

**Adopted
AMENDMENT NO 1 PROPOSED TO**

Cmte Sub for Senate Bill No. 2608

BY: Senator(s) England

1 **AMEND** on line 10, by adding the following after the
2 **semicolon:**

3 TO AMEND SECTION 79-29-105, MISSISSIPPI CODE OF 1972, TO CONFORM;

4 **FURTHER, AMEND** on line 57 by adding a new Section 4 using the
5 **following language:**

6 **SECTION 4.** Section 79-29-105, Mississippi Code of 1972, is
7 amended as follows:

8 79-29-105. As used in this chapter, unless the context
9 otherwise requires:

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



13 (b) "Certificate of formation" means the certificate
14 referred to in Section 79-29-201, the certificate as amended or
15 restated, and the certificate of merger. In the case of a foreign
16 limited liability company, the term includes all documents serving
17 a similar function that are required to be filed to form the
18 limited liability company in the state or other jurisdiction where
19 it is organized.

20 (c) "Contribution" means any cash, property, services
21 rendered, or a promissory note or other obligation to contribute
22 cash or property or to perform services, which a person
23 contributes to a limited liability company in the person's
24 capacity as a member.

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

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

35 (f) "Electronic transmission" or "electronically
36 transmitted" means any process of communication not directly
37 involving the physical transfer of paper that is suitable for the



38 retention, retrieval and reproduction of information by the
39 recipient.

40 (g) "Entity" means any association or legal entity
41 organized to conduct business, whether domestic or foreign,
42 including, without limitation, for-profit and nonprofit
43 corporations, limited partnerships, general partnerships, limited
44 liability partnerships, limited liability companies, joint
45 ventures, joint-stock companies, business trusts and estates; and
46 states, the United States, foreign governments, governmental
47 subdivisions or governmental agencies.

48 (h) "Financial interests" and "financial rights" means
49 (i) rights to share in profits and losses as provided in Section
50 79-29-505; (ii) rights to share in distributions as provided in
51 Section 79-29-507; (iii) rights to receive interim distributions
52 as provided in Section 79-29-601; (iv) rights to receive
53 distributions upon withdrawal as provided in Section 79-29-603;
54 (v) rights to receive allocations of income, loss, deduction,
55 credit or similar items; (vi) appraisal rights as provided in
56 Section 79-29-231; and (vii) any other rights granted in the
57 certificate of formation or the operating agreement that are in
58 addition to the above and are designated as "financial interests"
59 or "financial rights" by the limited liability company. Financial
60 interests may be owned by members of a limited liability company
61 and may be owned by persons who are not members of a limited
62 liability company. Financial interests are assignable in whole or



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

65 (i) "Foreign," with reference to any entity, means such
66 entity that is formed or organized under laws other than the laws
67 of this state or under the laws of any foreign country or other
68 foreign jurisdiction and denominated as such under the laws of
69 such state or foreign country or other foreign jurisdiction.

70 (j) "Formation document" means the document that
71 creates an entity which document is duly executed and delivered to
72 a public official or office in the state or other foreign
73 jurisdiction of the entity's formation pursuant to the laws under
74 which the entity is organized or formed.

75 (k) "Governance interests" or "governance rights" means
76 all of a member's rights as a member in the limited liability
77 company other than financial rights and the right to assign
78 financial rights, including without limitation: (i) the rights to
79 participate in the management of the limited liability company;
80 (ii) rights to bind the limited liability company as provided in
81 Sections 79-29-307 and 79-29-811; (iii) the right to vote for or
82 consent to matters requiring the vote of or consent of the
83 members, as specified in this chapter or in the certificate of
84 formation or operating agreement; and, unless the context
85 otherwise requires; and (iv) rights to enjoy any privileges
86 bestowed on members of the limited liability company. Only



87 members shall have governance rights or own governance interests
88 in a limited liability company.

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

90 (m) "Interests" means the proprietary interests in an
91 entity and, with respect to a member of a limited liability
92 company, "interests" or "membership interests" are used
93 interchangeably and shall each mean all of the governance
94 interests and financial interests in the limited liability company
95 held by such member or members.

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

98 (o) "Limited liability company" or "domestic limited
99 liability company" means an entity having one or more members that
100 is an unincorporated company or unincorporated association formed
101 and existing under this chapter and is not subject to
102 Section * * * 1 of this act.

103 (p) "Manager" or "managers" means a person or persons
104 who are named in or selected or designated pursuant to, the
105 certificate of formation or operating agreement as a manager to
106 manage the limited liability company to the extent and as provided
107 in the certificate of formation or operating agreement. A limited
108 liability company whose management is vested in a manager or
109 managers is referred to in this chapter as a manager-managed
110 limited liability company.



111 (q) "Member" means a person who has been admitted to a
112 limited liability company as provided in Section 79-29-301 or, in
113 the case of a foreign limited liability company, in accordance
114 with the laws under which the foreign limited liability company is
115 organized. A member includes a member of a limited liability
116 company who does not own a financial interest or who does not have
117 an obligation to contribute capital to the limited liability
118 company. A member may or may not have governance interests,
119 including voting rights. A member may have other rights, powers
120 or privileges as prescribed by the certificate of formation or the
121 operating agreement. A limited liability company whose management
122 is vested in the members is referred to in this chapter as a
123 member-managed limited liability company.

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

126 (s) "Officer" means an individual who is named in or
127 selected or designated pursuant to, the certificate of formation
128 or operating agreement as an officer to manage the limited
129 liability company to the extent and as provided in the certificate
130 of formation or operating agreement.

131 (t) "Operating agreement" or "limited liability company
132 agreement" means any agreement, whether referred to as a limited
133 liability company agreement or otherwise, written, oral or
134 implied, of the member or members as to the affairs of a limited
135 liability company and the conduct of its business. A member or



136 manager of a limited liability company or an assignee of a
137 financial interest is bound by the operating agreement whether or
138 not the member or manager or assignee executes the operating
139 agreement. A limited liability company is not required to execute
140 its operating agreement. A limited liability company is bound by
141 its operating agreement whether or not the limited liability
142 company executes the operating agreement. An operating agreement
143 of a limited liability company having only one (1) member shall
144 not be unenforceable by reason of there being only one (1) person
145 who is a party to the operating agreement. An operating agreement
146 may provide rights to any person, including a person who is not a
147 party to the operating agreement, to the extent set forth therein.
148 A written operating agreement or another written agreement or
149 writing:

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

154 1. If the person, or a representative
155 authorized by the person orally, in writing or by other action
156 such as payment for a financial interest, executes the operating
157 agreement or any other writing evidencing the intent of the person
158 to become a member or assignee; or

159 2. Without such execution, if such person, or
160 a representative authorized by such person orally, in writing or



161 by other action such as payment for a financial interest, complies
162 with the conditions for becoming a member or assignee as set forth
163 in the operating agreement or any other writing; and

164 (ii) Shall not be unenforceable by reason of its
165 not having been signed by a person being admitted as a member or
166 becoming an assignee as provided in paragraph (t)(i) of this * * *
167 section, or by reason of its having been signed by a
168 representative as provided in this chapter.

169 (u) "Organizational documents" means the document or
170 documents that create, or determine the internal governance of, an
171 entity. The organizational documents of a limited liability
172 company are the certificate of formation and the operating
173 agreement, if any.

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

176 (w) "Personal representative" means, as to an
177 individual, the executor, administrator, guardian, conservator or
178 other legal representative thereof or the successor of such
179 executor, administrator, guardian, conservator or legal
180 representative; and, as to a person other than an individual, the
181 legal representative or the successor of the legal representative.
182 The legal representative of a member which has been placed in
183 bankruptcy shall be the bankruptcy trustee or other representative
184 designated in accordance with the bankruptcy code.



185 (x) "Professional limited liability company" is a
186 limited liability company formed and existing under Article 9 of
187 this chapter.

188 (y) "Sign" or "signature" includes any manual,
189 facsimile, conformed or electronic signature.

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

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

196 (bb) "Withdraw" or "withdrawal" means, with respect to
197 a member of a limited liability company, any voluntary act by
198 which, pursuant to the certificate of formation or written
199 operating agreement, a member ceases to be a member of the limited
200 liability company and ceases to have any governance rights.
201 Withdrawal shall include retirement, resignation or withdrawal,
202 but shall not include the death or expulsion of a member, any
203 event described in Section 79-29-313, or the assignment of the
204 member's entire interest as provided in Section 79-29-703. Any
205 use of the term "resignation" or "retirement" in an operating
206 agreement or certificate of formation, with respect to a member
207 which is not defined in such document, shall mean the withdrawal
208 of the member from the limited liability company for purposes of
209 this chapter.



210 **FURTHER, AMEND by renumbering subsequent sections**
211 **accordingly.**

