

HB 279 -- UNIFORM LIMITED LIABILITY COMPANY ACT

SPONSOR: Riley

This bill repeals the Missouri Limited Liability Company Act and replaces it with the Uniform Limited Liability Company Act as proposed by the National Conference of Commissioners on Uniform State Laws.

DEFINITION OF TERMS AND TRANSITION REQUIREMENTS FOR PREEXISTING LIMITED LIABILITY COMPANIES (Sections 347.1002 to 347.1018)

The bill defines several terms including, but not limited to, "limited liability company (LLC)"; "foreign limited liability company"; "manager"; "member"; "operating agreement"; and "transfer" that apply to Sections 347.1000 to 347.1228, RSMo.

Before August 28, 2023, Sections 347.1000 to 347.1228 apply to a LLC formed on or after August 28, 2022 and to a LLC formed before August 28, 2022, which elects in its operating agreement to be subject to these sections. For a LLC formed before August 28, 2022 the LLC's articles of organization are deemed to be its certificate of organization and as further indicated in the bill.

OPERATING AGREEMENT (Sections 347.1008, 347.1010, and 347.1012)

The operating agreement governs the relationship between the members as members and between the members and the LLC, the rights and duties of a manager and the conditions for amending the operating agreement. The bill specifies what the operating agreement shall not contain, such as eliminating the duty of loyalty or the duty of care, eliminating the contractual obligation of good faith and fair dealing or exonerating a person from liability for conduct involving bad faith, willful or intentional misconduct, or knowing violation of the law. The operating agreement cannot alter or eliminate any other fiduciary duty or unreasonably restrict the right of a member to maintain direct action, derivative action, or to appoint a special litigation committee to investigate the claims asserted under Section 347.1136.

The bill includes provisions explaining what the operating agreement may include. The bill also specifies when a court can determine as a matter of law whether a term of an operating agreement is manifestly unreasonable. An operating agreement may specify that an amendment requires the approval of a person that is not a party to the agreement or the satisfaction of a condition.

FILING OF RECORDS WITH SECRETARY OF STATE (Sections 347.1022, 347.1024, 347.1026, 347.1064, 347.1068, and 347.1070)

The bill includes detailed requirements relating to the name of the LLC and the name under which a foreign LLC may register to do business in Missouri, which must be distinguishable on the records of the Secretary of State (SOS). The LLC or foreign LLC may use a name that is not distinguishable upon providing the SOS with a certified copy of the court judgment establishing the right to use the name. The bill explains how a foreign LLC, who is not registered to do business in Missouri, may register its name or its alternate name that is adopted. A LLC or registered foreign LLC shall deliver an annual report to the SOS and include information provided in the bill. A LLC may also provide the SOS with a statement of authority as indicated in the bill.

DESIGNATION OF A REGISTERED AGENT AND SERVICE OF PROCESS (Sections 347.1028 to 347.1036)

Each LLC and each registered foreign LLC shall designate and maintain a registered agent in Missouri. The bill explains the duties of the registered agent, notification of change of an agent and address of an agent, and resignation of an agent. A LLC or foreign LLC is served with process, notice, or demand under the law by serving the registered agent as specified in the bill.

MEMBERS RELATIONSHIP BETWEEN THEMSELVES AND THE LLC (Sections 347.1074 to 347.1098)

The bill contains an explanation on topics relating to organizers of the LLC, a person's contribution to the LLC, distributions made by the LLC to members before its dissolution and winding up, contributions to the LLC, member-managed LLCs, reimbursements to a member or manager of a member-managed LLC for payments made on behalf of the LLC, members duty of loyalty and care, transferable interests, court entered charging order against a member, or transferee from transferring interest of the judgment debtor.

DISASSOCIATION AS A MEMBER OF A LLC (Sections 347.1102, 347.1104 and 347.1106)

A person can disassociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will. The bill sets out when the disassociation of a member is regarded as wrongful. The bill also includes provisions explaining when a person is disassociated as a member in the case of an individual or in a member-managed LLC. A person's disassociation does not discharge the person from any debt, obligation, or other liability to the LLC or other members that were incurred while a member.

DISSOLUTION OF A LLC (Sections 347.1108 to 347.1120)

A LLC is dissolved and its affairs and activities are wound up based upon the occurrence of events or circumstances explained in the bill. A dissolved LLC continues after dissolution only for the purpose of winding up. The bill explains the requirements for a rescission of a dissolution, publication of notice of dissolution and for persons having any claims against the LLC to present them in accordance with the notice.

A LLC may be administratively dissolved by the SOS based upon factors indicated in the bill.

FOREIGN LIMITED LIABILITY COMPANY (Sections 347.1142 to 347.1160)

The bill includes provisions relating to registration of a foreign LLC with the SOS and delivering a foreign registration statement including information that is specified in the bill. The activities that do not constitute doing business in the state, dissolution, or conversion of a foreign LLC to a domestic or foreign entity that does not require public filing of a record, other than a limited liability partnership, and delivering a withdrawal statement to the SOS with certain information, are further specified in the bill. Transfer of registration based upon a merger is also detailed in the bill.

ADDITIONAL PROVISIONS (Sections 347.1164 to 347.1228)

These sections contain definitions including but not limited to: "conversion", "domestication", "entity", "governance interest" and "interest holder" and transactions effected under these sections relate to changes in control, takeover, business combination, control-share acquisition involving a domestic merger, acquisition, conversion, domesticating business corporation, plan of merger, plan of interest exchange, plan of domestication, and others as set out in the bill.

Sections 347.1000 to 347.1228 modify, limit and supersede the Electronic Signatures in Global and National Commerce Act with certain exceptions.

Sections 347.1000 to 347.1228 do not affect an action commenced, proceeding brought, or right accrued before August 28, 2022.

This bill is similar to HB 2518 (2022).