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Chapter No. 399
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SENATE BILL NO. 2322

Originated in Senate

Lyn Welch

Secretary

SENATE BILL NO. 2322

AN ACT TO CREATE THE MISSISSIPPI ENTITY CONVERSION AND DOMESTICATION ACT; TO CREATE NEW SECTION 79-37-101, MISSISSIPPI CODE OF 1972, TO SET FORTH A SHORT TITLE; TO CREATE NEW SECTION 79-37-102, MISSISSIPPI CODE OF 1972, TO ENACT DEFINITIONS; TO CREATE NEW SECTION 79-37-103, MISSISSIPPI CODE OF 1972, TO SPECIFY THE RELATIONSHIP OF THE ACT TO OTHER LAWS; TO CREATE NEW SECTION 79-37-104, MISSISSIPPI CODE OF 1972, TO SPECIFY WHEN NOTICE OR APPROVAL IS REQUIRED; TO CREATE NEW SECTION 79-37-105, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR FILING STATUS; TO CREATE NEW SECTION 79-37-106, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE ACT IS NOT EXCLUSIVE; TO CREATE NEW SECTION 79-37-107, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PLAN MAY REFER TO ASCERTAINABLE OUTSIDE FACTS; TO CREATE NEW SECTION 79-37-108, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR ALTERNATIVE MEANS OF APPROVAL OF TRANSACTIONS; TO CREATE NEW SECTION 79-37-109, MISSISSIPPI CODE OF 1972, TO OUTLINE APPRAISAL RIGHTS; TO CREATE NEW SECTION 79-37-110, MISSISSIPPI CODE OF 1972, TO BE RESERVED FOR FUTURE ENACTMENT; TO CREATE NEW SECTION 79-37-111, MISSISSIPPI CODE OF 1972, TO SET FORTH REQUIREMENTS FOR DOCUMENTS; TO CREATE NEW SECTION 79-37-112, MISSISSIPPI CODE OF 1972, TO SET FEES; TO CREATE NEW SECTION 79-37-113, MISSISSIPPI CODE OF 1972, TO PROVIDE THE EFFECTIVE DATE OF DOCUMENTS; TO CREATE NEW SECTION 79-37-114, MISSISSIPPI CODE OF 1972, TO ALLOW FOR CORRECTIONS TO A FILED DOCUMENT; TO CREATE NEW SECTION 79-37-115, MISSISSIPPI CODE OF 1972, TO SET FORTH THE FILING DUTY OF THE SECRETARY OF STATE; TO CREATE NEW SECTION 79-37-116, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPEAL OF THE SECRETARY'S REFUSAL TO FILE A DOCUMENT; TO CREATE NEW SECTION 79-37-117, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE EVIDENTIARY EFFECT OF A FILED COPY; TO CREATE NEW SECTION 79-37-118, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE PENALTY

FOR SIGNING A FALSE DOCUMENT; TO CREATE NEW SECTION 79-37-119, MISSISSIPPI CODE OF 1972, TO GRANT TO THE SECRETARY OF STATE POWERS REASONABLY NECESSARY TO ENFORCE THE ACT; TO CREATE NEW SECTION 79-37-401, MISSISSIPPI CODE OF 1972, TO AUTHORIZE CONVERSION OF ENTITIES TO A DIFFERENT FORM; TO CREATE NEW SECTION 79-37-402, MISSISSIPPI CODE OF 1972, TO SET FORTH REQUIREMENTS FOR A PLAN OF CONVERSION; TO CREATE NEW SECTION 79-37-403, MISSISSIPPI CODE OF 1972, TO REQUIRE APPROVAL OF A PLAN OF CONVERSION; TO CREATE NEW SECTION 79-37-404, MISSISSIPPI CODE OF 1972, TO ALLOW AMENDMENT OR ABANDONMENT OF A PLAN OF CONVERSION; TO CREATE NEW SECTION 79-37-405, MISSISSIPPI CODE OF 1972, TO SET FORTH THE REQUIREMENTS FOR A VALID STATEMENT OF CONVERSION; TO CREATE NEW SECTION 79-37-406, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE EFFECT OF A CONVERSION; TO CREATE NEW SECTION 79-37-501, MISSISSIPPI CODE OF 1972, TO AUTHORIZE DOMESTICATION OF A FOREIGN ENTITY; TO CREATE NEW SECTION 79-37-502, MISSISSIPPI CODE OF 1972, TO SET FORTH REQUIREMENTS FOR A PLAN OF DOMESTICATION; TO CREATE NEW SECTION 79-37-503, MISSISSIPPI CODE OF 1972, TO REQUIRE APPROVAL OF A PLAN OF DOMESTICATION; TO CREATE NEW SECTION 79-37-504, MISSISSIPPI CODE OF 1972, TO ALLOW AMENDMENT OR ABANDONMENT OF A PLAN OF DOMESTICATION; TO CREATE NEW SECTION 79-37-505, MISSISSIPPI CODE OF 1972, TO SET FORTH THE REQUIREMENTS FOR A VALID STATEMENT OF DOMESTICATION; TO CREATE NEW SECTION 79-37-506, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE EFFECT OF A DOMESTICATION; TO CREATE NEW SECTION 79-37-601, MISSISSIPPI CODE OF 1972, TO PROMOTE CONSISTENCY OF THE LAW WITH REGARD TO OTHER STATES ENACTING SUCH AN ACT; TO CREATE NEW SECTION 79-37-602, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE RELATIONSHIP OF THIS ACT TO THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT; TO CREATE NEW SECTION 79-37-603, MISSISSIPPI CODE OF 1972, TO CREATE A SAVINGS CLAUSE; TO CREATE SECTION 79-37-604, MISSISSIPPI CODE OF 1972, TO CREATE A SEPARATE SEVERABILITY CLAUSE; TO AMEND SECTION 79-4-13.02, MISSISSIPPI CODE OF 1972, TO CONFORM THE BUSINESS CORPORATION ACT; TO AMEND SECTIONS 79-13-101, 79-13-401, 79-13-502 AND 79-13-908, MISSISSIPPI CODE OF 1972, TO CONFORM THE UNIFORM PARTNERSHIP ACT; TO AMEND SECTIONS 79-14-101, 79-14-105, 79-14-201, 79-14-202, 79-14-204 AND 79-14-701, MISSISSIPPI CODE OF 1972, TO CONFORM THE UNIFORM LIMITED PARTNERSHIP ACT; TO AMEND SECTION 79-29-123, MISSISSIPPI CODE OF 1972, TO CONFORM THE LIMITED LIABILITY COMPANY ACT; TO REPEAL SECTION 79-13-902, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR CONVERSION OF A PARTNERSHIP TO A LIMITED PARTNERSHIP; TO REPEAL SECTION 79-13-903, MISSISSIPPI CODE OF 1972, WHICH IS RESERVED FOR FUTURE ENACTMENT; TO REPEAL SECTION 79-13-904, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE EFFECT OF A CONVERSION; AND FOR RELATED PURPOSES.

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

ARTICLE 1

GENERAL PROVISIONS

SECTION 1. The following shall be codified as Section 79-37-101, Mississippi Code of 1972:

79-37-101. **Short title.** This chapter shall be known and may be cited as the Mississippi Entity Conversion and Domestication Act.

SECTION 2. The following shall be codified as Section 79-37-102, Mississippi Code of 1972:

79-37-102. **Definitions.** As used in this chapter, unless the context otherwise requires:

(1) [Reserved]

(2) [Reserved]

(3) "Approve" means, in the case of an entity, for its governors and interest holders to take whatever steps are necessary under the entity's organic rules, organic law, and other law to:

(A) Propose a transaction subject to this chapter;

(B) Adopt and approve the terms and conditions of the transaction; and

(C) Conduct any required proceedings or otherwise obtain any required votes or consents of the governors or interest holders.

(4) "Conversion" means a transaction authorized by Article 4 of this chapter.

(5) "Converted entity" means the converting entity as it continues in existence after a conversion.

(6) "Converting entity" means the domestic entity that approves a plan of conversion pursuant to Section 79-37-403 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.

(7) "Distributional interest" means the right under an unincorporated entity's organic law and organic rules to receive distributions from the entity.

(8) "Domestic," with respect to an entity, means governed as to its internal affairs by the law of this state.

(9) "Domesticated entity" means the domesticating entity as it continues in existence after a domestication.

(10) "Domesticating entity" means the domestic entity that approves a plan of domestication pursuant to Section 79-37-503 or the foreign entity that approves a domestication pursuant to the law of its jurisdiction of formation.

(11) "Domestication" means a transaction authorized by Article 5 of this chapter.

(12) "Entity":

(A) Means:

(i) A business corporation;

(ii) A nonprofit corporation;

(iii) A general partnership, including a limited liability partnership;

(iv) A limited partnership, including a limited liability limited partnership;

(v) A limited liability company;

(vi) [Reserved];

(vii) [Reserved];

(viii) [Reserved];

(ix) A statutory trust, business trust, or common-law business trust;

(x) An agricultural association, including an agricultural co-operative marketing association; or

(xi) Any other person that has:

(I) A legal existence separate from any interest holder of that person; or

(II) The power to acquire an interest in real property in its own name; and

(B) Does not include:

(i) An individual;

(ii) A trust with a predominantly donative purpose or a charitable trust;

(iii) An association or relationship that is not an entity listed in subparagraph (A) and is not a partnership under the rules stated in Section 79-13-202(c) or a similar provision of the law of any other jurisdiction;

(iv) A decedent's estate; or

(v) A government or a governmental subdivision, agency, or instrumentality.

(13) "Filing entity" means an entity whose formation requires the filing of a public organic record. The term does not include a limited liability partnership.

(14) "Foreign," with respect to an entity, means an entity governed as to its internal affairs by the law of a jurisdiction other than this state.

(15) "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

(A) Receive or demand access to information concerning, or the books and records of, the entity;

(B) Vote for or consent to the election of the governors of the entity; or

(C) Receive notice of or vote on or consent to an issue involving the internal affairs of the entity.

(16) "Governor" means:

(A) A director of a business corporation;

(B) A director or trustee of a nonprofit corporation;

(C) A general partner of a general partnership;

(D) A general partner of a limited partnership;

(E) A manager of a manager-managed limited liability company;

(F) A member of a member-managed limited liability company;

(G) [Reserved];

(H) [Reserved];

(I) [Reserved];

(J) A trustee of a statutory trust, business trust, or common-law business trust; or

(K) Any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(17) "Interest" means:

(A) A share in a business corporation;

(B) A membership in a nonprofit corporation;

(C) A partnership interest in a general partnership;

(D) A partnership interest in a limited partnership;

(E) A membership interest in a limited liability company;

(F) [Reserved];

(G) [Reserved];

(H) [Reserved];

(I) A beneficial interest in a statutory trust, business trust, or common-law business trust;

(J) A membership in an agricultural association, including an agricultural co-operative marketing association; or

(K) A governance interest or distributional interest in any other type of unincorporated entity.

(18) [Reserved]

(19) "Interest holder" means:

(A) A shareholder of a business corporation;

(B) A member of a nonprofit corporation;

(C) A general partner of a general partnership;

(D) A general partner of a limited partnership;

(E) A limited partner of a limited partnership;

(F) A member of a limited liability company;

(G) [Reserved];

(H) [Reserved];

(I) [Reserved];

(J) A beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust;

(K) A member of an agricultural association, including an agricultural co-operative marketing association; or

(L) Any other direct holder of an interest.

(20) "Interest holder liability" means:

(A) Personal liability for a liability of an entity that is imposed on a person:

(i) Solely by reason of the status of the person as an interest holder; or

(ii) By the organic rules of the entity which make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(B) An obligation of an interest holder under the organic rules of an entity to contribute to the entity.

(21) "Jurisdiction", used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(22) "Jurisdiction of formation" means the jurisdiction whose law includes the organic law of an entity.

(23) [Reserved]

(24) [Reserved]

(25) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.

(26) "Organic rules" means the public organic record and private organic rules of an entity.

(27) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, agricultural association, agricultural co-operative marketing association, statutory trust, business trust, common-law business trust, estate, trust,

association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(28) "Plan" means a plan of conversion or plan of domestication.

(29) "Plan of conversion" means a plan under Section 79-37-402.

~~(30) "Plan of domestication" means a plan under Section 79-37-502.~~

(31) [Reserved]

(32) [Reserved]

(33) "Private organic rules" mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic record, if any. The term includes:

(A) The bylaws of a business corporation;

(B) The bylaws of a nonprofit corporation;

(C) The partnership agreement of a general partnership;

(D) The partnership agreement of a limited partnership;

(E) The operating agreement of a limited liability company;

(F) [Reserved];

(G) [Reserved];

(H) [Reserved];

(I) The bylaws of an agricultural association, including an agricultural co-operative marketing association; and

(J) The trust instrument of a statutory trust or similar rules of a business trust or common-law business trust.

(34) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

(35) "Protected agreement" means:

(A) A record evidencing indebtedness and any related agreement in effect on the effective date of this chapter;

(B) An agreement that is binding on an entity on the effective date of this chapter;

(C) The organic rules of an entity in effect on the effective date of this chapter; or

(D) An agreement that is binding on any of the governors or interest holders of an entity on the effective date of this chapter.

(36) "Public organic record" means the record the filing of which by the Secretary of State is required to form an entity and any amendment to or restatement of that record. The term includes:

(A) The articles of incorporation of a business corporation;

(B) The articles of incorporation of a nonprofit corporation;

(C) The certificate of limited partnership of a limited partnership;

(D) The certificate of formation of a limited liability company;

(E) [Reserved];

(F) [Reserved];

(G) The articles of association of an agricultural association, including an agricultural co-operative marketing association; and

(H) The certificate of trust of a statutory trust or similar record of a business trust.

(37) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(38) "Registered foreign entity" means a foreign entity that is registered to do business in this state pursuant to a record filed by the Secretary of State.

(39) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

(40) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(41) "Statement of conversion" means a statement under Section 79-37-405.

(42) "Statement of domestication" means a statement under Section 79-37-505.

(43) [Reserved]

(44) [Reserved]

(45) [Reserved]

(46) "Transfer" includes:

(A) An assignment;

(B) A conveyance;

(C) A sale;

(D) A lease;

(E) An encumbrance, including a mortgage or security interest;

(F) A gift; and

(G) A transfer by operation of law.

(47) "Type of entity" means a generic form of entity:

(A) Recognized at common law; or

(B) Formed under an organic law, whether or not some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.

SECTION 3. The following shall be codified as Section 79-37-103, Mississippi Code of 1972:

79-37-103. **Relationship of chapter to other laws.** (a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) This chapter does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this chapter.

(c) A transaction effected under this chapter may not create or impair a right, duty, or obligation of a person under the statutory law of this state relating to a change in control, takeover, business combination, control-share acquisition, or similar transaction involving a domestic converting or domesticating business corporation unless the corporation survives the transaction, the approval of the plan is by a vote of the shareholders or directors which would be sufficient to create or impair the right, duty, or obligation directly under the law.

SECTION 4. The following shall be codified as Section 79-37-104, Mississippi Code of 1972:

79-37-104. **Required notice or approval.** (a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this state to be a party to a merger must give the notice or obtain the approval to be a party to a conversion or domestication.

(b) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this chapter becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the appropriate court specifying the disposition of the property.

SECTION 5. The following shall be codified as Section 79-37-105, Mississippi Code of 1972:

79-37-105. **Status of filings.** A filing under this chapter signed by a domestic entity becomes part of the public organic record of the entity if the entity's organic law provides that similar filings under that law become part of the public organic record of the entity.

SECTION 6. The following shall be codified as Section 79-37-106, Mississippi Code of 1972:

79-37-106. **Nonexclusivity.** The fact that a transaction under this chapter produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this chapter.

SECTION 7. The following shall be codified as Section 79-37-107, Mississippi Code of 1972:

79-37-107. **Reference to external facts.** A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

SECTION 8. The following shall be codified as Section 79-37-108, Mississippi Code of 1972:

79-37-108. **Alternative means of approval of transactions.** Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this chapter by the affirmative vote or consent of all its interest holders satisfies the requirements of this chapter for approval of the transaction.

SECTION 9. The following shall be codified as Section 79-37-109, Mississippi Code of 1972:

79-37-109. **Appraisal rights.** (a) An interest holder of a domestic converting or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:

(1) The organic law permits the organic rules to limit the availability of appraisal rights; and

(2) The organic rules provide such a limit or elimination.

(b) An interest holder of a domestic converting or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this chapter to the extent provided in:

- (1) The entity's organic rules;
- (2) The plan; or
- (3) The case of a business corporation, by action of its governors.

(c) If an interest holder is entitled to contractual appraisal rights under subsection (b) and the entity's organic law does not provide procedures for the conduct of an appraisal rights proceeding, Chapter 13 of the Mississippi Business Corporation Act applies to the extent practicable or as otherwise provided in the entity's organic rules or the plan.

SECTION 10. The following shall be codified as Section 79-37-110, Mississippi Code of 1972:

79-37-110. [Reserved]

SECTION 11. The following shall be codified as Section 79-37-111, Mississippi Code of 1972:

79-37-111. **Requirements for documents.** (a) To be entitled to filing by the Secretary of State, a document must satisfy the following requirements and the requirements of any other provision of this chapter that adds to or varies these requirements:

(1) This chapter requires or permits filing the document in the Office of the Secretary of State.

(2) The document contains the information required by this chapter and may contain other information.

(3) The document is in a record.

(4) The document is in the English language, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.

(5) The document is signed:

(A) By an officer of a domestic or foreign corporation;

(B) By a person authorized by a domestic or foreign entity that is not a corporation; or

(C) If the entity is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The document must state the name and capacity of the person that signed it.

(7) The document must be delivered to the Office of the Secretary of State for filing.

(b) When a document is delivered to the Office of the Secretary of State for filing, the correct filing fee must be paid or provision for payment made in a manner permitted by the Secretary of State.

SECTION 12. The following shall be codified as Section 79-37-112, Mississippi Code of 1972:

79-37-112. **Filing, service, and copying fees.** (a) The Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) each time process is served on the Secretary of State under this chapter. The party to a proceeding causing service of process may recover this fee as costs if the party prevails in the proceeding.

(b) The Secretary of State shall collect the following fees for copying and certifying the copy of any document filed under this chapter:

- (1) One Dollar (\$1.00) a page for copying; and
- (2) Ten Dollars (\$10.00) for the certificate.

(c) The Secretary of State shall collect the following fees when the documents described are delivered for filing:

- (1) [Reserved]
- (2) [Reserved]
- (3) [Reserved]
- (4) [Reserved]
- (5) Statement of conversion \$50.00
- (6) Statement of abandonment of conversion \$25.00
- (7) Statement of domestication \$50.00
- (8) Statement of abandonment of domestication... \$25.00

SECTION 13. The following shall be codified as Section 79-37-113, Mississippi Code of 1972:

79-37-113. **Effective time and date of document.** Except as provided in Section 79-37-114, a document accepted for filing is effective:

(1) At the date and time of filing, as evidenced by the means used by the Secretary of State for recording the date and time of filing;

(2) At the time specified in the document as its effective time on the date it is filed;

(3) At a specified delayed effective time and date if permitted by this chapter; or

(4) If a delayed effective date but no time is specified, at the close of business on the date specified.

SECTION 14. The following shall be codified as Section 79-37-114, Mississippi Code of 1972:

79-37-114. **Correcting filed document.** (a) A domestic or foreign entity may correct a document filed by the Secretary of State within sixty (60) days of the filing if:

(1) The document contains an inaccuracy;

(2) The document was defectively signed; or

(3) The electronic transmission of the document to the Secretary of State was defective.

(b) A document is corrected by filing with the Secretary of State a statement of correction that:

(1) Describes the document to be corrected and states its filing date or has attached a copy of the document;

(2) Specifies the inaccuracy or defect to be corrected;
and

(3) Corrects the inaccuracy or defect.

(c) A statement of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, a statement of correction is effective when filed.

SECTION 15. The following shall be codified as Section 79-37-115, Mississippi Code of 1972:

79-37-115. **Filing duty of Secretary of State.** (a) A document delivered to the Office of the Secretary of State for filing that satisfies the requirements of Section 79-37-111 must be filed by the Secretary of State.

(b) The Secretary of State files a document by recording it as filed on the date and time of receipt. After filing a document, the Secretary of State shall deliver to the domestic or foreign entity or its representative a copy of the document with an acknowledgement of the date and time of filing.

(c) If the Secretary of State refuses to file a document, the Secretary of State shall return the document to the domestic or foreign entity or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(d) The duty of the Secretary of State to file documents under this section is ministerial. The filing or refusal to file a document does not:

(1) Affect the validity or invalidity of the document in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

SECTION 16. The following shall be codified as Section 79-37-116, Mississippi Code of 1972:

79-37-116. **Appeal from refusal to file a document.** (a) If the Secretary of State refuses to file a document delivered for filing, the domestic or foreign entity that submitted the document for filing may appeal the refusal within thirty (30) days after the return of the document to the chancery court of the county where the entity's principal office is or will be located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the entity does not have a principal office in this state. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the explanation of the Secretary of State for the refusal to file.

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

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

SECTION 17. The following shall be codified as Section 79-37-117, Mississippi Code of 1972:

79-37-117. **Evidentiary effect of copy of filed document.** A filed-stamped copy from the Secretary of State conclusively establishes that the original document is on file with the Secretary of State.

SECTION 18. The following shall be codified as Section 79-37-118, Mississippi Code of 1972:

79-37-118. **Penalty for signing false document.** (a) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a misdemeanor punishable by a fine of not to exceed One Thousand Dollars (\$1,000.00).

SECTION 19. The following shall be codified as Section 79-37-119, Mississippi Code of 1972:

79-37-119. **Powers of Secretary of State.** The Secretary of State has the power reasonably necessary to perform the duties

required by this chapter and adopt rules and regulations for enforcement.

ARTICLE 2 [RESERVED]

ARTICLE 3 [RESERVED]

ARTICLE 4

CONVERSION

SECTION 20. The following shall be codified as Section 79-37-401, Mississippi Code of 1972:

79-37-401. **Conversion authorized.** (a) By complying with this article, a domestic entity may become:

(1) A domestic entity that is a different type of entity; or

(2) A foreign entity that is a different type of entity, if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(b) By complying with the provisions of this article applicable to foreign entities, a foreign entity may become a domestic entity that is a different type of entity if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a conversion, the provision applies to a conversion of the entity as if the conversion were a merger until the provision is amended after the effective date of this chapter.

SECTION 21. The following shall be codified as Section 79-37-402, Mississippi Code of 1972:

79-37-402. **Plan of conversion.** (a) A domestic entity may convert to a different type of entity under this article by approving a plan of conversion. The plan must be in a record and contain:

- (1) The name and type of entity of the converting entity;
 - (2) The name, jurisdiction of formation, and type of entity of the converted entity;
 - (3) The manner of converting the interests in the converting entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
 - (4) The proposed public organic record of the converted entity if it will be a filing entity;
 - (5) The full text of the private organic rules of the converted entity which are proposed to be in a record;
 - (6) The other terms and conditions of the conversion;
- and
- (7) Any other provision required by the law of this state or the organic rules of the converting entity.

(b) In addition to the requirements of subsection (a), a plan of conversion may contain any other provision not prohibited by law.

SECTION 22. The following shall be codified as Section 79-37-403, Mississippi Code of 1972:

79-37-403. **Approval of conversion.** (a) A plan of conversion is not effective unless it has been approved:

(1) By a domestic converting entity:

(A) In accordance with the requirements, if any, in its organic rules for approval of a conversion;

(B) If its organic rules do not provide for approval of a conversion, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) In the case of an entity that is not a business corporation, a merger, as if the conversion were a merger;

(ii) In the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the conversion were that type of merger; or

(C) By all of the interest holders of the entity entitled to vote on or consent to any matter if in the case of any entity that is not a business corporation, neither its organic law nor organic rules provide for approval of a conversion or a merger; and

(2) In a record, by each interest holder of a domestic converting entity which will have interest holder liability for debts, obligations, and other liabilities that arise after the

conversion becomes effective, unless, in the case of an entity that is not a business or nonprofit corporation:

(A) The organic rules of the entity provide in a record for the approval of a conversion or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all the interest holders; and

(B) ~~The interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.~~

(b) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

SECTION 23. The following shall be codified as Section 79-37-404, Mississippi Code of 1972:

79-37-404. **Amendment or abandonment of plan of conversion.**

(a) A plan of conversion of a domestic converting entity may be amended:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended;
or

(2) By its governors or interest holders in the manner provided in the plan, but an interest holder that was entitled to

vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(A) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the converting entity under the plan;

~~(B) The public organic record, if any, or private organic rules of the converted entity which will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or~~

(C) Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of conversion has been approved and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting entity may abandon the plan in the same manner as the plan was approved.

(c) If a plan of conversion is abandoned after a statement of conversion has been delivered to the Secretary of State for filing and before the statement becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the Secretary of State for filing before the statement of

conversion becomes effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

- (1) The name of the converting entity;
- (2) The date on which the statement of conversion was filed by the Secretary of State; and
- (3) A statement that the conversion has been abandoned in accordance with this section.

SECTION 24. The following shall be codified as Section 79-37-405, Mississippi Code of 1972:

79-37-405. **Statement of conversion; effective date.** (a) A statement of conversion must be signed on behalf of the converting entity and delivered to the Secretary of State for filing.

(b) A statement of conversion must contain:

- (1) The name, jurisdiction of formation, and type of entity of the converting entity;
- (2) The name, jurisdiction of formation, and type of entity of the converted entity;
- (3) If the statement of conversion is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than ninety (90) days after the date of filing;
- (4) If the converting entity is a domestic entity, a statement that the plan of conversion was approved in accordance with this article or, if the converting entity is a foreign

entity, a statement that the conversion was approved by the foreign entity in accordance with the law of its jurisdiction of formation;

(5) If the converted entity is a domestic filing entity, its public organic record, as an attachment;

(6) If the converted entity is a domestic limited liability partnership, its statement of qualification, as an attachment; and

(7) If the converted entity is a foreign entity, a mailing address to which the Secretary of State may send any process served on the Secretary of State pursuant to Section 79-37-406(e).

(c) In addition to the requirements of subsection (b), a statement of conversion may contain any other provision not prohibited by law.

(d) If the converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that the public organic record does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) A plan of conversion that is signed by a domestic converting entity and meets all the requirements of subsection (b) may be delivered to the Secretary of State for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this subsection,

references in this chapter to a statement of conversion refer to the plan of conversion filed under this subsection.

(f) A statement of conversion is effective on the date and time of filing or the later date and time specified in the statement of conversion.

(g) If the converted entity is a domestic entity, the conversion is effective when the statement of conversion is effective. If the converted entity is a foreign entity, the conversion is effective on the later of:

(1) The date and time provided by the organic law of the converted entity; or

(2) When the statement is effective.

SECTION 25. The following shall be codified as Section 79-37-406, Mississippi Code of 1972:

79-37-406. **Effect of conversion.** (a) When a conversion becomes effective:

(1) The converted entity is:

(A) Organized under and subject to the organic law of the converted entity; and

(B) The same entity without interruption as the converting entity;

(2) All property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(3) All debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;

(4) Except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(5) The name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) If a converted entity is a filing entity, its public organic record is effective;

(7) If the converted entity is a limited liability partnership, its statement of qualification is effective;

(8) The private organic rules of the converted entity which are to be in a record, if any, approved as part of the plan of conversion are effective; and

(9) The interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 79-37-109 and the converting entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the converting entity, the conversion does not give rise to any rights that an interest holder, governor, or

third party would have upon a dissolution, liquidation, or winding up of the converting entity.

(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of a conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that arise after the conversion becomes effective.

(d) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic converting entity with respect to which the person had interest holder liability is subject to the following rules:

(1) The conversion does not discharge any interest holder liability under the organic law of a domestic converting entity to the extent the interest holder liability arose before the conversion became effective.

(2) The person does not have interest holder liability under the organic law of the domestic converting entity for any debt, obligation, or other liability that arises after the conversion becomes effective.

(3) The organic law of the domestic converting entity continues to apply to the release, collection, or discharge of any

interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by other law or the organic rules of the domestic converting entity with respect to any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

~~(e) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities in accordance with applicable law.~~

(f) If the converting entity is a registered foreign entity, its registration to do business in this state is canceled when the conversion becomes effective.

(g) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

ARTICLE 5

DOMESTICATION

SECTION 26. The following shall be codified as Section 79-37-501, Mississippi Code of 1972:

79-37-501. **Domestication authorized.** (a) Except as otherwise provided in this section, by complying with this article, a domestic entity may become a domestic entity of the

same type of entity in a foreign jurisdiction if the domestication is authorized by the law of the foreign jurisdiction.

(b) Except as otherwise provided in this section, by complying with the provisions of this article applicable to foreign entities a foreign entity may become a domestic entity of the same type of entity in this state if the domestication is authorized by the law of the foreign entity's jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic entity but does not refer to a domestication, the provision applies to a domestication of the entity as if the domestication were a merger until the provision is amended after the effective date of this chapter.

SECTION 27. The following shall be codified as Section 79-37-502, Mississippi Code of 1972:

79-37-502. **Plan of domestication.** (a) A domestic entity may become a foreign entity in a domestication by approving a plan of domestication. The plan must be in a record and contain:

(1) The name and type of entity of the domesticating entity;

(2) The name and jurisdiction of formation of the domesticated entity;

(3) The manner of converting the interests in the domesticating entity into interests, securities, obligations,

money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) The proposed public organic record of the domesticated entity if it is a filing entity;

(5) The full text of the private organic rules of the domesticated entity that are proposed to be in a record;

(6) The other terms and conditions of the domestication; and

(7) Any other provision required by the law of this state or the organic rules of the domesticating entity.

(b) In addition to the requirements of subsection (a), a plan of domestication may contain any other provision not prohibited by law.

SECTION 28. The following shall be codified as Section 79-37-503, Mississippi Code of 1972:

79-37-503. **Approval of domestication.** (a) A plan of domestication is not effective unless it has been approved:

(1) By a domestic domesticating entity:

(A) In accordance with the requirements, if any, in its organic rules for approval of a domestication;

(B) If its organic rules do not provide for approval of a domestication, in accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) In the case of an entity that is not a business corporation, a merger, as if the domestication were a merger;

(ii) In the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the domestication were that type merger; or

~~(C) By all of the interest holders of the entity entitled to vote on or consent to any matter if in the case of an entity that is not a business corporation, neither its organic law nor organic rules provide for approval of a domestication or a merger; and~~

(2) In a record, by each interest holder of a domestic domesticating entity that will have interest holder liability for debts, obligations, and other liabilities that arise after the domestication becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit corporation:

(A) The organic rules of the entity in a record provide for the approval of a domestication or merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) The interest holder consented in a record to or voted for that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A domestication of a foreign domesticating entity is not effective unless it is approved in accordance with the law of the foreign entity's jurisdiction of formation.

SECTION 29. The following shall be codified as Section 79-37-504, Mississippi Code of 1972:

79-37-504. **Amendment or abandonment of plan of domestication.** (a) A plan of domestication of a domestic domesticating entity may be amended:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) By its governors or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:

(A) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the domesticating entity under the plan;

(B) The public organic record, if any, or private organic rules of the domesticated entity that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the interest holders of the domesticated entity under its organic law or organic rules; or

(C) Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) After a plan of domestication has been approved by a domestic domesticating entity and before a statement of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating entity may abandon the plan in the same manner as the plan was approved.

(c) If a plan of domestication is abandoned after a statement of domestication has been delivered to the Secretary of State for filing and before the statement becomes effective, a statement of abandonment, signed by the entity, must be delivered to the Secretary of State for filing before the statement of domestication becomes effective. The statement of abandonment takes effect on filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:

- (1) The name of the domesticating entity;
- (2) The date on which the statement of domestication was filed by the Secretary of State; and
- (3) A statement that the domestication has been abandoned in accordance with this section.

SECTION 30. The following shall be codified as Section 79-37-505, Mississippi Code of 1972:

79-37-505. **Statement of domestication; effective date.** (a)

A statement of domestication must be signed by the domesticating entity and delivered to the Secretary of State for filing.

(b) A statement of domestication must contain:

(1) The name, jurisdiction of formation, and type of entity of the domesticating entity;

(2) The name and jurisdiction of formation of the domesticated entity;

(3) If the statement of domestication is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than ninety (90) days after the date of filing;

(4) If the domesticating entity is a domestic entity, a statement that the plan of domestication was approved in accordance with this article or, if the domesticating entity is a foreign entity, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation;

(5) If the domesticated entity is a domestic filing entity, its public organic record, as an attachment;

(6) If the domesticated entity is a domestic limited liability partnership, its statement of qualification, as an attachment; and

(7) If the domesticated entity is a foreign entity that is not a registered foreign entity, a mailing address to which the

Secretary of State may send any process served on the Secretary of State pursuant to Section 79-37-506(e).

(c) In addition to the requirements of subsection (b), a statement of domestication may contain any other provision not prohibited by law.

(d) If the domesticated entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, but the public organic record does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) A plan of domestication that is signed by a domesticating domestic entity and meets all of the requirements of subsection (b) may be delivered to the Secretary of State for filing instead of a statement of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this subsection, references in this chapter to a statement of domestication refer to the plan of domestication filed under this subsection.

(f) A statement of domestication is effective on the date and time of filing or the later date and time specified in the statement of domestication.

(g) A domestication in which the domesticated entity is a domestic entity is effective when the statement of domestication is effective. A domestication in which the domesticated entity is a foreign entity is effective on the later of:

(1) The date and time provided by the organic law of the domesticated entity; or

(2) When the statement is effective.

SECTION 31. The following shall be codified as Section 79-37-506, Mississippi Code of 1972:

79-37-506. **Effect of domestication.** (a) When a domestication becomes effective:

(1) The domesticated entity is:

(A) Organized under and subject to the organic law of the domesticated entity; and

(B) The same entity without interruption as the domesticating entity;

(2) All property of the domesticating entity continues to be vested in the domesticated entity without transfer, reversion, or impairment;

(3) All debts, obligations, and other liabilities of the domesticating entity continue as debts, obligations, and other liabilities of the domesticated entity;

(4) Except as otherwise provided by law or the plan of domestication, all of the rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the domesticated entity;

(5) The name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;

(6) If the domesticated entity is a filing entity, its public organic record is effective;

(7) If the domesticated entity is a limited liability partnership, its statement of qualification is effective simultaneously;

(8) The private organic rules of the domesticated entity that are to be in a record, if any, approved as part of the plan of domestication are effective; and

(9) The interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the interest holders of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 79-37-109 and the domesticating entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the domesticating entity, the domestication does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the domesticating entity.

(c) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of the domestication has interest holder liability only to the extent provided by the organic law of the entity and only for those

debts, obligations, and other liabilities that arise after the domestication becomes effective.

(d) When a domestication becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic domesticating entity with respect to which the person had interest holder liability is subject to the following rules:

(1) The domestication does not discharge any interest holder liability under the organic law of a domesticating domestic entity to the extent the interest holder liability arose before the domestication became effective.

(2) A person does not have interest holder liability under the organic law of the domestic domesticating entity for any debt, obligation, or other liability that arises after the domestication becomes effective.

(3) The organic law of a domestic domesticating entity continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(4) A person has whatever rights of contribution from any other person as are provided by other law or the organic rules of the domestic domesticating entity with respect to any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(e) When a domestication becomes effective, a foreign entity that is the domesticated entity may be served with process in this

state for the collection and enforcement of any of its debts, obligations, and other liabilities in accordance with applicable law.

(f) If a domesticating entity is a registered foreign entity, the registration to do business in this state of the domesticating entity is canceled when the domestication becomes effective.

~~(g) A domestication does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.~~

ARTICLE 6

MISCELLANEOUS PROVISIONS

SECTION 32. The following shall be codified as Section 79-37-601, Mississippi Code of 1972:

79-37-601. **Consistency of application.** In applying and construing this chapter, consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

SECTION 33. The following shall be codified as Section 79-37-602, Mississippi Code of 1972:

79-37-602. **Relation to Electronic Signatures in Global and National Commerce Act.** This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 USC Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 USC Section

7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USC Section 7003(b).

SECTION 34. The following shall be codified as Section 79-37-603, Mississippi Code of 1972:

79-37-603. **Savings clause.** This chapter does not affect an action commenced, proceeding brought, or right accrued before the effective date of this chapter.

SECTION 35. The following shall be codified as Section 79-37-604, Mississippi Code of 1972:

79-37-604. **Severability clause.** If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 36. Section 79-4-13.02, Mississippi Code of 1972, is amended as follows:

79-4-13.02. (a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

(1) Consummation of a merger to which the corporation is a party (i) if shareholder approval is required for the merger by Section 79-4-11.04 and the shareholder is entitled to vote on the merger, except that appraisal rights shall not be available to

any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger, or (ii) if the corporation is a subsidiary and the merger is governed by Section 79-4-11.05;

(2) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange, ~~except that appraisal rights shall not be available to any~~ shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(3) Consummation of a disposition of assets pursuant to Section 79-4-12.02 if the shareholder is entitled to vote on the disposition;

(4) An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created; * * *

(5) Any other amendment to the articles of incorporation, merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors * * *;

(6) Consummation of a domestication if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder

in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation, as the shares held by the shareholder before the domestication; or

(7) Consummation of a conversion of the corporation to a different form of entity under the Mississippi Entity Conversion and Domestication Act.

(b) Notwithstanding subsection (a), the availability of appraisal rights under subsection (a)(1), (2), (3) * * *, (4) and (6) shall be limited in accordance with the following provisions:

(1) Appraisal rights shall not be available to any shareholder of the constituent corporations in a corporate reorganization transaction otherwise covered by subsection (a)(1) or (2) if: (i) the shareholders of an existing corporation exchange shares of such corporation for shares of a newly formed corporation and receive, after the reorganization, the same proportionate share interest in the new corporation and the rights and interests of the shareholders in the newly formed corporation are substantially the same as those in the existing corporation prior to the transaction; (ii) the newly formed corporation has no significant assets other than the shares of the existing corporation; (iii) after the reorganization the newly formed corporation and its subsidiaries have substantially the same assets and liabilities, on a consolidated basis, as those of the existing corporation prior to the transaction; (iv) fractional

shares are neither created nor eliminated as a result of the transaction; (v) the existing corporation and the newly formed corporation are the only constituent corporations to such reorganization; (vi) the existing corporation and the newly formed corporation are corporations of this state; (vii) the directors of the existing corporation become the directors of the newly formed corporation upon the effective time of the corporate reorganization; (viii) the existing corporation becomes a direct wholly owned subsidiary of the newly formed corporation; and (ix) the shareholders of the existing corporation do not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of the existing corporation.

(2) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

(i) Listed on the New York Stock Exchange * * * or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

(ii) Not so listed or designated, but has at least two thousand (2,000) shareholders and the outstanding shares of such class or series has a market value of at least Twenty Million Dollars (\$20,000,000.00) (exclusive of the value of such shares held by its subsidiaries, senior executives, directors and beneficial shareholders owning more than ten percent (10%) of such shares).

(3) The applicability of subsection (b)(2) shall be determined as of:

(i) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(ii) The day before the effective date of such corporate action if there is no meeting of shareholders.

(4) Subsection (b)(2) shall not be applicable and appraisal rights shall be available pursuant to subsection (a) for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subsection (b)(2) at the time the corporate action becomes effective.

(5) Subsection (b)(2) shall not be applicable and appraisal rights shall be available pursuant to subsection (a) for the holders of any class or series of shares where the corporate action is an interested transaction.

(c) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination

contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or to other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one (1) year of that date if such action would otherwise afford appraisal rights.

SECTION 37. Section 79-13-101, Mississippi Code of 1972, is amended as follows:

79-13-101. In this chapter:

(1) "Business" includes every trade, occupation, and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of:

(i) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) A comparable order under federal, state, or foreign law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Domestic partnership" means a partnership whose internal relations are governed by the laws of this state.

(* * *5) "Foreign limited liability partnership" means a partnership that:

(i) Is formed under laws other than the laws of this state; and

(ii) Has the status of a limited liability partnership under those laws.

(6) "Foreign partnership" means a partnership other than a domestic partnership.

(* * *7) "Limited liability partnership" or "domestic limited liability partnership" means a partnership that has filed a statement of qualification under Section 79-13-1001 and does not have a similar statement in effect in any other jurisdiction.

(* * *8) "Partnership" means an association of two (2) or more persons to carry on as co-owners a business for profit formed under Section 79-13-202, predecessor law, or comparable law of another jurisdiction.

(* * *9) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(* * *10) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the

expiration of a definite term or the completion of a particular undertaking.

(* * *11) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(* * *12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(* * *13) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(* * *14) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(* * *15) "Statement" means a statement of partnership authority under Section 79-13-303, a statement of denial under Section 79-13-304, a statement of dissociation under Section 79-13-704, a statement of dissolution under Section 79-13-805, a statement of merger under Section 79-13-907, a statement of qualification under Section 79-13-1001, a statement of foreign qualification under Section 79-13-1102, or an amendment or cancellation of any of the foregoing.

(16) "Surviving partnership" means a domestic or foreign partnership into which one or more domestic or foreign partnerships are merged. A surviving partnership may preexist the merger or be created by the merger.

(* * *17) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

SECTION 38. Section 79-13-401, Mississippi Code of 1972, is amended as follows:

79-13-401. (a) Each partner is deemed to have an account that is:

(1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(2) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the

partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) ~~constitutes a loan to the partnership which accrues interest from the date of the payment or advance.~~

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) Except as provided in Article 9 of this chapter or the Mississippi Entity Conversion and Domestication Act, a person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under Section 79-13-301.

SECTION 39. Section 79-13-502, Mississippi Code of 1972, is amended as follows:

79-13-502. Except as provided in Article 9 of this chapter or the Mississippi Entity Conversion and Domestication Act, the only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest of a partner, whether or not transferable, is personal property.

SECTION 40. Section 79-13-908, Mississippi Code of 1972, is amended as follows:

79-13-908. This article is not exclusive. Partnerships may be converted or merged in any other manner provided or permitted by law.

SECTION 41. Section 79-14-101, Mississippi Code of 1972, is amended as follows:

79-14-101. As used in this chapter, unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in Section 79-14-201, and the certificate as amended or restated.

(2) "Contribution" means any cash, property, services rendered, or a promissory note or other obligation to contribute

cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

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

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

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

(6) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 79-14-402.

(7) "Foreign limited partnership" means a partnership formed under the laws of another state or under the laws of a foreign country or foreign jurisdiction and having as partners one

or more general partners and one or more limited partners (or their equivalence under any name).

(8) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement or the provisions of this chapter and named in the certificate of limited partnership as a general partner.

(9) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(10) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two (2) or more persons under the laws of this state and having one or more general partners and one or more limited partners. The terms include a limited liability limited partnership.

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

(12) "Partner" means a limited or general partner.

(13) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(14) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of limited partnership assets.

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

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

(17) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

SECTION 42. Section 79-14-105, Mississippi Code of 1972, is amended as follows:

79-14-105. (a) Each limited partnership shall keep at the office referred to in Section 79-14-104(a)(1) the following:

(1) A current list of the full name and last-known business address of each partner separately identifying in alphabetical order the general partners and the limited partners;

(2) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(3) Copies of the limited partnership's federal, state and local income tax returns and reports, if any, for the six (6) most recent years;

(4) Copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the six (6) most recent years; * * *

(5) A copy of any statement of conversion or domestication filed under the Mississippi Entity Conversion and Domestication Act; and

(* * *6) Unless contained in a written partnership agreement, a writing setting out:

(i) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;

(ii) The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(iii) Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution; and

(iv) Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

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

SECTION 43. Section 79-14-201, Mississippi Code of 1972, is amended as follows:

79-14-201. (a) In order to form a limited partnership, a certificate of limited partnership must be signed and delivered to the Office of the Secretary of State for filing. The certificate must set forth:

- (1) The name of the limited partnership;
- (2) The information required by Section 79-35-5(a);
- (3) The name and the street and mailing address of each general partner;
- (4) The latest date upon which the limited partnership is to dissolve; and
- (5) Any other matters the general partners determine to include therein.

(b) A limited partnership is formed at the date and time of the filing of the certificate of limited partnership in the Office of the Secretary of State, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing, or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

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

(d) If any provision of a partnership agreement is inconsistent with the statement of conversion or domestication

filed under the Mississippi Entity Conversion and Domestication Act:

(1) The partnership agreement prevails as to partners and transferees; and

(2) The filed document prevails as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.

SECTION 44. Section 79-14-202, Mississippi Code of 1972, is amended as follows:

79-14-202. (a) A certificate of limited partnership is amended by delivery of a certificate of amendment thereto to the Office of the Secretary of State for filing. The certificate shall set forth:

(1) The name of the limited partnership;

(2) The future effective date of the amendment, which must be a date certain, unless it is effective upon the filing of the certificate of amendment; and

(3) The amendment to the certificate.

(b) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate, or if appropriate, deliver to the Secretary of State for filing a statement of change of agent pursuant to Section 79-35-8.

(c) Notwithstanding the requirements of subsection (b) of this section, within thirty (30) days after the happening of any of the following events an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be delivered to the Office of the Secretary of State for filing:

- (1) The admission of a new general partner;
- (2) The withdrawal of a general partner;
- (3) ~~The continuation of the business under Section 79-14-801~~ after an event of withdrawal of a general partner;
- (4) A change in the name of the limited partnership; or
- (5) A change in the street or mailing address of the office of the limited partnership.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(e) Except as provided in Section 79-14-402(b), if an amendment to a certificate of limited partnership is delivered to the Office of the Secretary of State in compliance with subsection (c) of this section, no person is subject to liability because the amendment was not filed earlier.

(f) A certificate of limited partnership may also be amended by filing a statement of conversion or domestication under the Mississippi Entity Conversion and Domestication Act.

SECTION 45. Section 79-14-204, Mississippi Code of 1972, is amended as follows:

79-14-204. (a) Each certificate required by this article to be filed in the Office of the Secretary of State must be signed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one (1) general partner and by each other general partner designated in the certificate as a new general partner; and

(3) Certificates of dissolution and cancellation must be signed by all general partners or, if there is no general partner, by the limited partners conducting the winding up of the limited partnership affairs under Section 79-14-803. A document required or permitted to be filed under this chapter which contains a copy of a signature, however made, is acceptable for filing.

(b) Any person may sign a certificate, a partnership agreement or any amendment to either by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

(c) Each record delivered to the Secretary of State for filing pursuant to the Mississippi Entity Conversion and Domestication Act must be signed by each general partner listed in the certificate of limited partnership.

SECTION 46. Section 79-14-701, Mississippi Code of 1972, is amended as follows:

79-14-701. Except as provided in the Mississippi Entity Conversion and Domestication Act, the only interest of a partner which is transferable is the partner's transferable interest. A partnership interest of a partner, whether or not transferable, is personal property. A partner has no interest in specific limited partnership property.

SECTION 47. Section 79-29-123, Mississippi Code of 1972, is amended as follows:

79-29-123. (1) An operating agreement must initially be agreed to by all of the members. Except as otherwise provided in subsections (2) and (3) of this section, the certificate of formation or operating agreement governs:

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

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

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

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

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

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

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

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

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

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

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

(f) Restrict the right to approve a conversion under the Mississippi Entity Conversion and Domestication Act of a member that will have personal liability with respect to an entity following the conversion.

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

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

(* * *i) Unreasonably restrict the duties and rights stated in Section 79-29-315;

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

(* * *k) Vary the requirement to windup a limited liability company's business following the filing of a certificate of dissolution as specified in Section 79-29-801;

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

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

(* * *n) Vary the requirements of Sections 79-29-817 and 79-29-819;

(* * *o) Vary or modify any provision of Article 9 of this chapter unless otherwise expressly provided in Article 9 that the certificate of formation or the operating agreement may vary or modify such provision;

(* * *p) Unreasonably restrict the right of a member to maintain an action under Article 11 of this chapter;

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

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

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

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

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

(c) An intentional violation of criminal law;

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

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

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

(5) Indemnification. (a) A limited liability company may, and shall have the power to, indemnify and hold harmless any

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

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

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

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

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

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

(a) A manager:

(i) Shall discharge the duties of a manager;

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

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

1. For any action taken as a manager, or any failure to take any action, if such manager performed the duties of such manager in compliance with subsection (6) (a) (i) of this section.
2. For breach of fiduciary duty for the manager's good-faith reliance on the provisions of the operating agreement.

(b) An officer:

(i) Shall discharge the duties of an officer;

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

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

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

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

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

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

1. In good faith and with fair dealing;
2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

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

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

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

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

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

(e) The operating agreement may:

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

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

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

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

- (a) Section 79-29-123(4);
- (b) Section 79-29-123(6);
- (c) Section 79-29-231;
- (d) Section 79-29-301(6);
- (e) Section 79-29-303;
- (f) Section 79-29-309;
- (g) Section 79-29-313(1);
- (h) Section 79-29-801; and
- (i) Section 79-29-1211

(8) A court of equity:

(a) May enforce an operating agreement by injunction or by such other relief that the court in its discretion determines to be fair and appropriate in the circumstances or, when the

provisions of Section 79-29-803 are applicable, the court may order dissolution of the limited liability company; and

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

The court:

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

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

1. The objective of the term is unreasonable;

or

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

SECTION 48. Section 79-13-902, Mississippi Code of 1972, which provides for conversion of a partnership to a limited partnership, is repealed.

SECTION 49. Section 79-13-903, Mississippi Code of 1972, which is reserved for future enactment, is repealed.

SECTION 50. Section 79-13-904, Mississippi Code of 1972, which provides for the effect of a conversion, is repealed.

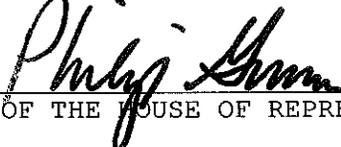
SECTION 51. This act shall take effect and be in force from
and after January 1, 2015.

PASSED BY THE SENATE
February 5, 2014



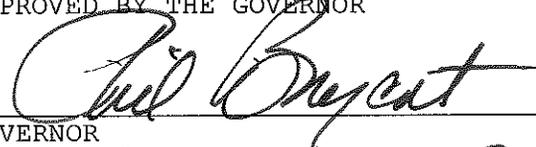
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 4, 2014



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR
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