c) ceasing to be
1784 a member.

1785 (2) A person who has ceased to be a member shall continue to
1786 have any financial rights that the person had at the time of the
1787 event but shall cease to have any governance rights or any other
1788 rights.

1789 (3) Unless otherwise provided in the certificate of
1790 formation or written operating agreement or with the written
1791 consent of all members, a member ceases to be a member upon the
1792 happening of the following events:

1793 (a) A member: (i) makes an assignment for the benefit
1794 of creditors; (ii) files a voluntary petition in bankruptcy; (iii)
1795 is adjudicated a bankrupt or insolvent; (iv) files a petition or
1796 answer seeking for the person any reorganization, arrangement,
1797 composition, readjustment, liquidation, dissolution, or similar
1798 relief under any statute, law or regulation; (v) files an answer
1799 or other pleading admitting or failing to contest the material
1800 allegations of a petition filed against the member in any
1801 proceeding of the nature described in this subsection (3) (a); or



1802 (vi) seeks, consents to or acquiesces in the appointment of a
1803 trustee, receiver or liquidator of the member or of all or any
1804 substantial part of the member's properties; or

1805 (b) If one hundred twenty (120) days after the
1806 commencement of any proceeding against the member seeking
1807 reorganization, arrangement, composition, readjustment,
1808 liquidation, dissolution, or similar relief under any statute, law
1809 or regulation, the proceeding has not been dismissed, or if within
1810 ninety (90) days after the appointment without the member's
1811 consent or acquiescence of a trustee, receiver or liquidator of
1812 the member or of all or any substantial part of the member's
1813 properties, the appointment is not vacated or stayed or within
1814 ninety (90) days after the expiration of any stay, the appointment
1815 is not vacated.

1816 **Section 79-29-315. Access to and confidentiality of**
1817 **information; records.** (1) Each member of a limited liability
1818 company has the right, subject to such reasonable standards,
1819 including standards governing what information and documents are
1820 to be furnished at what time and location and at whose expense, as
1821 may be set forth in an operating agreement or otherwise
1822 established by the manager or, if there is no manager, then by the
1823 members, to obtain from the limited liability company from time to
1824 time upon reasonable demand for any good faith purpose reasonably
1825 related to the member's interest as a member of the limited
1826 liability company:

1827 (a) True, full and current information regarding the
1828 status of the business and financial condition of the limited
1829 liability company;

1830 (b) Promptly after becoming available, a copy of the
1831 limited liability company's federal, state and local income tax
1832 returns for each year;

1833 (c) A current list of the name and last known business,
1834 residence or mailing address of each member and manager;



1835 (d) A copy of any written operating agreement and
1836 certificate of formation and all amendments thereto, together with
1837 executed copies of any written powers of attorney pursuant to
1838 which the operating agreement and any certificate and all
1839 amendments thereto have been executed;

1840 (e) True and full information regarding the amount of
1841 cash and a description and statement of the agreed value of any
1842 other property or services contributed by each member and which
1843 each member has agreed to contribute in the future, and the date
1844 on which each became a member; and

1845 (f) Other information regarding the affairs of the
1846 limited liability company as is just and reasonable.

1847 (2) Each manager shall have the right to examine all of the
1848 information described in subsection (1) of this section for a good
1849 faith purpose reasonably related to the position of manager.

1850 (3) The manager or members of a limited liability company,
1851 referred to herein as the "authority", shall have the right to
1852 keep confidential from the members and managers, for a period of
1853 time as the authority deems reasonable, any information which the
1854 authority reasonably believes to be in the nature of trade secrets
1855 or other information the disclosure of which the authority in good
1856 faith believes is not in the best interest of the limited
1857 liability company or could damage the limited liability company or
1858 its business or which the limited liability company is required by
1859 law or by agreement with a third party to keep confidential.

1860 (4) A limited liability company may maintain its records in
1861 other than a written form if such form is capable of conversion
1862 into written form within a reasonable time.

1863 (5) Any demand under this section shall be in writing and
1864 shall state the purpose of such demand with reasonable detail.

1865 (6) Any action to enforce any right arising under this
1866 section shall be brought in the chancery court of the county where
1867 the limited liability company's principal office is located. If



1868 the limited liability company refuses to permit a member to obtain
1869 or a manager to examine the information described in subsection
1870 (1) of this section or does not reply to the demand that has been
1871 made within five (5) business days after the demand has been made,
1872 the demanding member or manager may apply to the chancery court
1873 for an order to compel the disclosure. The chancery court is
1874 hereby vested with exclusive jurisdiction to determine whether the
1875 person seeking the information is entitled to the information
1876 sought. The court may summarily order the limited liability
1877 company to permit the demanding member to obtain or manager to
1878 examine the information described in subsection (1) of this
1879 section and to make copies or abstracts therefrom, or the court
1880 may summarily order the limited liability company to furnish to
1881 the demanding member or manager the information described in
1882 subsection (1) of this section on the condition that the demanding
1883 member or manager first pay to the limited liability company the
1884 reasonable cost of obtaining and furnishing the information and on
1885 such other conditions as the court of chancery deems appropriate.
1886 When a demanding member seeks to obtain or a manager seeks to
1887 examine the information described in subsection (1) of this
1888 section, the demanding member or manager shall first establish (a)
1889 that the demanding member or manager has complied with the
1890 provisions of this section respecting the form and manner of
1891 making demand for obtaining or examining of the information, and
1892 (b) that the information the demanding member or manager seeks is
1893 reasonably related to the member's interest as a member or the
1894 manager's position as a manager, as the case may be. The court
1895 may, in its discretion, prescribe any limitations or conditions
1896 with reference to the obtaining or examining of information, or
1897 award such other or further relief as the court of chancery may
1898 deem just and proper. The court may order books, documents and
1899 records, pertinent extracts therefrom, or duly authenticated



1900 copies thereof, to be brought within the state and kept in the
1901 state upon such terms and conditions as the order may prescribe.

1902 (7) The rights of a member or manager to obtain information
1903 as provided in this section may be restricted in the original
1904 operating agreement or in any subsequent amendment approved or
1905 adopted by all of the members or in compliance with any applicable
1906 requirements of the operating agreement. The provisions of this
1907 subsection shall not be construed to limit the ability to impose
1908 restrictions on the rights of a member or manager to obtain
1909 information by any other means permitted under this section.

1910 ARTICLE 4.

1911 MANAGEMENT

1912 **Section 79-29-401. Management of a limited liability company**
1913 **by a manager or managers.** (1) The certificate of formation or

1914 the operating agreement may delegate responsibility for managing a
1915 limited liability company to or among one or more managers to the
1916 extent provided therein. Managers may also serve as officers to
1917 the extent provided in the operating agreement.

1918 (2) Managers need not be residents of this state or members
1919 of the limited liability company. The certificate of formation or
1920 the operating agreement may prescribe other qualifications for
1921 managers.

1922 (3) The number of managers shall be fixed by or in the
1923 manner provided in the certificate of formation or the operating
1924 agreement. The number of managers may be increased or decreased
1925 by amendment to, or in the manner provided in, the certificate of
1926 formation or the operating agreement.

1927 (4) Managers shall be elected by the members.

1928 (5) Any vacancy occurring in the office of manager shall be
1929 filled by the vote of the members.

1930 (6) All managers or any lesser number may be removed in the
1931 manner provided in the certificate of formation or the operating
1932 agreement. All managers or any lesser number may be removed with



1933 or without cause by the vote of the members required to elect such
1934 manager or managers.

1935 (7) Any action required or permitted to be taken by the
1936 managers of a limited liability company may be taken upon a
1937 majority vote of the managers.

1938 (8) An operating agreement may set forth provisions relating
1939 to notice of the time, place or purpose of any meeting at which
1940 any matter is to be voted on by any manager or class or group of
1941 managers, waiver of any such notice, action by consent without a
1942 meeting, quorum requirements, voting in person or by proxy, or any
1943 other matter with respect to the exercise of any such right to
1944 vote.

1945 (9) Meetings of managers may be held by means of telephone
1946 or other communications equipment by means of which all persons
1947 participating in the meeting can speak to and hear each other, and
1948 participation in a meeting pursuant to this subsection shall
1949 constitute presence in person at the meeting.

1950 (10) The managers may take action on any matter that is to
1951 be voted on, consented to or approved by managers without a
1952 meeting, and without a vote with not less than one (1) but not
1953 more than ten (10) days prior notice to all the managers if a
1954 consent or consents in writing, setting forth the action so taken,
1955 shall be signed by the managers having not less than the minimum
1956 number of votes that would be necessary to authorize or take such
1957 action at a meeting at which all managers entitled to vote thereon
1958 were present and voted.

1959 **Section 79-29-403. Reliance on reports and information.** A
1960 member, manager, officer or liquidating trustee of a limited
1961 liability company shall be fully protected in relying in good
1962 faith upon:

1963 (a) The records of the limited liability company; and
1964 upon



1965 (b) Information, opinions, reports or statements,
1966 including information, opinions, reports or statements as to the
1967 value and amount of the assets, liabilities, profits or losses of
1968 the limited liability company, or the value and amount of assets,
1969 reserves, contracts, agreements or other undertakings that would
1970 be sufficient to pay claims and obligations of the limited
1971 liability company or to make reasonable provision to pay such
1972 claims and obligations, or any other facts pertinent to the
1973 existence and amount of assets from which distributions might
1974 properly be paid which are presented by:

- 1975 (i) Another manager of the limited liability
1976 company;
- 1977 (ii) A member of the limited liability company;
- 1978 (iii) A liquidating trustee of the limited
1979 liability company;
- 1980 (iv) An officer of the limited liability company;
- 1981 (v) An employee of the limited liability company;
- 1982 (vi) Committees of the limited liability company,
1983 members or managers; or
- 1984 (vii) Any other person as to matters the member,
1985 manager, officer or liquidating trustee reasonably believes is
1986 within such other person's professional or expert competence.

1987 **Section 79-29-405. Delegation of rights and powers to**
1988 **manage.** (1) The manager of a limited liability company has the
1989 power and authority to delegate to one or more other persons the
1990 manager's rights and powers to manage and control the business and
1991 affairs of the limited liability company, including to delegate to
1992 agents, officers and employees of: (a) a member, (b) a manager or
1993 (c) the limited liability company, and to delegate by a management
1994 agreement or another agreement with, or otherwise to, other
1995 persons.

1996 (2) Such delegation as provided in subsection (1) of this
1997 section shall not cause the manager to cease to be a manager of



1998 the limited liability company or cause the person to whom any such
1999 rights and powers have been delegated to be a manager of the
2000 limited liability company.

2001 **Section 79-29-407. Resignation of manager.** An operating
2002 agreement may provide that a manager may resign as a manager of a
2003 limited liability company at the time or upon the happening of
2004 events specified in an operating agreement and in accordance with
2005 the operating agreement. An operating agreement may provide that
2006 a manager shall not have the right to resign as a manager of a
2007 limited liability company. A manager may resign as a manager of a
2008 limited liability company at any time by giving written notice to
2009 the members and other managers. If the resignation of a manager
2010 violates an operating agreement, in addition to any remedies
2011 otherwise available under applicable law, a limited liability
2012 company may recover from the resigning manager damages for breach
2013 of the operating agreement and offset the damages against the
2014 amount otherwise payable to the resigning manager.

2015 ARTICLE 5.

2016 FINANCE

2017 **Section 79-29-501. Form of contribution.** The contribution
2018 of a member may be in cash, property, services rendered, or a
2019 promissory note or other obligation to contribute cash or property
2020 or to perform services.

2021 **Section 79-29-503. Liability for contributions.** (1) A
2022 promise by a member to contribute to the limited liability company
2023 is not enforceable unless set out in a writing signed by the
2024 member.

2025 (2) A member is obligated to the limited liability company
2026 to perform an enforceable promise to contribute cash or property
2027 or to perform services, even if the member is unable to perform
2028 because of death, disability or any other reason. If a member
2029 does not make the required contribution of property or services,
2030 the member is obligated at the option of the limited liability



2031 company to contribute cash equal to that portion of the value of
2032 the stated contribution that has not been made. The foregoing
2033 option shall be in addition to, and not in lieu of, any other
2034 rights, including the right to specific performance, that the
2035 limited liability company may have against the member under the
2036 operating agreement or applicable law.

2037 (3) The obligation of a member to make a contribution or
2038 return money or other property paid or distributed in violation of
2039 this chapter may be compromised only by specific consent of all
2040 the members. However, a creditor of a limited liability company
2041 who extends credit, or otherwise acts in reliance on that
2042 obligation after the member signs a writing that reflects the
2043 obligation and before the amendment or cancellation thereof to
2044 reflect the compromise, may enforce the original obligation to the
2045 same extent as the limited liability company could pursuant to
2046 this section. A conditional obligation of a member to make a
2047 contribution or return money or other property to a limited
2048 liability company may not be enforced unless the conditions of the
2049 obligation have been satisfied or waived as to or by such member.
2050 Conditional obligations include contributions payable upon a
2051 discretionary call of a limited liability company prior to the
2052 time the call occurs.

2053 (4) A certificate of formation or operating agreement may
2054 provide that the interest of any member who fails to make any
2055 contribution that the member is obligated to make, shall be
2056 subject to specified penalties for, or specified consequences of,
2057 such failure. Such penalty or consequence may take the form of
2058 reducing the defaulting member's proportionate financial or
2059 governance interest in the limited liability company,
2060 subordinating the defaulting member's financial or governance
2061 interests to that of nondefaulting members, forcing a sale of the
2062 defaulting member's financial or governance interest, forfeiting
2063 the defaulting member's financial or governance interest, the



2064 lending by other members of the amount necessary to meet the
2065 defaulting member's commitment, fixing the value of the defaulting
2066 member's financial or governance interest by appraisal or by
2067 formula and redeeming or selling of the defaulting member's
2068 financial or governance interest at such value, or other penalty
2069 or consequence.

2070 **Section 79-29-505. Sharing of profits and losses.** The
2071 profits and losses of a limited liability company shall be
2072 allocated among the members who own financial interests and other
2073 owners of financial interests, and among groups or classes of
2074 members, in the manner provided in the certificate of formation or
2075 operating agreement. Profits and losses must be allocated on the
2076 basis of the agreed value, as stated in the limited liability
2077 company records required to be kept pursuant to Section 79-29-115,
2078 of the contributions made by each owner of a financial interest to
2079 the extent they have been received by the limited liability
2080 company and have not been returned.

2081 **Section 79-29-507. Sharing of distributions.** Distributions
2082 of cash or other assets of a limited liability company must be
2083 allocated among the members who own financial interests and other
2084 owners of financial interests, and among classes or groups of
2085 members, in the manner provided in the certificate of formation or
2086 operating agreement. Distributions must be made on the basis of
2087 the agreed value, as stated in the limited liability company
2088 records required to be kept pursuant to Section 79-29-115, of the
2089 contributions made by each member who owns a financial interest to
2090 the extent they have been received by the limited liability
2091 company and have not been returned.

2092 **Section 79-29-509. Defense of usury not available.** No
2093 obligation of a member, manager or officer of a limited liability
2094 company to the limited liability company arising under the
2095 operating agreement or a separate agreement or writing, and no
2096 note, instrument or other writing evidencing any such obligation



2097 of a member, manager or officer, shall be subject to the defense
2098 of usury, and no member, manager or officer shall interpose the
2099 defense of usury with respect to any such obligation in any
2100 action.

2101 ARTICLE 6.

2102 DISTRIBUTIONS

2103 **Section 79-29-601. Distributions generally and interim**

2104 **distributions.** For purposes of this article, except for Section
2105 79-29-611(1) which shall apply to any member, any reference to a
2106 member of a limited liability company in this article shall mean a
2107 member who owns a financial interest and shall not mean a member
2108 who does not own a financial interest or hold a financial right in
2109 the limited liability company.

2110 Except as provided in this article, to the extent specified
2111 in the certificate of formation or the operating agreement and at
2112 the times or upon the occurrence of the events specified in the
2113 certificate of formation or operating agreement, a member is
2114 entitled to receive from a limited liability company distributions
2115 before the member's withdrawal from the limited liability company
2116 and before the dissolution and winding up thereof.

2117 **Section 79-29-603. Distribution upon withdrawal of member.**

2118 Except as provided in this article, upon withdrawal any
2119 withdrawing member is entitled to receive any distribution to
2120 which the member is entitled under an operating agreement and, if
2121 not otherwise provided in an operating agreement, the member is
2122 entitled to receive, within a reasonable time after withdrawal the
2123 fair value of the member's financial interest as of the date of
2124 withdrawal based upon the member's right to share in distributions
2125 from the limited liability company.

2126 For purposes of this section the fair value of the member's
2127 financial interest shall be determined as of the date of
2128 withdrawal:



2129 (a) Using customary and current valuation concepts and
2130 techniques generally employed for similar businesses in the
2131 context of the transaction requiring appraisal; and

2132 (b) Without discounting for lack of marketability or
2133 minority status.

2134 The distribution must be accompanied by current financial
2135 statements of the limited liability company.

2136 **Section 79-29-605. Distribution in kind.** A member,
2137 regardless of the nature of the person's contribution, has no
2138 right to demand and receive any distribution from a limited
2139 liability company in any form other than cash. A member may not
2140 be compelled to accept a distribution of any asset in kind from a
2141 limited liability company to the extent that the percentage of the
2142 asset distributed to the person exceeds a percentage of that asset
2143 which is equal to the percentage in which the person shares in
2144 distributions from the limited liability company. Except as
2145 provided in the operating agreement, a member may be compelled to
2146 accept a distribution of any asset in kind from a limited
2147 liability company to the extent that the percentage of the asset
2148 distributed is equal to a percentage of that asset which is equal
2149 to the percentage in which the member shares in distributions from
2150 the limited liability company.

2151 **Section 79-29-607. Right to distribution.** Subject to
2152 Sections 79-29-609 and 79-29-813, at the time a member becomes
2153 entitled to receive a distribution, the member has the status of,
2154 and is entitled to all remedies available to, a creditor of the
2155 limited liability company with respect to the distribution. An
2156 operating agreement may provide for the establishment of a record
2157 date with respect to allocations and distributions by a limited
2158 liability company.

2159 **Section 79-29-609. Limitations on distribution.** (1) No
2160 distribution may be made if, after giving effect to the
2161 distribution:



2162 (a) The limited liability company would not be able to
2163 pay its debts as they become due in the usual course of business;
2164 or

2165 (b) The limited liability company's total assets would
2166 be less than the sum of its total liabilities plus the amount that
2167 would be needed, if the limited liability company were to be
2168 dissolved at the time of the distribution, to satisfy the
2169 preferential rights of other members upon dissolution which are
2170 superior to the rights of the member receiving the distribution.

2171 For purposes of this section, the term "distribution" shall
2172 not include amounts constituting reasonable compensation for
2173 present or past services or reasonable payments made in the
2174 ordinary course of business pursuant to a bona fide retirement
2175 plan or other benefits program.

2176 (2) The limited liability company may base a determination
2177 that a distribution is not prohibited under subsection (1) of this
2178 section either on:

2179 (a) Financial statements prepared on the basis of
2180 accounting practices and principles that are reasonable under the
2181 circumstances; or

2182 (b) A fair valuation or other method that is reasonable
2183 under the circumstances.

2184 (3) The effect of a distribution under subsection (1) of
2185 this section is measured as of: (a) the date the distribution is
2186 authorized if the payment occurs within one hundred twenty (120)
2187 days after the date of authorization; or (b) the date payment is
2188 made if it occurs more than one hundred twenty (120) days after
2189 the date of authorization.

2190 **Section 79-29-611. Liability for wrongful distribution.** (1)
2191 A member or manager who votes for or assents to a distribution in
2192 violation of the certificate of formation or operating agreement
2193 or Section 79-29-609 is personally liable to the limited liability
2194 company for the amount of the distribution that exceeds what could



2195 have been distributed without violating Section 79-29-609 or the
2196 certificate of formation or operating agreement if it is
2197 established that the member or manager did not act in compliance
2198 with Section 79-29-609. Each member or manager held liable under
2199 this subsection (1) is entitled to contribution:

2200 (a) From each other member or manager who could be held
2201 liable under this subsection (1) for the unlawful distribution;
2202 and

2203 (b) From each member for the amount the member received
2204 knowing that the distribution was made in violation of Section
2205 79-29-605, the certificate of formation or the operating
2206 agreement.

2207 (2) (a) A member who receives a distribution in violation
2208 of Section 79-29-609, and who knew at the time of the distribution
2209 that the distribution violated Section 79-29-609, shall be liable
2210 to a limited liability company for the amount of the distribution.

2211 (b) A member who receives a distribution in violation
2212 of Section 79-29-609, and who did not know at the time of the
2213 distribution that the distribution violated Section 79-29-609,
2214 shall not be liable for the amount of the distribution.

2215 (3) Subject to subsection (4) of this section, this section
2216 shall not affect any obligation or liability of a member under an
2217 agreement or other applicable law for the amount of a
2218 distribution.

2219 (4) Unless otherwise agreed, a member who either assents to
2220 or receives a distribution from a limited liability company shall
2221 have no liability under this chapter or other applicable law for
2222 the amount of the distribution after the expiration of two (2)
2223 years from the date of the distribution unless an action to
2224 recover the distribution from the member is commenced before the
2225 expiration of the two-year period and an adjudication of liability
2226 against the member is made in the action.

2227 ARTICLE 7.



2228 ASSIGNMENT OF FINANCIAL INTERESTS

2229 **Section 79-29-701. Nature of financial interest in a limited**
2230 **liability company.** A financial interest in a limited liability
2231 company is intangible personal property. A member has no interest
2232 in specific limited liability company property.

2233 **Section 79-29-703. Assignment of financial interest in a**
2234 **limited liability company.** (1) A financial interest is
2235 assignable in whole or in part. The assignee of a member's
2236 financial interest shall have no right to participate in the
2237 management of the business and affairs of a limited liability
2238 company except as provided in an operating agreement and upon:

2239 (a) The approval of all of the members of the limited
2240 liability company other than the member assigning the financial
2241 interest; or

2242 (b) Compliance with any procedure provided for in the
2243 operating agreement.

2244 (2) (a) An assignment of a financial interest does not
2245 dissolve a limited liability company or entitle the assignee to
2246 become or to exercise any rights or powers of a member;

2247 (b) An assignment of a financial interest entitles the
2248 assignee to share in such profits and losses, to receive such
2249 distribution or distributions, and to receive such allocation of
2250 income, gain, loss, deduction, or credit or similar item to which
2251 the assignor was entitled, to the extent assigned; and

2252 (c) A member ceases to be a member, ceases to hold a
2253 governance interest, and ceases to have the power to exercise any
2254 rights or powers of a member upon assignment of all of the
2255 member's financial interest. The pledge of, or granting of, a
2256 security interest, lien or other encumbrance in or against, any or
2257 all of the financial interest of a member shall not cause the
2258 member to cease to be a member or to cease to have the power to
2259 exercise any rights or powers of a member.



2260 (3) A member's interest in a limited liability company may
2261 be evidenced by a certificate issued by the limited liability
2262 company. An operating agreement may provide for the assignment or
2263 transfer of any interest represented by such a certificate and
2264 make other provisions with respect to the certificates. A limited
2265 liability company shall not have the power to issue a certificate
2266 of an interest in a limited liability company in bearer form.

2267 (4) Except to the extent assumed by written agreement until
2268 an assignee of a financial interest becomes a member, the assignee
2269 shall have no liability as a member solely as a result of the
2270 assignment.

2271 (5) A limited liability company may acquire, by purchase,
2272 redemption or otherwise, any interest in the limited liability
2273 company. Any such interest so acquired by the limited liability
2274 company shall be deemed canceled.

2275 **Section 79-29-705. Rights of creditor.** (1) On application
2276 to a court of competent jurisdiction by a judgment creditor of a
2277 member, referred to in this section as the "judgment debtor", the
2278 court may charge the financial interest of the judgment debtor
2279 with payment of the unsatisfied amount of the judgment, with
2280 interest (referred to in this section as a "charging order"). To
2281 the extent so charged, the judgment creditor has only the rights
2282 of an assignee of the financial interest, however, the judgment
2283 creditor shall have no rights to bring a proceeding under Article
2284 11 of this chapter. This article does not deprive any judgment
2285 debtor of the benefit of any exemption laws applicable to the
2286 judgment debtor's financial interest.

2287 (2) A charging order constitutes a lien on the judgment
2288 debtor's financial interest.

2289 (3) The entry of a charging order is the exclusive remedy by
2290 which a judgment creditor of a judgment debtor or its assignee may
2291 satisfy a judgment out of the judgment debtor's financial
2292 interest.



2293 (4) No creditor of a judgment debtor or its assignee shall
2294 have any right to obtain possession of, or otherwise exercise
2295 legal or equitable remedies with respect to, the property of the
2296 limited liability company.

2297 (5) The chancery court shall have jurisdiction to hear and
2298 determine any matter relating to any such charging order.

2299 **Section 79-29-707. Right of assignee to become a member.**

2300 (1) An assignee of a financial interest may become a member with
2301 governance interests if and to the extent that: (a) the
2302 certificate of formation or operating agreement so provides; (b)
2303 all other members consent; or (c) in the case of an assignee of a
2304 member's entire financial interest in which, immediately following
2305 the assignment, the limited liability company otherwise would have
2306 no members, simultaneously with and upon the assignment of the
2307 interest to an assignee who agrees to become a member.

2308 (2) An assignee who has become a member has, to the extent
2309 assigned, the governance rights and powers, and is subject to the
2310 restrictions and liabilities, of a member under the certificate of
2311 formation or operating agreement and this chapter. An assignee
2312 who becomes a member also is liable for the obligations of the
2313 assignee's assignor to make and return contributions as provided
2314 in Articles 5 and 6 of this chapter. However, the assignee is not
2315 obligated for liabilities or obligations unknown to the assignee
2316 at the time the assignee became a member and which could not be
2317 ascertained from the certificate of formation or the operating
2318 agreement.

2319 (3) Whether or not an assignee of a financial interest
2320 becomes a member, the assignor is not released from the assignor's
2321 liability to the limited liability company under Articles 5 and 6
2322 of this chapter.

2323 **Section 79-29-709. Powers of personal representative of**
2324 **deceased, incompetent or dissolved member.** (1) If a court of

2325 competent jurisdiction adjudges a member to be incompetent, the



2326 member's personal representative may exercise all rights until
2327 such time that the member's competency is regained, including the
2328 member's governance rights, on behalf of the member and any power
2329 under an operating agreement of an assignee to become a member.

2330 (2) If a member who is an individual dies, a personal
2331 representative of the member's estate may exercise all rights for
2332 the purpose of settling the estate, including the governance
2333 rights that were held by such member at the time of the member's
2334 death and any power under an operating agreement of an assignee to
2335 become a member.

2336 (3) If a member is a corporation, trust or other entity and
2337 such entity is dissolved, terminated or liquidated, the personal
2338 representative of the entity may exercise all rights and powers of
2339 that member until a successor is established, including the
2340 member's governance rights.

2341 **Section 79-29-711. Enforceability of limitations on**
2342 **assignments of financial interests.** Sections 75-9-406 and
2343 75-9-408 do not apply to a member's financial interest in a
2344 domestic limited liability company, including the rights, powers
2345 and interests arising under the limited liability company's
2346 certificate of formation or operating agreement or under this
2347 chapter. To the extent of any conflict or inconsistency between
2348 this section and Sections 75-9-406 and 75-9-408, this section
2349 prevails. It is the express intent of this section to permit the
2350 enforcement, as an agreement among the members of a limited
2351 liability company, of any provision of an operating agreement that
2352 would otherwise be ineffective under Sections 75-9-406 and
2353 75-9-408.

2354 ARTICLE 8.

2355 DISSOLUTION

2356 **Section 79-29-801. Nonjudicial dissolution.** (1) A limited
2357 liability company is dissolved and its affairs must be wound up
2358 upon the first of the following to occur:



2359 (a) At the time specified in the certificate of
2360 formation;

2361 (b) Upon the occurrence of the event specified in the
2362 certificate of formation or the written operating agreement;

2363 (c) Upon the consent of all members, or such lesser
2364 number as may be provided in the certificate of formation or
2365 operating agreement;

2366 (d) At any time there are no members; provided, that
2367 the limited liability company is not dissolved and is not required
2368 to be wound up if:

2369 (i) Within one hundred eighty (180) days or such
2370 other period as is provided for in the certificate of formation or
2371 operating agreement after the occurrence of the event that
2372 terminated the continued membership of the last remaining member,
2373 the personal representative of the last remaining member agrees in
2374 writing to continue the limited liability company and to the
2375 admission of the personal representative of the member or its
2376 nominee or designee to the limited liability company as a member,
2377 effective as of the occurrence of the event that terminated the
2378 continued membership of the last remaining member; however, an
2379 operating agreement may provide that the personal representative
2380 of the last remaining member shall be obligated to agree in
2381 writing to continue the limited liability company and to the
2382 admission of the personal representative of such member or its
2383 nominee or designee to the limited liability company as a member,
2384 effective as of the occurrence of the event that terminated the
2385 continued membership of the last remaining member; or

2386 (ii) A member is admitted to the limited liability
2387 company in the manner provided in the operating agreement,
2388 effective as of the occurrence of the event that terminated the
2389 continued membership of the last remaining member, within one
2390 hundred eighty (180) days or such other period as is provided in
2391 the operating agreement after the occurrence of the event that



2392 terminated the continued membership of the last remaining member,
2393 pursuant to a provision of the operating agreement that
2394 specifically provides for the admission of a member to the limited
2395 liability company after there is no longer a remaining member of
2396 the limited liability company.

2397 (e) Upon the entry of a decree of judicial dissolution
2398 under Section 79-29-803.

2399 (2) The following events with respect to any member shall
2400 not cause the limited liability company to be dissolved or its
2401 affairs to be wound up, and upon the occurrence of any such event,
2402 the limited liability company shall be continued without
2403 dissolution:

- 2404 (a) Death;
- 2405 (b) Withdrawal;
- 2406 (c) Expulsion;
- 2407 (d) Bankruptcy;
- 2408 (e) Dissolution; or

2409 The occurrence of any other event that terminates the
2410 continued membership of any member.

2411 **Section 79-29-803. Judicial dissolution.** (1) On
2412 application by or for a member, the chancery court for the county
2413 in which the registered office of the limited liability company is
2414 located may decree dissolution of a limited liability company:

2415 (a) Whenever it is not reasonably practicable to carry
2416 on the business in conformity with the certificate of formation or
2417 the operating agreement;

2418 (b) Whenever the managers or the members in control of
2419 the limited liability company have been guilty of or have
2420 knowingly countenanced persistent and pervasive fraud or abuse of
2421 authority, or the property of the limited liability company is
2422 being misapplied or wasted by such persons; or

2423 (c) In a proceeding by the limited liability company to
2424 have its voluntary dissolution continued under court supervision.



2425 (2) If a limited liability company has no members due to the
2426 expulsion or withdrawal of the last remaining member pursuant to
2427 the terms of the certificate of formation or the written operating
2428 agreement and the certificate of formation or the written
2429 operating agreement of the limited liability company prohibits the
2430 substitution of a member, then an officer, manager or any assignee
2431 or owner of a financial interest of the limited liability company
2432 or the personal representative of the member may apply to the
2433 chancery court to dissolve the limited liability company; provided
2434 however, that if there are no persons that hold the above
2435 described positions, then any creditor of the limited liability
2436 company or the Secretary of State may apply to the chancery court
2437 to dissolve the limited liability company.

2438 (3) A court in a judicial proceeding brought to dissolve a
2439 limited liability company may appoint one or more receivers to
2440 wind up and liquidate, or one or more custodians to manage, the
2441 business and affairs of the limited liability company. The court
2442 appointing a receiver or custodian has jurisdiction over the
2443 limited liability company and all its property wherever located.
2444 The court may appoint an individual or entity (authorized to
2445 transact business in this state) as a receiver or custodian. The
2446 court may require the receiver or custodian to post bond, with or
2447 without sureties, in an amount the court directs.

2448 The court shall describe the powers and duties of the
2449 receiver or custodian in its appointing order, which may be
2450 amended from time to time. Among other powers:

2451 (a) The receiver (i) may dispose of all or any part of
2452 the assets of the limited liability company wherever located, at a
2453 public or private sale, if authorized by the court; and (ii) may
2454 sue and defend in the receiver's own name as receiver of the
2455 limited liability company in all courts of this state; and

2456 (b) The custodian may exercise all the powers of the
2457 limited liability company, through or in place of its members,



2458 managers or officers, to the extent necessary to manage the
2459 affairs of the limited liability company in the best interests of
2460 its members and creditors.

2461 The court during a receivership may redesignate the receiver
2462 a custodian, and during a custodianship may redesignate the
2463 custodian a receiver, if doing so is in the best interests of the
2464 limited liability company, its members and creditors.

2465 The court from time to time during the receivership or
2466 custodianship may order compensation paid and expenses paid or
2467 reimbursed to the receiver or custodian from the assets of the
2468 limited liability company or proceeds from the sale of the assets.

2469 **Section 79-29-805. Decree; winding up, liquidation,**
2470 **notification.** (1) If after a hearing the court determines that
2471 one or more grounds for judicial dissolution exist, it may enter a
2472 decree dissolving the limited liability company and specifying the
2473 effective date of the dissolution, and the clerk of the court
2474 shall deliver a certified copy of the decree to the Secretary of
2475 State who shall file it.

2476 (2) After entering the decree of dissolution, the court
2477 shall direct the winding up and liquidation of the limited
2478 liability company's business and affairs in accordance with
2479 Section 79-29-809 and the notification of claimants in accordance
2480 with Sections 79-29-817 and 79-29-819.

2481 (3) Nothing contained in this section shall diminish the
2482 inherent equity powers of the court to fashion alternative
2483 remedies to judicial dissolution.

2484 **Section 79-29-807. Safekeeping by State Treasurer.** Assets
2485 of a dissolved limited liability company that should be
2486 transferred to a creditor, claimant or member of the limited
2487 liability company who cannot be found shall be reduced to cash and
2488 deposited with the State Treasurer for safekeeping. When the
2489 creditor, claimant or member furnishes satisfactory proof of



2490 entitlement to the amount deposited, the State Treasurer shall pay
2491 such person or the person's personal representative that amount.

2492 **Section 79-29-809. Winding up.** (1) A manager who has not
2493 wrongfully dissolved a limited liability company or, if none, the
2494 members or a person approved by the members or, if there is more
2495 than one class or group of members, then by each class or group of
2496 members, in either case, by members who own more than fifty
2497 percent (50%) of the then current percentage or other interest in
2498 the profits of the limited liability company owned by all of the
2499 members or by the members in each class or group, as appropriate,
2500 may wind up the limited liability company's affairs; but the
2501 chancery court upon cause shown, may wind up the limited liability
2502 company's affairs upon application of any member or manager, the
2503 member's or manager's personal representative or assignee, and in
2504 connection therewith, may appoint a liquidating trustee.

2505 (2) Upon dissolution of a limited liability company, the
2506 persons winding up the limited liability company's affairs may, in
2507 the name of, and for and on behalf of, the limited liability
2508 company, prosecute and defend suits, whether civil, criminal or
2509 administrative, gradually settle and close the limited liability
2510 company's business, dispose of and convey the limited liability
2511 company's property, discharge or make reasonable provision for the
2512 limited liability company's liabilities, and distribute to the
2513 members any remaining assets of the limited liability company, all
2514 without affecting the liability of members and managers and
2515 without imposing liability on a liquidating trustee.

2516 **Section 79-29-811. Agency power of managers, officers or**
2517 **members after dissolution.** (1) Except as provided in subsections
2518 (3), (4) and (5) of this section, after an event causing
2519 dissolution of the limited liability company any member can bind
2520 the limited liability company:



2521 (a) By any act appropriate for winding up the limited
2522 liability company's affairs or completing transactions unfinished
2523 at dissolution; and

2524 (b) By any transaction that would have bound the
2525 limited liability company if it had not been dissolved, if the
2526 other party to the transaction does not have notice of the
2527 dissolution.

2528 (2) The filing of the certificate of dissolution shall be
2529 presumed to constitute notice of dissolution for purposes of
2530 subsection (1)(b) of this section.

2531 (3) An act of a manager, officer or member which is not
2532 binding on the limited liability company pursuant to subsection
2533 (1) of this section is binding if it is otherwise authorized by
2534 the limited liability company.

2535 (4) An act of a manager, officer or member which would be
2536 binding under subsection (1) or would be otherwise authorized but
2537 which is in contravention of a restriction on authority shall not
2538 bind the limited liability company to persons having knowledge of
2539 the restriction.

2540 (5) If the certificate of formation or the operating
2541 agreement vests management of the limited liability company in a
2542 manager or managers, the manager or managers shall have the
2543 authority of a member provided for in subsection (1) of this
2544 section, and no member shall have such authority if the member is
2545 acting solely in the capacity of a member.

2546 **Section 79-29-813. Distribution of assets.** (1) Upon the
2547 winding up of a limited liability company, the assets shall be
2548 distributed as follows:

2549 (a) To creditors, including members and managers who
2550 are creditors, to the extent otherwise permitted by law, in
2551 satisfaction of liabilities of the limited liability company,
2552 whether by payment or the making of reasonable provision for
2553 payment thereof, other than liabilities for which reasonable



2554 provision for payment has been made and liabilities for
2555 distributions to members and former members under Section
2556 79-29-601 or Section 79-29-603;

2557 (b) To members and former members in satisfaction of
2558 liabilities for distributions under Section 79-29-601 or Section
2559 79-29-603; and

2560 (c) To members first for the return of their
2561 contributions and second respecting their financial interests, in
2562 the proportions in which the members share in distributions.

2563 (2) A limited liability company which has dissolved:

2564 (a) Shall pay or make reasonable provision to pay all
2565 claims and obligations, including all contingent, conditional or
2566 unmatured contractual claims, known to the limited liability
2567 company;

2568 (b) Shall make such provision as will be reasonably
2569 likely to be sufficient to provide compensation for any claim
2570 against the limited liability company which is the subject of a
2571 pending action, suit or proceeding to which the limited liability
2572 company is a party; and

2573 (c) Shall make such provision as will be reasonably
2574 likely to be sufficient to provide compensation for claims that
2575 have not been made known to the limited liability company or that
2576 have not arisen but that, based on facts known to the limited
2577 liability company, are likely to arise or to become known to the
2578 limited liability company within three (3) years after the date of
2579 dissolution.

2580 If there are sufficient assets, such claims and obligations
2581 shall be paid in full and any such provision for payment made
2582 shall be made in full. If there are insufficient assets, such
2583 claims and obligations shall be paid or provided for according to
2584 their priority and, among claims of equal priority, ratably to the
2585 extent of assets available therefor. Any remaining assets shall
2586 be distributed as provided in this chapter. Any liquidating



2587 trustee winding up a limited liability company's affairs who has
2588 complied with this section shall not be personally liable to the
2589 claimants of the dissolved limited liability company by reason of
2590 such person's actions in winding up the limited liability company.

2591 (3) A member who receives a distribution in violation of
2592 subsection (1) of this section, and who knew at the time of the
2593 distribution that the distribution violated subsection (1) of this
2594 section, shall be liable to the limited liability company for the
2595 amount of the distribution. For purposes of the immediately
2596 preceding sentence, the term "distribution" shall not include
2597 amounts constituting reasonable compensation for present or past
2598 services or reasonable payments made in the ordinary course of
2599 business pursuant to a bona fide retirement plan or other benefits
2600 program. A member who receives a distribution in violation of
2601 subsection (1) of this section, and who did not know at the time
2602 of the distribution that the distribution violated subsection (1)
2603 of this section, shall not be liable for the amount of the
2604 distribution. Subject to subsection (4) of this section, this
2605 subsection shall not affect any obligation or liability of a
2606 member under an agreement or other applicable law for the amount
2607 of a distribution.

2608 (4) Unless otherwise agreed, a member who receives a
2609 distribution from a limited liability company to which this
2610 section applies shall have no liability under this chapter or
2611 other applicable law for the amount of the distribution after the
2612 expiration of two (2) years from the date of the distribution
2613 unless an action to recover the distribution from such member is
2614 commenced prior to the expiration of the said two-year period and
2615 an adjudication of liability against such member is made in the
2616 said action.

2617 (5) Section 79-29-609 shall not apply to a distribution to
2618 which this section applies.



2619 **Section 79-29-815. Trustees or receivers for limited**
2620 **liability companies; appointment; powers; duties.** When the
2621 certificate of formation of any limited liability company formed
2622 under this chapter shall be dissolved by the filing of a
2623 certificate of dissolution, the chancery court, on application of
2624 any creditor, member or manager of the limited liability company,
2625 or any other person who shows good cause therefor, at any time,
2626 may either appoint one or more of the managers of the limited
2627 liability company to be trustees, or appoint one or more persons
2628 to be receivers, of and for the limited liability company, to take
2629 charge of the limited liability company's property, and to collect
2630 the debts and property due and belonging to the limited liability
2631 company, with the power to prosecute and defend, in the name of
2632 the limited liability company, or otherwise, all such suits as may
2633 be necessary or proper for the purposes aforesaid, and to appoint
2634 an agent or agents under them, and to do all other acts which
2635 might be done by the limited liability company, if in being, that
2636 may be necessary for the final settlement of the unfinished
2637 business of the limited liability company. The powers of the
2638 trustees or receivers may be continued as long as the chancery
2639 court shall think necessary for the purposes aforesaid.

2640 **Section 79-29-817. Known claims against dissolved limited**
2641 **liability company.** (1) A dissolved limited liability company may
2642 dispose of the known claims against it by filing a certificate of
2643 dissolution pursuant to Section 79-29-205 and following the
2644 procedure described in this section.

2645 (2) The dissolved limited liability company shall notify its
2646 known claimants in writing of the dissolution at any time after
2647 the effective date of the dissolution. The written notice must:

2648 (a) Describe information that must be included in a
2649 claim;

2650 (b) Provide a mailing address where a claim may be
2651 sent;



2652 (c) State the deadline, which may not be fewer than one
2653 hundred twenty (120) days from the latter of the mailing date of
2654 the written notice or the filing of a certificate of dissolution
2655 pursuant to Section 79-29-205, by which the dissolved limited
2656 liability company must receive the claim; and

2657 (d) State that the claim will be barred if not received
2658 by the deadline.

2659 (3) A claim against the dissolved limited liability company
2660 is barred:

2661 (a) If a claimant who was given written notice under
2662 subsection (2) of this section does not deliver the claim to the
2663 dissolved limited liability company by the deadline; or

2664 (b) If a claimant whose claim was rejected by the
2665 dissolved limited liability company does not commence a proceeding
2666 to enforce the claim within ninety (90) days from the date the
2667 claimant receives notice of the rejection of the claim.

2668 (4) For purposes of this section, "claim" does not include a
2669 contingent liability or a claim based on an event occurring after
2670 the effective date of dissolution.

2671 **Section 79-29-819. Unknown claims against dissolved limited**
2672 **liability company.** (1) A dissolved limited liability company may
2673 publish notice of its dissolution pursuant to this section which
2674 requests that persons with claims against the limited liability
2675 company present them in accordance with the notice.

2676 (2) The notice must:

2677 (a) Be published one (1) time in a newspaper of general
2678 circulation in the county where the dissolved limited liability
2679 company's principal office, or, if none in this state, its
2680 registered office, is or was last located;

2681 (b) Describe the information that must be included in a
2682 claim and provide a mailing address where the claim may be sent;
2683 and



2684 (c) State that a claim against the limited liability
2685 company not otherwise barred will be barred unless a proceeding to
2686 enforce the claim is commenced within three (3) years after the
2687 latter of the publication of the notice or the filing of a
2688 certificate of dissolution with respect to the limited liability
2689 company.

2690 (3) If the dissolved limited liability company publishes a
2691 newspaper notice in accordance with subsection (2) and files a
2692 certificate of dissolution pursuant to Section 79-29-205, the
2693 claim of each of the following claimants which is not otherwise
2694 barred is barred unless the claimant commences a proceeding to
2695 enforce the claim against the dissolved limited liability company
2696 within three (3) years after the latter of the publication date of
2697 the newspaper notice or the filing of the certificate of
2698 dissolution:

2699 (a) A claimant who did not receive written notice under
2700 Section 79-29-817;

2701 (b) A claimant whose claim was timely sent to the
2702 dissolved limited liability company but not acted on within the
2703 three-year period; and

2704 (c) A claimant whose claim is contingent or based on an
2705 event occurring after the effective date of dissolution.

2706 (4) A claim may be enforced under this section:

2707 (a) Against the dissolved limited liability company, to
2708 the extent of its undistributed assets; or

2709 (b) If the assets have been distributed in liquidation,
2710 against a member of the dissolved limited liability company to the
2711 extent of the member's pro rata share of the claim or the assets
2712 of the limited liability company distributed to the member in
2713 liquidation, whichever is less, but a member's total liability for
2714 all claims under this section may not exceed the total amount of
2715 assets distributed to the member, subject to Section 79-29-611(1).



2716 **Section 79-29-821. Grounds for administrative dissolution.**

2717 The Secretary of State may commence a proceeding under Section
2718 79-29-823 to administratively dissolve a limited liability company
2719 if:

2720 (a) The limited liability company does not pay within
2721 sixty (60) days after they are due any fees imposed by this
2722 chapter or other law;

2723 (b) The limited liability company does not deliver its
2724 annual report to the Secretary of State within sixty (60) days
2725 after it is due;

2726 (c) The limited liability company is without a
2727 registered agent in this state for sixty (60) days or more;

2728 (d) The limited liability company does not notify the
2729 Secretary of State within sixty (60) days that its registered
2730 agent has been changed or that its registered agent has resigned;
2731 or

2732 (e) The Department of Revenue notifies the Secretary of
2733 State that the limited liability company is delinquent in any
2734 payments or tax owed by the limited liability company to the State
2735 of Mississippi; or

2736 (f) A misrepresentation has been made of any material
2737 matter in any application, report, affidavit, or other record
2738 submitted by the limited liability company to the Secretary of
2739 State pursuant to this chapter.

2740 **Section 79-29-823. Procedure for administrative dissolution.**

2741 (1) If the Secretary of State determines that one or more grounds
2742 exist under Section 79-29-821 for administratively dissolving a
2743 limited liability company, the Secretary of State shall serve the
2744 limited liability company with written notice of the determination
2745 under Section 79-29-125, except that such determination may be
2746 served by first class mail.

2747 (2) If the limited liability company does not correct each
2748 ground for dissolution or demonstrate to the reasonable



2749 satisfaction of the Secretary of State that each ground determined
2750 by the Secretary of State does not exist within sixty (60) days
2751 after the service of the notice, the Secretary of State shall
2752 administratively dissolve the limited liability company by signing
2753 a certification of the administrative dissolution that recites the
2754 ground or grounds for dissolution and its effective date. The
2755 Secretary of State shall file the original of the certificate of
2756 administrative dissolution and serve the limited liability company
2757 with a copy of the certificate of administrative dissolution under
2758 Section 79-29-125, except that such certificate of administrative
2759 dissolution may be served by first class mail.

2760 **Section 79-29-825. Reinstatement following administrative**

2761 **dissolution.** (1) A limited liability company administratively
2762 dissolved under Section 79-29-823 may apply to the Secretary of
2763 State for reinstatement at any time after the effective date of
2764 dissolution. The application must:

2765 (a) Recite the name of the limited liability company
2766 and the effective date of its administrative dissolution;

2767 (b) State that the ground or grounds for administrative
2768 dissolution either did not exist or have been eliminated; and

2769 (c) State that the limited liability company's name
2770 satisfies the requirements of Section 79-29-109.

2771 (2) If the Secretary of State determines that the
2772 application contains the information required by subsection (1) of
2773 this section and that the information is correct, the Secretary of
2774 State shall cancel the certificate of administrative dissolution
2775 and prepare a certificate of reinstatement that recites this
2776 determination and the effective date of reinstatement, file the
2777 original of the certificate of reinstatement, and serve the
2778 limited liability company with a copy of the certificate of
2779 reinstatement under Section 79-29-125, except that such
2780 certificate of reinstatement may be served by first class mail.

2781 (3) When the reinstatement is effective:



2782 (a) The reinstatement relates back to and takes effect
2783 as of the effective date of the administrative dissolution;

2784 (b) Any liability incurred by the limited liability
2785 company or a member after the administrative dissolution and
2786 before the reinstatement shall be determined as if the
2787 administrative dissolution had never occurred; and

2788 (c) The limited liability company may resume carrying
2789 on its business as if the administrative dissolution had never
2790 occurred.

2791 **Section 79-29-827. Appeal from denial of reinstatement. (1)**

2792 If the Secretary of State denies a limited liability company's
2793 application for reinstatement following administrative
2794 dissolution, the Secretary of State shall serve the limited
2795 liability company under Section 79-29-125 with a record that
2796 explains the reason or reasons for denial, except that such record
2797 may be served by first class mail.

2798 (2) The limited liability company may appeal the denial of
2799 reinstatement to the Chancery Court of the First Judicial District
2800 of Hinds County, Mississippi or the chancery court where the
2801 limited liability company is domiciled within thirty (30) days
2802 after service of the notice of denial is perfected. The limited
2803 liability company appeals by petitioning the court to set aside
2804 the dissolution and attaching to the petition copies of the
2805 Secretary of State's certificate of administrative dissolution,
2806 the limited liability company's application for reinstatement, and
2807 the Secretary of State's notice of denial.

2808 (3) The court may summarily order the Secretary of State to
2809 reinstate the dissolved limited liability company or may take
2810 other action the court considers appropriate.

2811 (4) The court's final decision may be appealed as in other
2812 civil proceedings.

2813 **Section 79-29-829. Revocation of dissolution.**

2814 Notwithstanding the occurrence of an event set forth in Section



2815 79-29-801(1) (a), (b), (c) or (d) of this chapter, the limited
2816 liability company shall not be dissolved and its affairs shall not
2817 be wound up if, within one hundred twenty (120) days of the
2818 effective date of the dissolution:

2819 (a) The limited liability company is continued pursuant
2820 to the affirmative majority vote or consent of all remaining
2821 members of the limited liability company or the personal
2822 representative of the last remaining member of the limited
2823 liability company if there is no remaining member, and any other
2824 person whose approval is required under the operating agreement to
2825 revoke a dissolution pursuant to this section, and; however, if
2826 the dissolution was caused by a vote or consent, the dissolution
2827 shall not be revoked unless each member and other person, or their
2828 respective personal representatives, who voted in favor of, or
2829 consented to, the dissolution has voted or consented to continue
2830 the limited liability company. If there is no remaining member of
2831 the limited liability company and the personal representative of
2832 the last remaining member votes in favor of or consents to the
2833 continuation of the limited liability company, the personal
2834 representative shall be required to agree in writing to the
2835 admission of the personal representative of the member or its
2836 nominee or designee to the limited liability company as a member,
2837 effective as of the occurrence of the event that terminated the
2838 continued membership of the last remaining member; and

2839 (b) The limited liability company delivers to the
2840 Secretary of State for filing a certificate of revocation of
2841 dissolution, together with a copy of certificate of dissolution,
2842 that sets forth:

2843 (i) The name of the limited liability company;

2844 (ii) The effective date of the dissolution that
2845 was revoked; and

2846 (iii) The date that the revocation of dissolution
2847 was authorized.



2848 (c) The revocation of dissolution is effective upon the
2849 date of the certificate of revocation of dissolution is filed, but
2850 the revocation shall relate back to and take effect as of the
2851 effective date of the dissolution and any liability incurred by
2852 the limited liability company or a member after the dissolution
2853 and before the revocation shall be determined as if the
2854 dissolution had never occurred; and the limited liability company
2855 may resume or continue carrying on its business as if dissolution
2856 had never occurred.

2857 **Section 79-29-831. Effect of dissolution.** (1) The
2858 dissolution of a limited liability company does not terminate the
2859 authority of the registered agent of the limited liability
2860 company.

2861 (2) The administrative dissolution of a limited liability
2862 company shall not impair the validity on any contract, deed,
2863 mortgage, security interest, lien or act of such limited liability
2864 company or prevent such limited liability company from defending
2865 any action, suit or proceeding with any court of this state.

2866 (3) A member, manager or officer of a limited liability
2867 company is not liable for the debts, obligations or liabilities of
2868 such limited liability company solely by reason of the
2869 administrative dissolution of a limited liability company.

2870 (4) A limited liability company that has been
2871 administratively dissolved may not maintain any action, suit or
2872 proceeding in any court of this state until such limited liability
2873 company is reinstated. An action, suit or proceeding may not be
2874 maintained in any court of this state by any successor or assignee
2875 of such limited liability company on any right, claim or demand
2876 arising out the transaction of business by such limited liability
2877 company after the administrative dissolution.

2878 (5) A limited liability company that is dissolved pursuant
2879 to Section 79-29-801 or 79-29-803 continues its legal existence
2880 but may carry on only business necessary or appropriate to wind up



2881 and liquidate its business and affairs under Section 79-29-809 and
2882 to notify claimants under Sections 79-29-817 and 79-29-819.

2883 ARTICLE 9.

2884 PROFESSIONAL LIMITED LIABILITY COMPANIES

2885 **Section 79-29-901. Applicability of remaining articles of**
2886 **chapter.** The other provisions of this chapter apply to
2887 professional limited liability companies, both domestic and
2888 foreign, to the extent not inconsistent with the provisions of
2889 this article.

2890 **Section 79-29-902. Article definitions.** As used in this
2891 article, unless the context requires otherwise:

2892 (a) "Disqualified person" means an individual, general
2893 partnership, professional limited liability company, professional
2894 limited liability partnership or other entity that for any reason
2895 is or becomes ineligible under this article to be a member of a
2896 professional limited liability company.

2897 (b) "Domestic professional limited liability company"
2898 means a professional limited liability company.

2899 (c) "Foreign professional limited liability company"
2900 means a limited liability company formed for the purpose of
2901 rendering professional services under a law other than the law of
2902 this state.

2903 (d) "Law" includes rules promulgated in accordance with
2904 Section 79-29-929.

2905 (e) "Licensing authority" means the office, board,
2906 agency, court or other authority in this state empowered to
2907 license or otherwise authorize the rendition of a professional
2908 service.

2909 (f) "Professional limited liability company" means a
2910 limited liability company, other than a foreign professional
2911 limited liability company, subject to the provisions of this
2912 article.



2913 (g) "Professional service" means a service that may be
2914 lawfully rendered only by a person licensed or otherwise
2915 authorized by a licensing authority in this state to render the
2916 service, including, without limitation, certified public
2917 accountants, dentists, architects, veterinarians, osteopaths,
2918 physicians, surgeons and attorneys-at-law.

2919 (h) "Qualified person" means an individual, general
2920 partnership, professional limited liability company, professional
2921 limited liability partnership or other entity that is eligible
2922 under this article to be a member of a professional limited
2923 liability company.

2924 **Section 79-29-903. Election of professional limited**
2925 **liability company status.** (1) One or more persons may form a
2926 professional limited liability company by delivering to the
2927 Secretary of State for filing a certificate of formation which
2928 includes a statement that: (a) it is a professional limited
2929 liability company; and (b) its purpose is to render the specified
2930 professional services.

2931 (2) Nothing in this article shall be construed to require a
2932 person rendering professional services in this state to render
2933 such services through a professional limited liability company or
2934 foreign professional limited liability company unless a law of
2935 this state other than this article so requires.

2936 **Section 79-29-904. Purposes.** (1) Except to the extent
2937 authorized by subsection (2), a limited liability company may
2938 elect professional limited liability company status under Section
2939 79-29-903 solely for the purpose of rendering professional
2940 services, including services ancillary to them, and solely within
2941 a single profession.

2942 (2) A limited liability company may elect professional
2943 limited liability company status under Section 79-29-903 for the
2944 purpose of rendering professional services within two (2) or more
2945 professions, and for the purpose of engaging in any lawful



2946 business authorized by Section 79-29-117(1) to the extent the
2947 combination of professional purposes or of professional and
2948 business purposes is not prohibited by the licensing law of this
2949 state applicable to each profession in the combination.

2950 **Section 79-29-905. General powers.** (1) Except as provided
2951 in subsection (2) of this section, a professional limited
2952 liability company has the powers enumerated in Section
2953 79-29-117(2).

2954 (2) A professional limited liability company may be a
2955 promoter, general partner, member, associate or manager of a
2956 partnership, joint venture, trust or other entity only if the
2957 entity is engaged solely in rendering professional services or in
2958 carrying on business authorized by the professional limited
2959 liability company's certificate of formation and not prohibited by
2960 the licensing laws applicable to each profession rendering
2961 services through the professional limited liability company.

2962 **Section 79-29-906. Rendering professional services.** (1) A
2963 domestic or foreign limited liability company may render
2964 professional services in this state only through individuals
2965 licensed or otherwise authorized in this state to render the
2966 services.

2967 (2) Subsection (1) does not:

2968 (a) Require an individual employed by a professional
2969 limited liability company to be licensed to perform services for
2970 the limited liability company if a license is not otherwise
2971 required;

2972 (b) Prohibit a licensed individual from rendering
2973 professional services in the individual's capacity although the
2974 individual is a member, manager, employee or agent of a domestic
2975 or foreign professional limited liability company;

2976 (c) Prohibit an individual licensed in another state
2977 from rendering professional services for a domestic or foreign



2978 professional limited liability company in this state if not
2979 prohibited by the licensing authority.

2980 **Section 79-29-907. Prohibited activities.** (1) A
2981 professional limited liability company may not render any
2982 professional service other than the professional service
2983 authorized by its certificate of formation.

2984 (2) Subsection (1) does not prohibit a professional limited
2985 liability company from investing its funds in real estate,
2986 mortgages, securities, or any other type of investment or from
2987 owning real or personal property appropriate for carrying on its
2988 business.

2989 **Section 79-29-908. Corporate name.** (1) The name of a
2990 domestic professional limited liability company and of a foreign
2991 professional limited liability company authorized to transact
2992 business in this state, in addition to satisfying the requirements
2993 of Sections 79-29-109 and 79-29-1007:

2994 (a) Must contain the words "professional limited
2995 liability company" or the abbreviations "P.L.L.C." or "PLLC";

2996 (b) May not contain language stating or implying that
2997 it is formed for a purpose other than that authorized by Section
2998 79-29-904 and its certificate of formation; and

2999 (c) Must conform with any rule promulgated by the
3000 licensing authority having jurisdiction over a professional
3001 service described in the limited liability company's certificate
3002 of formation.

3003 (2) Sections 79-29-109 and 79-29-1007 do not prevent the use
3004 of a name otherwise prohibited by those sections if it is the
3005 personal name of a member or former member of the domestic or
3006 foreign professional limited liability company or the name of an
3007 individual who was associated with a predecessor of the limited
3008 liability company.

3009 **Section 79-29-909. Who may become members.** (1) No
3010 professional limited liability company organized under the



3011 provisions of this article may have as a member any person other
3012 than:

3013 (a) Individuals who are authorized by law in this or
3014 another state to render a professional service described in the
3015 limited liability company's certificate of formation;

3016 (b) A professional limited liability company, domestic
3017 or foreign, authorized by law in this state to render a
3018 professional service described in the limited liability company's
3019 certificate of formation;

3020 (c) General partnerships in which all the partners are
3021 individuals or entities otherwise authorized by paragraph (a), (b)
3022 or (d) of this subsection (1) to be members of a professional
3023 limited liability company under this article;

3024 (d) A professional limited liability partnership,
3025 domestic or foreign, authorized by law in this state to render a
3026 professional service described in the limited liability
3027 partnership's certificate of registration;

3028 (e) Any other individual or entity not included in
3029 paragraph (a), (b), (c) or (d) of this subsection (1) if expressly
3030 authorized by the licensing authority having jurisdiction over the
3031 professional services described in the certificate of formation of
3032 the professional limited liability company.

3033 (2) A licensing authority with jurisdiction over a
3034 profession may by rule restrict or condition, or revoke in part,
3035 the authority of a professional limited liability company subject
3036 to its jurisdiction to issue membership interests. A rule
3037 promulgated under this section does not, of itself, make a member
3038 of a professional limited liability company at the time the rule
3039 becomes effective a disqualified person.

3040 (3) The certificate of formation may provide for additional
3041 limitations and restrictions on members or for additional
3042 qualifications of members and such limitations, restrictions or
3043 qualifications shall be valid and enforceable in each instance.



3044 (4) Membership interests issued in violation of this section
3045 or a rule promulgated under this section are void.

3046 **Section 79-29-910. Membership interest transfer**

3047 **restrictions.** (1) A member of a professional limited liability
3048 company may transfer the member's membership interests only to
3049 qualified persons. Unless otherwise prohibited by the certificate
3050 of formation or operating agreement, a member of a professional
3051 limited liability company may pledge the member's membership
3052 interest to a qualified person or to a disqualified person.

3053 (2) A transfer of a membership interest made in violation of
3054 subsection (1), except one made by operation of law or court
3055 judgment, is void.

3056 **Section 79-29-911. Compulsory acquisition of membership**

3057 **interests after death or disqualification of a member.** (1) A
3058 professional limited liability company must acquire, or cause to
3059 be acquired by a qualified person, a member's membership interest
3060 if:

3061 (a) The member dies and the successor in interest to
3062 the deceased member is not a qualified person, except as provided
3063 in subsection (3);

3064 (b) The member becomes a disqualified person, except as
3065 provided in subsection (3); or

3066 (c) The membership interest is transferred by operation
3067 of law or court judgment to a disqualified person, except as
3068 provided in subsection (3).

3069 (2) If a price for the membership interest is established in
3070 accordance with the certificate of formation or written operating
3071 agreement or by private agreement, that price controls. If the
3072 price is not so established, the limited liability company shall
3073 acquire the membership interest in accordance with Section
3074 79-29-912. If the disqualified person rejects the limited
3075 liability company's purchase offer made pursuant to Section
3076 79-29-912, either the person or the limited liability company may



3077 commence a proceeding under Section 79-29-913 to determine the
3078 price of the membership interest.

3079 (3) This section does not require the acquisition of
3080 membership interests in the event of disqualification if the
3081 disqualification lasts no more than five (5) months from the date
3082 the disqualification or transfer occurs. A member who becomes a
3083 disqualified person shall notify the limited liability company
3084 promptly.

3085 (4) This section and Section 79-29-912 do not prevent or
3086 relieve a professional limited liability company from paying
3087 pension benefits or other deferred compensation for services
3088 rendered to a former member if otherwise permitted by law.

3089 (5) A provision for the acquisition of membership interests
3090 contained in a professional limited liability company's
3091 certificate of formation or operating agreement, or in a private
3092 agreement, is specifically enforceable.

3093 **Section 79-29-912. Acquisition procedure.** (1) If
3094 membership interests must be acquired under Section 79-29-911, the
3095 professional limited liability company shall deliver a written
3096 notice to the executor or administrator of the estate of its
3097 deceased member, or to the disqualified person or transferee,
3098 offering to purchase the membership interest at a price the
3099 limited liability company believes represents the membership
3100 interests' fair value as of the date of death, disqualification or
3101 transfer. The offer notice must be accompanied by the limited
3102 liability company's balance sheet for the most recent fiscal year
3103 ending prior to the date of death or disqualification, an income
3104 statement for that fiscal year, a reconciliation of members'
3105 capital accounts for that fiscal year, and the latest available
3106 interim financial statements, if any.

3107 (2) The disqualified person has thirty (30) days from the
3108 effective date of the notice to accept the limited liability
3109 company's offer or demand that the limited liability company



3110 commence a proceeding under Section 79-29-913 to determine the
3111 fair value of the disqualified person's membership interest. If
3112 the individual accepts the offer, the limited liability company
3113 shall make payment for the membership interests within sixty (60)
3114 days from the effective date of the offer notice (unless a later
3115 date is agreed on) upon the disqualified person's surrender of his
3116 membership interest to the limited liability company.

3117 (3) After the limited liability company makes payment for
3118 the membership interest, the disqualified person has no further
3119 interest in the limited liability company.

3120 **Section 79-29-913. Court action to appraise membership**

3121 **interests.** (1) If the disqualified member does not accept the
3122 professional limited liability company's offer under Section
3123 79-29-912(2) within the thirty-day period, the member during the
3124 following thirty-day period may deliver a written notice to the
3125 limited liability company demanding that it commence a proceeding
3126 to determine the fair value of the membership interest. The
3127 limited liability company may commence a proceeding at any time
3128 during the sixty (60) days following the effective date of its
3129 offer notice. If it does not do so, the member may commence a
3130 proceeding against the limited liability company to determine the
3131 fair value of the disqualified person's membership interest.

3132 (2) The limited liability company or disqualified member
3133 shall commence the proceeding in the chancery court of the county
3134 where the limited liability company's principal office, or, if
3135 none in this state, its registered office, is located. The
3136 limited liability company shall make the disqualified person a
3137 party to the proceeding as in an action against the disqualified
3138 person's membership interest. The jurisdiction of the court in
3139 which the proceeding is commenced is plenary and exclusive.

3140 (3) The court may appoint one or more persons as appraisers
3141 to receive evidence and recommend decision on the question of fair



3142 value. The appraisers have the power described in the order
3143 appointing them, or in any amendment to it.

3144 (4) The disqualified member is entitled to judgment for the
3145 fair value of the disqualified person's membership interest
3146 determined by the court as of the date of death, disqualification
3147 or transfer, together with interest from that date at a rate found
3148 by the court to be fair and equitable.

3149 (5) The court may order the judgment paid in installments
3150 determined by the court.

3151 (6) "Fair value" means the value of the membership interest
3152 of the professional limited liability company determined:

3153 (a) Using customary and current valuation concepts and
3154 techniques generally employed for similar businesses in the
3155 context of the transaction requiring appraisal; and

3156 (b) Without discounting for lack of marketability or
3157 minority status.

3158 **Section 79-29-914. Court costs and fees of experts. (1)**

3159 The court in an appraisal proceeding commenced under Section
3160 79-29-913 shall determine all costs of the proceeding, including
3161 the reasonable compensation and expenses of appraisers appointed
3162 by the court, and shall assess the costs against the professional
3163 limited liability company. But the court may assess costs against
3164 the disqualified member, in an amount the court finds equitable,
3165 if the court finds the member acted arbitrarily, vexatiously or
3166 not in good faith in refusing to accept the limited liability
3167 company's offer.

3168 (2) The court may also assess the fees and expenses of
3169 counsel and experts for the disqualified member against the
3170 limited liability company and in favor of the member if the court
3171 finds that the fair value of disqualified member's membership
3172 interest substantially exceeded the amount offered by the limited
3173 liability company or that the limited liability company did not
3174 make an offer.



3175 **Section 79-29-915. Cancellation of disqualified membership**
3176 **interests.** If the membership interest of a disqualified person is
3177 not acquired under Section 79-29-912 or 79-29-913 within ten (10)
3178 months after the death of the member or within five (5) months
3179 after the disqualification or transfer, the professional limited
3180 liability company shall immediately cancel the membership interest
3181 on its books and the disqualified person has no further interest
3182 as a member in the limited liability company other than the
3183 disqualified member's right to payment of the fair value of the
3184 membership interest under Section 79-29-912 or 79-29-913.

3185 **Section 79-29-917. Voting of membership interests.** (1)
3186 Only a qualified person may be appointed a proxy to vote the
3187 membership interest of a professional limited liability company.

3188 (2) A voting trust with respect to membership interests of a
3189 professional limited liability company is not valid unless all of
3190 its trustees and beneficiaries are qualified persons. If a
3191 beneficiary who is a qualified person dies or becomes
3192 disqualified, a voting trust valid under this subsection continues
3193 to be valid for ten (10) months after the date of death or for
3194 five (5) months after the disqualification occurred.

3195 **Section 79-29-918. Confidential relationship.** (1) The
3196 relationship between an individual rendering professional services
3197 as an employee of a domestic or foreign professional limited
3198 liability company and the individual's client or patient is the
3199 same as if the individual were rendering the services as a sole
3200 practitioner.

3201 (2) The relationship between a domestic or foreign
3202 professional limited liability company and the client or patient
3203 for whom its employee is rendering professional services is the
3204 same as that between the client or patient and the employee.

3205 **Section 79-29-919. Privileged communications.** A privilege
3206 applicable to communications between an individual rendering
3207 professional services and the person receiving the services



3208 recognized under the statute or common law of this state is not
3209 affected by this article. The privilege applies to a domestic or
3210 foreign professional limited liability company and to its
3211 employees in all situations in which it applies to communications
3212 between an individual rendering professional services on behalf of
3213 the limited liability company and the person receiving the
3214 services.

3215 **Section 79-29-920. Responsibility for professional services.**

3216 (1) Each individual who renders professional services as an
3217 employee of a domestic or foreign professional limited liability
3218 company is liable for a negligent or wrongful act or omission in
3219 which the member personally participates to the same extent as if
3220 the member rendered the services as a sole practitioner. A member
3221 or an employee of a domestic or foreign professional limited
3222 liability company is not liable, however, for the conduct of other
3223 members or employees of the limited liability company, except a
3224 person under the member's direct supervision and control, while
3225 rendering professional services on behalf of the professional
3226 limited liability company to the person for whom such professional
3227 services were being rendered.

3228 (2) A domestic or foreign professional limited liability
3229 company whose employees perform professional services within the
3230 scope of their employment or of their apparent authority to act
3231 for the limited liability company is liable to the same extent as
3232 its employees.

3233 **Section 79-29-921. Merger.** (1) If all the members of the
3234 disappearing and surviving limited liability companies, unless
3235 prohibited by certificate of formation or the operating agreement,
3236 are qualified to be members of the surviving limited liability
3237 company, a professional limited liability company may merge with
3238 another domestic or foreign professional limited liability company
3239 or with a domestic or foreign limited liability company.



3240 (2) If the surviving limited liability company is to render
3241 professional services in this state, it must comply with this
3242 article.

3243 **Section 79-29-922. Termination of professional activities.**

3244 If a professional limited liability company ceases to render
3245 professional services, it must amend its certificate of formation
3246 to delete references to rendering professional services and to
3247 conform its name to the requirements of Section 79-29-109. After
3248 the amendment becomes effective the limited liability company may
3249 continue in existence as a limited liability company under this
3250 chapter other than the provisions of this article.

3251 **Section 79-29-923. Judicial dissolution.** The Attorney
3252 General may commence a proceeding under Section 79-29-803 to
3253 dissolve a professional limited liability company if:

3254 (a) The Secretary of State or a licensing authority
3255 with jurisdiction over a professional service described in the
3256 limited liability company's certificate of formation serves
3257 written notice on the limited liability company under Section
3258 79-29-125 that it has violated or is violating a provision of this
3259 article;

3260 (b) The limited liability company does not correct each
3261 alleged violation, or demonstrate to the reasonable satisfaction
3262 of the Secretary of State or licensing authority that it did not
3263 occur, within sixty (60) days after service of the notice is
3264 perfected under Section 79-29-125; and

3265 (c) The Secretary of State or licensing authority
3266 certifies to the Attorney General a description of the violation,
3267 that it notified the limited liability company of the violation,
3268 and that the limited liability company did not correct it, or
3269 demonstrate that it did not occur, within sixty (60) days after
3270 perfection of service of the notice.

3271 **Section 79-29-924. Authority to transact business.** (1) A
3272 foreign professional limited liability company may not transact



3273 business in this state until it obtains a certificate of authority
3274 from the Secretary of State.

3275 (2) A foreign professional limited liability company may not
3276 obtain a certificate of authority unless:

3277 (a) Its name satisfies the requirements of Section
3278 79-29-908;

3279 (b) It is formed for one or more of the purposes
3280 described in Section 79-29-904; and

3281 (c) All of its members would be qualified persons if
3282 the foreign professional limited liability company were a domestic
3283 professional limited liability company.

3284 **Section 79-29-925. Application for certificate of authority.**

3285 The application of a foreign professional limited liability
3286 company for a certificate of authority to render professional
3287 services in this state must contain the information called for by
3288 Section 79-29-1003 and in addition include a statement that all of
3289 its members meet the requirements of Section 79-29-924.

3290 **Section 79-29-926. Revocation of certificate of authority.**

3291 The Secretary of State may administratively revoke the certificate
3292 of authority of a foreign professional limited liability company
3293 authorized to transact business in this state if a licensing
3294 authority with jurisdiction over a professional service described
3295 in the limited liability company's certificate of formation
3296 certifies to the Secretary of State that the limited liability
3297 company has violated or is violating a provision of this article
3298 and describes the violation. Such administrative revocation may
3299 be challenged by the foreign professional limited liability
3300 company in the chancery court of the county where the foreign
3301 professional limited liability company maintains its principal
3302 place of business in this state.

3303 **Section 79-29-930. Rulemaking by licensing authority.** Each

3304 licensing authority is empowered to promulgate rules expressly
3305 authorized by this article if the rules are consistent with the



3306 public interest or required by the public health or welfare or by
3307 generally recognized standards of professional conduct.

3308 **Section 79-29-931. Licensing authority's regulatory**
3309 **jurisdiction.** This article does not restrict the jurisdiction of
3310 a licensing authority over individuals rendering a professional
3311 service within the jurisdiction of the licensing authority, nor
3312 does it affect the interpretation or application of any law
3313 pertaining to standards of professional conduct.

3314 **Section 79-29-933. Application to existing professional**
3315 **limited liability companies.** (1) This article does not apply to
3316 a limited liability company now existing or later formed under a
3317 law of this state that is not a professional limited liability
3318 company unless the limited liability company elects professional
3319 limited liability company status under Section 79-29-903.

3320 (2) This article does not affect an existing or future right
3321 or privilege to render professional services through the use of
3322 any other form of business entity.

3323 (3) Unless otherwise specifically provided by an amendment
3324 to the certificate of formation, for professional limited
3325 liability companies in existence on July 1, 1995, Sections
3326 79-29-912, 79-29-913 and 79-29-914 shall be applied by
3327 substituting the term "book value" for the term "fair value" in
3328 such sections only. Book value shall be determined from the books
3329 and records of the professional limited liability company in
3330 accordance with the regular method of accounting used by the
3331 professional limited liability company and shall be determined as
3332 of the end of the month immediately preceding the death or
3333 disqualification of the member.

3334 ARTICLE 10.

3335 FOREIGN LIMITED LIABILITY COMPANIES.

3336 **Section 79-29-1001. Law governing.** (1) Subject to the
3337 Constitution of this state, the laws of the state or country or
3338 other jurisdiction under which a foreign limited liability company



3339 is organized govern its organization and internal affairs and the
3340 liability of its members, and a foreign limited liability company
3341 may not be denied registration by reason of any difference between
3342 those laws and the laws of this state.

3343 (2) A foreign limited liability company shall be subject to
3344 Section 79-29-117 of this chapter.

3345 **Section 79-29-1003. Registrations; application to register**
3346 **foreign limited companies.** (1) Before transacting business in
3347 this state, a foreign limited liability company, including a
3348 foreign limited liability company formed to render professional
3349 services, shall register with the Secretary of State. In order to
3350 register, a foreign limited liability company shall deliver the
3351 application for registration of foreign limited liability company
3352 to the Office of the Secretary of State for filing, signed by a
3353 person with authority to do so under the laws of the state,
3354 country or other jurisdiction of its formation who is either a
3355 member, manager or officer of the limited liability company and
3356 setting forth:

3357 (a) The name of the foreign limited liability company
3358 which must meet the requirements of Section 79-29-1007 and, if
3359 different, the name under which it proposes to transact business
3360 in this state which must meet the requirements of Section
3361 79-29-1007;

3362 (b) The state or other jurisdiction and date of its
3363 formation and a statement that, as of the date of filing, the
3364 foreign limited liability company validly exists as a limited
3365 liability company under the laws of the jurisdiction of its
3366 formation;

3367 (c) The name and street and mailing address of the
3368 registered agent for service of process on the foreign limited
3369 liability company which the foreign limited liability company has
3370 elected to appoint and who meets the requirements of Section
3371 79-29-113(1) (b);



3372 (d) A statement that the Secretary of State is
3373 appointed the registered agent of the foreign limited liability
3374 company for service of process if the registered agent's authority
3375 has been revoked or if the registered agent cannot be found or
3376 served with the exercise of reasonable diligence;

3377 (e) The date on which the foreign limited liability
3378 company first did, or intends to do, business in the State of
3379 Mississippi.

3380 (f) The address of the office required to be maintained
3381 in the state or other jurisdiction of its formation by the laws of
3382 that state or other jurisdiction or, if not so required, the
3383 address of the principal office of the foreign limited liability
3384 company;

3385 (g) If the limited liability company is to have a
3386 specific date of dissolution, the latest date upon which the
3387 foreign limited liability company is to dissolve; and

3388 (h) Any other matters the manager or members determine
3389 to include therein.

3390 The person signing the application shall state the person's
3391 name, the capacity in which the person signs and the street and
3392 mailing address of the person beneath or opposite the person's
3393 signature. A document required or permitted to be delivered to
3394 the Office of the Secretary of State for filing under this chapter
3395 which contains a copy of a signature, however made, is acceptable
3396 for filing by the Secretary of State.

3397 (2) The foreign limited liability company shall deliver with
3398 the completed application a certificate of existence, or a
3399 document of similar import, duly authenticated by the secretary of
3400 state or other public official having custody of corporate records
3401 in the state or country under whose law it is formed.

3402 **Section 79-29-1005. Issuance of registration.** If the
3403 Secretary of State finds that an application for registration
3404 meets the requirements of Sections 79-29-1003 and 79-29-1007 and



3405 all requisite fees as provided in Section 79-29-1203 have been
3406 paid, the Secretary of State shall:

3407 (a) Certify that the application has been filed in the
3408 Secretary of State's Office by endorsing upon the signed
3409 application the word "Filed" and the date and time of the filing.
3410 This endorsement is conclusive evidence of the date and time of
3411 its filing in the absence of actual fraud;

3412 (b) File the application; and

3413 (c) Return a copy to the person who delivered it for
3414 filing or that person's representative.

3415 **Section 79-29-1007. Name.** A foreign limited liability
3416 company shall register with the Secretary of State under any name,
3417 whether or not it is the name under which it is registered in its
3418 state of organization, that includes the words "limited liability
3419 company" or the abbreviation "L.L.C." or "LLC" and that could be
3420 registered by a domestic limited liability company.

3421 **Section 79-29-1009. Changes and amendments.** If any
3422 statement, arrangements or other facts described in the
3423 application for registration of a foreign limited liability
3424 company have changed, making the application inaccurate in any
3425 respect, the foreign limited liability company shall promptly
3426 amend the application by delivering to the Office of the Secretary
3427 of State for filing a certificate of amendment that includes the
3428 amendment to the certificate correcting such statement, signed and
3429 acknowledged by a person authorized to do so under the laws of the
3430 state or other jurisdiction of its formation who is either a
3431 member, manager or officer of the limited liability company,
3432 together with a fee as set forth in Section 79-29-1203.

3433 **Section 79-29-1011. Cancellation of registration.** (1) A
3434 foreign limited liability company registered under this chapter
3435 shall cancel its registration upon completion of the winding up of
3436 its affairs.



3437 (2) A foreign limited liability company may cancel its
3438 registration whenever it ceases transacting business in this
3439 state.

3440 (3) Registration is canceled by delivering to the Office of
3441 the Secretary of State for filing a certificate of cancellation
3442 signed by a person authorized to do so under the laws of the state
3443 or other jurisdiction of its formation and paying the fee set
3444 forth in Section 79-29-1203.

3445 (4) A cancellation revokes the authority of the registered
3446 agent for service of process designated pursuant to Section
3447 79-29-1003 and operates as a consent that the Secretary of State
3448 may accept service of process on the foreign limited liability
3449 company with respect to causes of action arising out of the
3450 transaction of business in this state.

3451 **Section 79-29-1013. Transaction of business without**
3452 **registration.** (1) A foreign limited liability company
3453 transacting business in this state may not maintain any action,
3454 suit, or proceeding in any court of this state until it has
3455 registered in this state.

3456 (2) The failure of a foreign limited liability company to
3457 register in this state does not:

3458 (i) Impair the validity of any contract or act of the
3459 foreign limited liability company;

3460 (ii) Impair the right of any other party to the
3461 contract to maintain any action, suit or proceeding on the
3462 contract; or

3463 (iii) Prevent the foreign limited liability company
3464 from defending any action, suit, or proceeding in any court of
3465 this state.

3466 (3) A member of a foreign limited liability company is not
3467 liable for the debts, obligations or liabilities of the foreign
3468 limited liability company solely by reason of the foreign limited



3469 liability company having transacted business in this state without
3470 registration.

3471 (4) By transacting business in this state without
3472 registration, a foreign limited liability company appoints the
3473 Secretary of State as its registered agent for service of process
3474 with respect to causes of action arising out of the transaction of
3475 business in this state.

3476 **Section 79-29-1015. Transactions not constituting**
3477 **transacting business.** (1) The following activities of a foreign
3478 limited liability company, among others, do not constitute
3479 transacting business in this state within the meaning of this
3480 article:

3481 (a) Maintaining, defending, or settling any proceeding;

3482 (b) Holding meetings of its members or managers or
3483 carrying on any other activities concerning its internal affairs;

3484 (c) Maintaining bank accounts;

3485 (d) Maintaining offices or agencies for the transfer,
3486 exchange and registration of the foreign limited liability
3487 company's own securities or interests or maintaining trustees or
3488 depositories with respect to those securities or interests;

3489 (e) Selling through independent contractors;

3490 (f) Soliciting or obtaining orders, whether by mail or
3491 through employees or agents or otherwise, if the orders require
3492 acceptance outside this state before they become contracts;

3493 (g) Creating or acquiring indebtedness, mortgages, and
3494 security interests in real or personal property;

3495 (h) Securing or collecting debts or enforcing mortgages
3496 and security interests in property securing the debts and holding,
3497 protecting and maintaining property so acquired;

3498 (i) Owning, without more, real or personal property;

3499 (j) Conducting an isolated transaction that is
3500 completed within thirty (30) days and that is not one in the
3501 course of repeated transactions of a like nature; or



3502 (k) Transacting business in interstate commerce.

3503 (2) A foreign limited liability company shall not be
3504 considered to be transacting business in this state solely because
3505 it:

3506 (a) Is a shareholder in a corporation or a foreign
3507 corporation that transacts business in this state;

3508 (b) Is a limited partner of a limited partnership or
3509 foreign limited partnership that is transacting business in this
3510 state; or

3511 (c) Is a member or manager of a limited liability
3512 company or foreign limited liability company that is transacting
3513 business in this state.

3514 (3) This section does not apply in determining the contracts
3515 or activities that may subject a foreign limited liability company
3516 to service of process or taxation in this state or to regulation
3517 under any other law of this state.

3518 (4) A foreign limited liability company which is a general
3519 partner of any general or limited partnership, which partnership
3520 is transacting business in this state, is hereby declared to be
3521 transacting business in this state.

3522 **Section 79-29-1017. Action by Attorney General.** The
3523 Attorney General may bring an action to restrain a foreign limited
3524 liability company from transacting business in this state in
3525 violation of this article.

3526 **Section 79-29-1019. Execution; liability.** Section
3527 79-29-207(4) shall be applicable to foreign limited liability
3528 companies as if they were domestic limited liability companies.

3529 **Section 79-29-1021. Administrative revocation of**
3530 **registration of foreign limited liability company.** (1) The
3531 Secretary of State may commence a proceeding under Section
3532 79-29-1023 to administratively revoke the registration of a
3533 foreign limited liability company authorized to transact business
3534 in this state if:



3535 (a) The foreign limited liability company does not pay
3536 within sixty (60) days after they are due any fees imposed by this
3537 chapter or other law;

3538 (b) The foreign limited liability company does not
3539 deliver its annual report to the Secretary of State within sixty
3540 (60) days after it is due;

3541 (c) The foreign limited liability company is without a
3542 registered agent in this state for sixty (60) days or more;

3543 (d) The foreign limited liability company does not
3544 notify the Secretary of State within sixty (60) days that its
3545 registered agent has been changed or that its registered agent has
3546 resigned;

3547 (e) The Secretary of State receives a duly
3548 authenticated certificate from the secretary of state or other
3549 public official having custody of corporate records in the state
3550 or country under whose law the foreign limited liability company
3551 is organized stating that it has been dissolved or ceased to exist
3552 as the result of a merger; or

3553 (f) A misrepresentation has been made of any material
3554 matter in any application, report, affidavit, or other record
3555 submitted by the foreign limited liability company to the
3556 Secretary of State pursuant to this chapter.

3557 (2) The Secretary of State may not administratively revoke a
3558 registration of a foreign limited liability company unless the
3559 Secretary of State sends the foreign limited liability company
3560 notice of the administrative revocation under Section 79-29-1023,
3561 at least sixty (60) days before its effective date, by a record
3562 addressed to its registered agent, or to the foreign limited
3563 liability company if the foreign limited liability company fails
3564 to appoint and maintain a proper agent in this state. The notice
3565 must specify the cause for the administrative revocation of the
3566 registration. The authority of the foreign limited liability
3567 company to transact business in this state ceases on the effective



3568 date of the administrative revocation unless the foreign limited
3569 liability company cures the failure before that date.

3570 **Section 79-29-1023. Administrative revocation of**
3571 **registration, procedure and effect.** (1) If the Secretary of
3572 State determines that one or more grounds exist under Section
3573 79-29-1021 for administrative revocation of registration, the
3574 Secretary of State shall serve the foreign limited liability
3575 company with written notice of the determination under Section
3576 79-29-125, except that such determination may be served by first
3577 class mail.

3578 (2) If the foreign limited liability company does not
3579 correct each ground for administrative revocation or demonstrate
3580 to the reasonable satisfaction of the Secretary of State that each
3581 ground determined by the Secretary of State does not exist within
3582 sixty (60) days after the service of the notice, the Secretary of
3583 State may administratively revoke the foreign limited liability
3584 company's registration by signing a certificate of administrative
3585 revocation that recites the ground or grounds for administrative
3586 revocation and its effective date. The Secretary of State shall
3587 file the original of the certificate of administrative revocation
3588 and serve the foreign limited liability company with a copy of the
3589 certificate of administrative revocation under Section 79-29-125,
3590 except that such certificate of administrative revocation may be
3591 served by first class mail.

3592 (3) The authority of a foreign limited liability company to
3593 transact business in this state ceases on the date shown on the
3594 certificate of administrative revocation.

3595 (4) The Secretary of State's administrative revocation of a
3596 foreign limited liability company's registration appoints the
3597 Secretary of State the foreign limited liability company's agent
3598 for service of process in any proceeding based on a cause of
3599 action which arose during the time the foreign limited liability
3600 company was authorized to transact business in this state.



3601 Service of process on the Secretary of State under this subsection
3602 is service on the foreign limited liability company. Upon receipt
3603 of process and the payment of the fee specified in Section
3604 79-29-1203, the Secretary of State shall mail a copy of the
3605 process to the foreign limited liability company at the office of
3606 its registered agent, or if the agent has resigned or cannot be
3607 located, at its principal office shown in its most recent
3608 communication received from the foreign limited liability company
3609 stating the current mailing address of its principal office, or,
3610 if none are on file, in its application for registration of
3611 foreign limited liability company.

3612 (5) Administrative revocation of a foreign limited liability
3613 company's registration does not terminate the authority of the
3614 registered agent of the foreign limited liability company.

3615 (6) The administrative revocation of the registration of a
3616 foreign limited liability company shall not impair the validity on
3617 any contract, deed, mortgage, security interest, lien or act of
3618 such foreign limited liability company or prevent such foreign
3619 limited liability company from defending any action, suit or
3620 proceeding with any court of this state.

3621 (7) A member, manager or officer of a foreign limited
3622 liability company is not liable for the debts, obligations or
3623 liabilities of such foreign limited liability company solely by
3624 reason of the administrative revocation of the registration of a
3625 foreign limited liability company.

3626 (8) A foreign limited liability company whose registration
3627 has been administratively revoked may not maintain any action,
3628 suit or proceeding in any court of this state until such foreign
3629 limited liability company's registration has been reinstated. An
3630 action, suit or proceeding may not be maintained in any court of
3631 this state by any successor or assignee of such foreign limited
3632 liability company on any right, claim or demand arising out the



3633 transaction of business by foreign limited liability company after
3634 the administrative revocation.

3635 **Section 79-29-1025. Administrative revocation of**
3636 **registration, appeal and reinstatement.** (1) A foreign limited
3637 liability company whose registration is administratively revoked
3638 under Section 79-29-1021 may apply to the Secretary of State for
3639 reinstatement at any time after the effective date of such
3640 administrative revocation. The application must:

3641 (a) Recite the name of the foreign limited liability
3642 company and the effective date of the administrative revocation;

3643 (b) State that the ground or grounds for administrative
3644 revocation either did not exist or have been eliminated; and

3645 (c) State that the foreign limited liability company's
3646 name satisfies the requirements of Section 79-29-1007.

3647 (2) If the Secretary of State determines that the
3648 application contains the information required by subsection (1) of
3649 this section and that the information is correct, the Secretary of
3650 State shall reinstate the registration of foreign limited
3651 liability company, prepare a certificate of reinstatement that
3652 recites this determination and the effective date of
3653 reinstatement, file the original of the certificate of
3654 reinstatement, and serve the foreign limited liability company
3655 with a copy of the certificate of reinstatement under Section
3656 79-29-125, except that such certificate may be served by first
3657 class mail.

3658 (3) When the reinstatement is effective:

3659 (a) The reinstatement relates back to and takes effect
3660 as of the effective date of the administrative revocation;

3661 (b) Any liability incurred by the foreign limited
3662 liability company or a member after the administrative revocation
3663 and before the reinstatement shall be determined as if the
3664 administrative revocation had never occurred; and



3665 (c) The foreign limited liability company may resume
3666 carrying on its business as if the administrative revocation had
3667 never occurred.

3668 **Section 79-29-1027. Administrative revocation of**
3669 **registration, denial of reinstatement; further review.** (1) If
3670 the Secretary of State denies a foreign limited liability
3671 company's application for reinstatement of the registration
3672 following administrative revocation, the Secretary of State shall
3673 serve the foreign limited liability company with a record that
3674 explains the reason or reasons for denial.

3675 (2) The foreign limited liability company may appeal the
3676 denial of reinstatement to the Chancery Court of the First
3677 Judicial District of Hinds County or the chancery court of the
3678 county where the foreign limited liability company is domiciled
3679 within thirty (30) days after service of the notice of denial is
3680 perfected. The foreign limited liability company appeals by
3681 petitioning the court to set aside the administrative revocation
3682 and attaching to the petition copies of the Secretary of State's
3683 certificate of administrative revocation, the foreign limited
3684 liability company's application for reinstatement and the
3685 Secretary of State's notice of denial.

3686 (3) The court may summarily order the Secretary of State to
3687 reinstate the registration of the foreign limited liability
3688 company or may take other action the court considers appropriate.

3689 (4) The court's final decision may be appealed as in other
3690 civil proceedings.

3691 **Section 79-29-1029. Certificate of authorization.** (1) The
3692 Secretary of State, upon request and payment of the requisite fee,
3693 shall furnish to any person a certificate of authorization for a
3694 foreign limited liability company if the records filed in the
3695 Office of the Secretary of State show that the foreign limited
3696 liability company has registered as a foreign limited liability
3697 company, the registration has not been administratively revoked,



3698 and a certificate of cancellation has not been filed which has
3699 become effective. A certificate of authorization must state:

3700 (a) The foreign limited liability company's name and
3701 any alternate name adopted under Section 79-29-1003(1) (a) for use
3702 in this state;

3703 (b) That the foreign limited liability company is
3704 authorized to transact business in this state;

3705 (c) Whether all fees due under this chapter to the
3706 Secretary of State have been paid;

3707 (d) Whether the foreign limited liability company's
3708 most recent annual report required by Section 79-29-215 has been
3709 filed with the Secretary of State;

3710 (e) Whether a certificate of administrative revocation
3711 of registration has been filed;

3712 (f) Whether a certificate of cancellation of
3713 registration as a foreign limited liability company has been filed
3714 for the limited liability company; and

3715 (g) Other facts of record in the Office of the
3716 Secretary of State which are specified by the person requesting
3717 the certificate.

3718 (2) Subject to any qualification stated in the certificate,
3719 a certificate of authorization issued by the Secretary of State is
3720 conclusive evidence that the foreign limited liability company is
3721 authorized to transact business in this state.

3722 ARTICLE 11.

3723 DERIVATIVE ACTIONS

3724 **Section 79-29-1101. Right to bring action.** A member or an
3725 owner of a financial interest may bring an action in chancery
3726 court in the right of a limited liability company to recover a
3727 judgment in its favor if managers or members with authority to do
3728 so have refused to bring the action or if an effort to cause those
3729 managers or members to bring the action is not likely to succeed.



3730 **Section 79-29-1103. Proper plaintiff.** In a derivative
3731 action, the plaintiff must be a member or an owner of a financial
3732 interest at the time of bringing the action and:

3733 (a) At the time of the transaction of which the
3734 plaintiff complains; or

3735 (b) The plaintiff's status as a member or an owner of a
3736 financial interest had devolved upon the plaintiff by operation of
3737 law or pursuant to the terms of an operating agreement from a
3738 person who was a member or an owner of a financial interest at the
3739 time of the transaction.

3740 A plaintiff may not commence or maintain a derivative
3741 proceeding unless the plaintiff fairly and adequately represents
3742 the interests of the limited liability company in enforcing the
3743 right of the limited liability company.

3744 **Section 79-29-1105. Complaint.** In a derivative action, the
3745 complaint shall set forth with particularity the effort, if any,
3746 of the plaintiff to secure initiation of the action by a manager
3747 or member pursuant to Section 79-29-1101 or the reasons for not
3748 making the effort.

3749 **Section 79-29-1107. Stay of proceedings.** If the limited
3750 liability company commences an inquiry into the allegations made
3751 in the complaint, the court may stay any derivative proceeding for
3752 such period as the court deems appropriate.

3753 **Section 79-29-1109. Dismissal.** (1) A derivative proceeding
3754 shall be dismissed by the court on motion by the limited liability
3755 company if one of the groups specified in subsection (2) or (6) of
3756 this section has determined in good faith, after conducting a
3757 reasonable inquiry upon which its conclusions are based, that the
3758 maintenance of the derivative proceeding is not in the best
3759 interests of the limited liability company.

3760 (2) Unless a panel is appointed pursuant to subsection (6)
3761 of this section, the determination in subsection (1) of this
3762 section shall be made by one (1) of the following:



3763 (a) A majority vote of independent managers present at
3764 a meeting of managers if independent managers constitute a
3765 majority of all managers;

3766 (b) A majority vote of independent members at a meeting
3767 of the members, whether or not such independent members
3768 constituted a majority of all members; or

3769 (c) A majority vote of a committee consisting of two or
3770 more independent managers appointed by the majority vote of
3771 independent managers present at a meeting of managers, whether or
3772 not such independent managers constituted a majority of all
3773 managers.

3774 (3) None of the following shall by itself cause a manager or
3775 member to be considered not independent for purposes of this
3776 section:

3777 (a) The nomination or election of the manager by
3778 persons who are defendants in the derivative proceeding or against
3779 whom action is demanded;

3780 (b) The naming of the manager or member as a defendant
3781 in the derivative proceeding or as a person against whom action is
3782 demanded; or

3783 (c) The approval by the manager or member of the act
3784 being challenged in the derivative proceeding if the act resulted
3785 in no personal benefit to the manager or member.

3786 (4) If a derivative proceeding is commenced after a
3787 determination has been made rejecting a demand by a member, the
3788 complaint shall allege with particularity facts establishing
3789 either:

3790 (a) That a majority of the persons making the
3791 determination under subsection (2) of this section were not
3792 independent at the time the determination was made; or

3793 (b) That the requirements of subsection (1) of this
3794 section have not been met.



3795 (5) If the determination in subsection (1) of this section
3796 is made by a committee pursuant to paragraph (2)(c) of this
3797 section and a majority of managers are not independent at the time
3798 the determination is made, or if the determination in subsection
3799 (1) is made by the members pursuant to paragraph (2)(b) of this
3800 section and a majority of the members are not independent at the
3801 time the determination is made, then the limited liability company
3802 shall have the burden of proving that the requirements of
3803 subsection (1) have been met. In all other cases, the plaintiff
3804 shall have the burden of proving that the requirements of
3805 subsection (1) of this section have not been met.

3806 (6) The court may appoint a panel of one or more independent
3807 persons upon motion by the limited liability company to make a
3808 determination whether the maintenance of the derivative proceeding
3809 is in the best interests of the limited liability company. In
3810 such case, the plaintiff shall have the burden of proving that the
3811 requirements of subsection (1) of this section have not been met.

3812 **Section 79-29-1111. Discontinuance or settlement.** A
3813 derivative proceeding may not be discontinued or settled without
3814 the court's approval. If the court determines that a proposed
3815 discontinuance or settlement will substantially affect the
3816 interests of the limited liability company's members or a class of
3817 members, the court shall direct that notice be given to the
3818 members affected.

3819 **Section 79-29-1113. Payment of expenses.** (1) If a
3820 derivative action is successful, in whole or in part, as a result
3821 of a judgment, compromise or settlement of any such action, the
3822 court may award the plaintiff reasonable expenses, including
3823 reasonable attorney's fees, from any recovery in any such action
3824 or from a limited liability company.

3825 (2) On termination of the derivative proceeding the court
3826 may order the plaintiff to pay any defendant's reasonable
3827 expenses, including reasonable attorney fees, incurred in



3828 defending the proceeding if it finds that the proceeding was
3829 commenced or maintained without reasonable cause or for an
3830 improper purpose.

3831 **Section 79-29-1115. Applicability to foreign limited**

3832 **liability companies.** In any derivative proceeding brought in the
3833 courts of this state in the right of a foreign limited liability
3834 company, the matters covered by this article shall be governed by
3835 this chapter.

3836 ARTICLE 12.

3837 MISCELLANEOUS.

3838 **Section 79-29-1201. Construction and application.** (1) The
3839 rule that statutes in derogation of the common law are to be
3840 strictly construed shall have no application to this chapter.

3841 (2) It is the policy of this chapter to give the maximum
3842 effect to the principle of freedom of contract and to the
3843 enforceability of operating agreements.

3844 (3) Unless the context otherwise requires, as used herein,
3845 the singular shall include the plural and the plural may refer to
3846 the singular. The captions contained herein are for the purposes
3847 of convenience only and shall not control or affect the
3848 construction of this chapter.

3849 (4) As used herein, the words "include," "includes" and
3850 "including" will be deemed to be followed by the phrase "without
3851 limitation," whether or not such phrase is included therein.

3852 **Section 79-29-1203. Fees.** (1) No document required to be
3853 filed under this chapter shall be effective until the applicable
3854 fee required by this section is paid. The following fees shall be
3855 paid to and collected by the Secretary of State for the use of the
3856 State of Mississippi:

3857 (a) Filing of Reservation of Limited Liability Company
3858 Name or Transfer of Reservation, Twenty-Five Dollars (\$25.00).

3859 (b) Filing of Change of Address of Registered Agent,
3860 Twenty-Five Dollars (\$25.00).



3861 (c) Filing of Resignation of Registered Agent, Five
3862 Dollars (\$5.00).

3863 (d) Filing of Certificate of Formation, Fifty Dollars
3864 (\$50.00).

3865 (e) Filing of Amendment to Certificate of Formation,
3866 Fifty Dollars (\$50.00).

3867 (f) Filing of Certificate of Dissolution, Fifty Dollars
3868 (\$50.00).

3869 (g) Filing of Application for Registration of Foreign
3870 Limited Liability Company, Two Hundred Fifty Dollars (\$250.00) and
3871 Ten Dollars (\$10.00) for each day, but not to exceed a total of
3872 One Thousand Dollars (\$1,000.00) for each year the foreign limited
3873 liability company transacts business in this state without a
3874 registration as a foreign limited liability company.

3875 (h) Filing of Certificate of Correction, Fifty Dollars
3876 (\$50.00).

3877 (i) Filing of Certificate of Cancellation of
3878 Registration of Foreign Limited Liability Company, Fifty Dollars
3879 (\$50.00).

3880 (j) [Reserved]

3881 (k) [Reserved]

3882 (l) Certificate of Administrative Dissolution, (no
3883 fee).

3884 (m) Filing of Application for Reinstatement Following
3885 Administrative Dissolution, Fifty Dollars (\$50.00).

3886 (n) Certificate of Administrative Revocation of
3887 Authority to Transact Business, (no fee).

3888 (o) Filing of Application for Reinstatement Following
3889 Administrative Revocation, One Hundred Dollars (\$100.00).

3890 (p) Certificate of Reinstatement Following
3891 Administrative Dissolution, (no fee).



3892 (q) Certificate of Reinstatement Following
3893 Administrative Revocation of Authority to Transact Business, (no
3894 fee).

3895 (r) Filing of Certificate of Revocation of Dissolution,
3896 Twenty-Five Dollars (\$25.00).

3897 (s) Application for Certificate of Existence or
3898 Authorization, Twenty-Five Dollars (\$25.00).

3899 (t) Any other document required or permitted to be
3900 filed under this chapter, Twenty-Five Dollars (\$25.00).

3901 (2) The Secretary of State shall collect a fee of
3902 Twenty-Five Dollars (\$25.00) each time process is served on the
3903 Secretary of State under Sections 79-29-101 et seq.

3904 (3) The Secretary of State shall collect the following fees
3905 for copying and certifying the copy of any filed document relating
3906 to a domestic or foreign limited liability company:

3907 (a) One Dollar (\$1.00) a page for copying; and

3908 (b) Ten Dollars (\$10.00) for the certificate.

3909 (4) The Secretary of State may promulgate rules to:

3910 (a) Reduce the filing fees set forth in this Section or
3911 provide for discounts of fees as set forth in this Section to
3912 encourage online filing of documents or for other reasons as
3913 determined by the Secretary; and

3914 (b) Provide for documents to be filed and accepted on
3915 an expedited basis upon the request of the applicant. The
3916 Secretary may promulgate rules to provide for an additional
3917 reasonable filing fee to be paid by the applicant and collected by
3918 the Secretary for the expedited filing services.

3919 **Section 79-29-1205. Severability.** If any provision of this
3920 chapter or its application to any person or circumstance is held
3921 invalid by a court of competent jurisdiction, the invalidity shall
3922 not affect other provisions or applications of this chapter which
3923 can be given effect without the invalid provision or application,
3924 and to this end the provisions of this chapter are severable.



3957 (a) A domestic limited liability company formed on or
3958 after the effective date of this chapter; and

3959 (b) A foreign limited liability company entity that is
3960 not registered with the Secretary of State to transact business in
3961 this state before the effective date of this chapter.

3962 **Section 79-29-1303. Early effectiveness of fees and annual**
3963 **reports.** (1) On or after the effective date of this chapter, the
3964 fees required by Section 79-29-1203 apply to all filings made with
3965 the Secretary of State, including comparable filings under prior
3966 law, regardless of whether a limited liability company is subject
3967 to or has adopted this chapter. The intent of this section is to
3968 require a filing fee for all documents filed under either this
3969 chapter or the prior law without regard to the difference in
3970 designation of the document.

3971 (2) On or after the effective date of this chapter Section
3972 79-29-215 and Sections 79-29-219, 79-29-821, 79-29-823, 79-29-825,
3973 79-29-827, 79-29-831, 79-29-1021, 79-29-1023, 79-29-1025,
3974 79-29-1027, and 79-29-1029 shall apply to all domestic limited
3975 liability companies formed before or after the effective date of
3976 this chapter and all foreign limited liability companies
3977 registered with the Secretary of State before or after the
3978 effective date of this chapter.

3979 **Section 79-29-1305. Early adoption of this chapter by**
3980 **existing limited liability company.** A domestic limited liability
3981 company formed before the effective date of this chapter may
3982 voluntarily elect to adopt and become subject to this chapter by:

3983 (a) Adopting the chapter by complying with the
3984 procedures for approval, under prior law and its organizational
3985 documents, of an amendment to its certificate of formation;

3986 (b) Amending any noncomplying organizational documents
3987 to comply with this chapter if any of its organizational
3988 documents, including its certificate of formation, do not comply
3989 with this chapter by complying with the procedures, under prior



3990 law and its organizational documents, to amend the noncomplying
3991 organizational documents to comply with this chapter, including
3992 filing with the Secretary of State in accordance with Section
3993 79-29-203 a certificate of amendment to cause its certificate of
3994 formation to comply with this chapter; and

3995 (c) Filing with the Secretary of State in accordance
3996 with Section 79-29-203 a statement that the domestic limited
3997 liability company is electing to adopt this chapter.

3998 **Section 79-29-1307. Early adoption of chapter by registered**
3999 **foreign limited liability company.** A foreign limited liability
4000 company registered with the Secretary of State to transact
4001 business in this state before the effective date of this chapter
4002 may voluntarily elect to adopt and become subject to this chapter
4003 by filing with the Secretary of State in accordance with Section
4004 79-29-203:

4005 (a) A statement that the foreign limited liability
4006 company is electing to adopt this chapter; and

4007 (b) An amendment to its registration of foreign limited
4008 liability company that would cause its certificate of registration
4009 of foreign limited liability company to comply with this chapter.

4010 **Section 79-29-1309. Applicability to existing limited**
4011 **liability companies.** On or after January 1, 2012, such date
4012 referred to in this article as the "mandatory application date",
4013 if a domestic limited liability company formed before the
4014 mandatory application date, or a foreign limited liability company
4015 registered with the Secretary of State to transact business in
4016 this state before the mandatory application date has not taken the
4017 actions specified by Section 79-29-1305 or 79-29-1307 to elect to
4018 adopt this chapter:

4019 (a) This chapter applies to the domestic or foreign
4020 limited liability company and all actions taken by the managers,
4021 officers, or members of the limited liability company, except as
4022 otherwise expressly provided by this article;



4023 (b) A domestic or foreign limited liability company
4024 shall not be considered to have failed to comply with this chapter
4025 if the entity's certificate of formation or application for
4026 registration of foreign limited liability company, as appropriate,
4027 does not comply with the chapter;

4028 (c) A domestic limited liability company shall conform
4029 its certificate of formation to the requirements of this chapter
4030 when it next files an amendment to its certificate of formation;
4031 and

4032 (d) A foreign limited liability company shall conform
4033 its registration of foreign limited liability company to the
4034 requirements of this chapter when it next files an amendment to
4035 its registration of foreign limited liability company.

4036 **Section 79-29-1311. Applicability to certain acts,**
4037 **contracts, and transactions.** Except as otherwise expressly
4038 provided by this article, all of the provisions of this chapter
4039 govern acts, contracts, or other transactions by a limited
4040 liability company subject to this chapter or by its managers,
4041 members or officers that occur on or after the mandatory
4042 application date. Unless the limited liability company has
4043 elected to be subject to the Revised Act prior to the mandatory
4044 application date the prior law governs the acts, contracts, or
4045 transactions of the limited liability company or its managers,
4046 members or officers that occur before the mandatory application
4047 date.

4048 **Section 79-29-1313. Indemnification.** Section 79-29-123
4049 governs any proposed indemnification by a limited liability
4050 company after the mandatory application date, regardless of
4051 whether the events on which the indemnification is based occurred
4052 before or after the mandatory application date. In a case in
4053 which indemnification is permitted but not required under Section
4054 79-29-123, a provision relating to indemnification contained in
4055 the organizational documents of a limited liability company on the



4056 mandatory application date that would otherwise have the effect of
4057 limiting the nature or type of indemnification permitted by
4058 Section 79-29-123 may not be construed after the mandatory
4059 application date as limiting the indemnification authorized by
4060 Section 79-29-123 unless the provision so intended to limit or
4061 restrict permissive indemnification under applicable law.

4062 **Section 79-29-1315. Dissolution.** (1) (a) Section
4063 79-29-803 applies to an action for judicial dissolution commenced
4064 after the mandatory application date; or

4065 (b) Section 79-29-801 applies to a voluntary
4066 dissolution initiated after the mandatory application date.

4067 (2) The prior law governs:

4068 (a) An action described by subsection (1)(a) of this
4069 section that is pending on the mandatory application date; or

4070 (b) a proceeding described by subsection (1)(b) of this
4071 section initiated before the mandatory application date.

4072 **Section 79-29-1317. Maintenance of prior action.** Except as
4073 expressly provided by this chapter, this chapter does not apply to
4074 an action or proceeding commenced before the mandatory application
4075 date. Prior law applies to the action or proceeding.

4076 **SECTION 2.** Sections 79-29-101, 79-29-102, 79-29-103,
4077 79-29-104, 79-29-105, 79-29-106, 79-29-107, 79-29-108, 79-29-109,
4078 79-29-110, 79-29-111, 79-29-112, 79-29-201, 79-29-202, 79-29-203,
4079 79-29-204, 79-29-205, 79-29-206, 79-29-207, 79-29-208, 79-29-209,
4080 79-29-210, 79-29-211, 79-29-212, 79-29-213, 79-29-214, 79-29-301,
4081 79-29-302, 79-29-303, 79-29-304, 79-29-305, 79-29-306, 79-29-307,
4082 79-29-308, 79-29-401, 79-29-402, 79-29-403, 79-29-501 79-29-502,
4083 79-29-503, 79-29-504, 79-29-601, 79-29-602, 79-29-603, 79-29-604,
4084 79-29-605, 79-29-606, 79-29-701, 79-29-702, 79-29-703, 79-29-704,
4085 79-29-705, 79-29-801, 79-29-802, 79-29-803, 79-29-804, 79-29-805,
4086 79-29-806, 79-29-807, 79-29-901, 79-29-902, 79-29-903, 79-29- 904,
4087 79-29-905, 79-29-906, 79-29-907, 79-29-908, 79-29-909, 79-29-910,
4088 79-29-911, 79-29-912, 79-29-913, 79-29-914, 79-29-915, 79-29-917,



4089 79-29-918, 79-29-919, 79-29-920, 79-29-921, 79-29-922, 79-29-923,
4090 79-29-924, 79-29-925, 79-29-926, 79-29-930, 79-29-931, 79-29-933,
4091 79-29-1001, 79-29-1002, 79-29-1003, 79-29-1004, 79-29-1005,
4092 79-29-1006, 79-29-1007, 79-29-1008, 79-29-1009, 79-29-1010,
4093 79-29-1101, 79-29-1102, 79-29-1103, 79-29-1104, 79-29-1105,
4094 79-29-1106, 79-29-1107, 79-29-1201, 79-29-1202, 79-29-1203, and
4095 79-29-1204, Mississippi Code of 1972, which comprise the
4096 Mississippi Limited Liability Company Act, are hereby repealed.

4097 **SECTION 3.** This act shall take effect and be in force from
4098 and after January 1, 2011.

