

Bill No. SB 704  
Amendment No. \_\_\_\_

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Senator Klein moved the following amendment:

12  
13 **Senate Amendment (with title amendment)**

14 On page 8, between lines 28 and 29,  
15  
16 insert:

17 Section 6. Subsections (2) and (3) of section  
18 607.0730, Florida Statutes, are amended to read:

19 607.0730 Voting trusts.--

20 (2) A voting trust becomes effective on the date the  
21 first shares subject to the trust are registered in the  
22 trustee's name. ~~A voting trust is valid for not more than 10~~  
23 ~~years after its effective date unless extended under~~  
24 ~~subsection (3). The validity of any voting trust otherwise~~  
25 ~~lawful shall not be affected during a period of 10 years from~~  
26 ~~the date when it was created or last extended by the fact that~~  
27 ~~under its terms it will or may last beyond the 10-year period.~~

28 (3) ~~All or some of the parties to a voting trust may~~  
29 ~~extend it for additional terms of not more than 10 years each~~  
30 ~~by signing an extension agreement and obtaining the voting~~  
31 ~~trustee's written consent to the extension. An extension is~~

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1 ~~valid for the period set forth therein, up to 10 years, from~~  
2 ~~the date the first shareholder signs the extension agreement.~~  
3 ~~The voting trustee must deliver copies of the extension~~  
4 ~~agreement and list of beneficial owners to the corporation's~~  
5 ~~principal office. An extension agreement binds only those~~  
6 ~~parties signing it.~~

7 Section 7. Holding company formation by merger by  
8 certain corporations.--

9 (1) This section applies only to a corporation that  
10 has shares of any class or series which are either registered  
11 on a national securities exchange or designated as a national  
12 market system security on an interdealer quotation system by  
13 the National Association of Securities Dealers, Inc., or held  
14 of record by not fewer than 2,000 shareholders.

15 (2) As used in this section, the term:

16 (a) "Constituent corporation" means a corporation that  
17 is a party to a merger governed by this section.

18 (b) "Holding company" means a corporation that, from  
19 the date it first issued shares until consummation of a merger  
20 governed by this section, was at all times a wholly owned  
21 subsidiary of a constituent corporation, and whose shares are  
22 issued in such merger.

23 (c) "Wholly owned subsidiary" means, as to a  
24 corporation, any other corporation of which it owns, directly  
25 or indirectly through one or more subsidiaries, all of the  
26 issued and outstanding shares.

27 (3) Notwithstanding the requirements of section  
28 607.1103, Florida Statutes, unless expressly required by its  
29 articles of incorporation, no vote of shareholders of a  
30 corporation is necessary to authorize a merger of the  
31 corporation with or into a wholly owned subsidiary of such

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1 corporation if:

2 (a) Such corporation and wholly owned subsidiary are  
3 the only constituent corporations to the merger;

4 (b) Each share or fraction of a share of the  
5 constituent corporation whose shares are being converted  
6 pursuant to the merger into a share or equal fraction of share  
7 of a holding company having the same designations, rights,  
8 powers and preferences, and qualifications, limitations and  
9 restrictions thereof as the share of the constituent  
10 corporation being converted in the merger;

11 (c) The holding company and each of the constituent  
12 corporations to the merger are domestic corporations;

13 (d) The articles of incorporation and by-laws of the  
14 holding company immediately following the effective time of  
15 the merger contain provisions identical to the articles of  
16 incorporation and by-laws of the constituent corporation whose  
17 shares are being converted pursuant to the merger immediately  
18 prior to the effective time of the merger, except provisions  
19 regarding the incorporators, the corporate name, the  
20 registered office and agent, the initial board of directors,  
21 the initial subscribers for shares and matters solely of  
22 historical significance, and such provisions contained in any  
23 amendment to the articles of incorporation as were necessary  
24 to effect a change, exchange, reclassification, or  
25 cancellation of shares, if such change, exchange,  
26 reclassification, or cancellation has become effective;

27 (e) As a result of the merger, the constituent  
28 corporation whose shares are being converted pursuant to the  
29 merger or its successor corporation becomes or remains a  
30 direct or indirect wholly-owned subsidiary of the holding  
31 company;

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1           (f) The directors of the constituent corporation  
2 become or remain the directors of the holding company upon the  
3 effective date of the merger;

4           (g) The articles of incorporation of the surviving  
5 corporation immediately following the effective time of the  
6 merger are identical to the articles of incorporation of the  
7 constituent corporation whose shares are being converted  
8 pursuant to the merger immediately prior to the effective time  
9 of the merger, except provisions regarding the incorporators,  
10 the corporate name, the registered office and agent, the  
11 initial board of directors, the initial subscribers for shares  
12 and matters solely of historical significance, and such  
13 provisions contained in any amendment to the articles of  
14 incorporation as were necessary to effect a change, exchange,  
15 reclassification, or cancellation of shares, if such change,  
16 exchange, reclassification, or cancellation has become  
17 effective. The articles of incorporation of the surviving  
18 corporation must be amended in the merger to contain a  
19 provision requiring, by specific reference to this section,  
20 that any act or transaction by or involving the surviving  
21 corporation which requires for its adoption under this act or  
22 its articles of incorporation the approval of the shareholders  
23 of the surviving corporation also be approved by the  
24 shareholders of the holding company, or any successor by  
25 merger, by the same vote as is required by this act or the  
26 articles of incorporation of the surviving corporation. The  
27 articles of incorporation of the surviving corporation may be  
28 amended in the merger to reduce the number of classes and  
29 shares which the surviving corporation is authorized to issue;

30           (h) The board of directors of the constituent  
31 corporation determines that the shareholders of the

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1 constituent corporation will not recognize gain or loss for  
2 United States federal income tax purposes; and  
3 (i) The board of directors of such corporation adopts  
4 a plan of merger that sets forth:  
5 1. The names of the constituent corporations;  
6 2. The manner and basis of converting the shares of  
7 the corporation into shares of the holding company and the  
8 manner and basis of converting rights to acquire shares of  
9 such corporation into rights to acquire shares of the holding  
10 company; and  
11 3. A provision for the pro rata issuance of shares of  
12 the holding company to the holders of shares of the  
13 corporation upon surrender of any certificates therefor.  
14 (4) From and after the effective time of a merger  
15 adopted by a constituent corporation by action of its board of  
16 directors and without any vote of shareholders pursuant to  
17 this section:  
18 (a) To the extent the restrictions of sections  
19 607.0901 and 607.0902, Florida Statutes, applied to the  
20 constituent corporation and its shareholders at the effective  
21 time of the merger, such restrictions also apply to the  
22 holding company and its shareholders immediately after the  
23 effective time of the merger as though it were the constituent  
24 corporation, and all shares of the holding company acquired in  
25 the merger shall, for purposes of sections 607.0901 and  
26 607.0902, Florida Statutes, be deemed to have been acquired at  
27 the time that the shares of the constituent corporation  
28 converted in the merger were acquired, and provided further  
29 that any shareholder who immediately prior to the effective  
30 time of the merger was not an interested shareholder within  
31 the meaning of section 607.0901, Florida Statutes, shall not,

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1 solely by reason of the merger, become an interested  
2 shareholder of the holding company; and

3 (b) If the corporate name of the holding company  
4 immediately following the effective time of the merger is the  
5 same as the corporate name of the constituent corporation  
6 immediately prior to the effective time of the merger, the  
7 shares of the holding company into which the shares of the  
8 constituent corporation are converted in the merger shall be  
9 represented by the share certificates that previously  
10 represented shares of the constituent corporation.

11 (5) If a plan of merger is adopted by a constituent  
12 corporation by selection of its board of directors without any  
13 vote of shareholders pursuant to this section, the secretary  
14 or assistant secretary of the constituent corporation shall  
15 certify in the articles of merger that the plan of merger has  
16 been adopted pursuant to this section and that the conditions  
17 specified in the first sentence of this section have been  
18 satisfied. The articles of merger so certified shall then be  
19 filed and become effective in accordance with section  
20 607.1106, Florida Statutes.

21 Section 8. Subsection (2) of section 608.407, Florida  
22 Statutes, is amended to read:

23 608.407 Articles of organization.--

24 (2) An affidavit declaring that the limited liability  
25 company has at least one member ~~two members~~ and setting forth  
26 the amount of the cash and a description and agreed value of  
27 property other than cash contributed by the members and the  
28 amount anticipated to be contributed by the members shall  
29 accompany the articles of organization of a limited liability  
30 company.

31 Section 9. Sections 607.1108, 607.1109, and 607.11101,

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1 Florida Statutes, are created to read:

2 607.1108 Merger of domestic corporation and other  
3 business entity.--

4 (1) As used in this section and ss. 607.1109 and  
5 607.11101, the term "other business entity" means a limited  
6 liability company, a foreign corporation, a not-for-profit  
7 corporation, a business trust or association, a real estate  
8 investment trust, a common law trust, an unincorporated  
9 business, a general partnership, a limited partnership, or any  
10 other entity that is formed pursuant to the requirements of  
11 applicable law. Notwithstanding the provisions of chapter 617,  
12 a domestic not-for-profit corporation acting under a plan of  
13 merger approved pursuant to s. 617.1103 shall be governed by  
14 the provisions of ss. 607.1108, 607.1109, and 607.11101.

15 (2) Pursuant to a plan of merger complying and  
16 approved in accordance with this section, one or more domestic  
17 corporations may merge with or into one or more other business  
18 entities formed, organized, or incorporated under the laws of  
19 this state or any other state, the United States, foreign  
20 country, or other foreign jurisdiction, if:

21 (a) Each domestic corporation which is a party to the  
22 merger complies with the applicable provisions of this  
23 chapter.

24 (b) Each domestic partnership that is a party to the  
25 merger complies with the applicable provisions of chapter 620.

26 (c) Each domestic limited liability company that is a  
27 party to the merger complies with the applicable provisions of  
28 chapter 608.

29 (d) The merger is permitted by the laws of the state,  
30 country, or jurisdiction under which each other business  
31 entity that is a party to the merger is formed, organized, or

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1 incorporated and each such other business entity complies with  
2 such laws in effecting the merger.

3 (3) The plan of merger shall set forth:

4 (a) The name of each domestic corporation and the name  
5 and jurisdiction of formation, organization, or incorporation  
6 of each other business entity planning to merge, and the name  
7 of the surviving or resulting domestic corporation or other  
8 business entity into which each other domestic corporation or  
9 other business entity plans to merge, which is hereinafter and  
10 in ss. 607.1109 and 607.11101 designated as the surviving  
11 entity.

12 (b) The terms and conditions of the merger.

13 (c) The manner and basis of converting the shares of  
14 each domestic corporation that is a party to the merger and  
15 the partnership interests, interests, shares, obligations or  
16 other securities of each other business entity that is a party  
17 to the merger into partnership interests, interests, shares,  
18 obligations or other securities of the surviving entity or any  
19 other domestic corporation or other business entity or, in  
20 whole or in part, into cash or other property, and the manner  
21 and basis of converting rights to acquire the shares of each  
22 domestic corporation that is a party to the merger and rights  
23 to acquire partnership interests, interests, shares,  
24 obligations or other securities of each other business entity  
25 that is a party to the merger into rights to acquire  
26 partnership interests, interests, shares, obligations or other  
27 securities of the surviving entity or any other domestic  
28 corporation or other business entity or, in whole or in part,  
29 into cash or other property.

30 (d) If a partnership is to be the surviving entity,  
31 the names and business addresses of the general partners of



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1 the surviving entity.

2 (e) If a limited liability company is to be the  
3 surviving entity and management thereof is vested in one or  
4 more managers, the names and business addresses of such  
5 managers.

6 (f) All statements required to be set forth in the  
7 plan of merger by the laws under which each other business  
8 entity that is a party to the merger is formed, organized, or  
9 incorporated.

10 (4) The plan of merger may set forth:

11 (a) If a domestic corporation is to be the surviving  
12 entity, any amendments to, or a restatement of, the articles  
13 of incorporation of the surviving entity, and such amendments  
14 or restatement shall be effective at the effective date of the  
15 merger.

16 (b) The effective date of the merger, which may be on  
17 or after the date of filing the certificate of merger.

18 (c) Any other provisions relating to the merger.

19 (5) The plan of merger required by subsection (3)  
20 shall be adopted and approved by each domestic corporation  
21 that is a party to the merger in the same manner as is  
22 provided in s. 607.1103. Notwithstanding the foregoing, if the  
23 surviving entity is a partnership, no shareholder of a  
24 domestic corporation that is a party to the merger shall, as a  
25 result of the merger, become a general partner of the  
26 surviving entity, unless such shareholder specifically  
27 consents in writing to becoming a general partner of the  
28 surviving entity, and unless such written consent is obtained  
29 from each such shareholder who, as a result of the merger,  
30 would become a general partner of the surviving entity, such  
31 merger shall not become effective under s. 607.11101. Any

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1 shareholder providing such consent in writing shall be deemed  
2 to have voted in favor of the plan of merger for purposes of  
3 s. 607.1103.

4 (6) Sections 607.1103 and 607.1301-607.1320 shall,  
5 insofar as they are applicable, apply to mergers of one or  
6 more domestic corporations with or into one or more other  
7 business entities.

8 (7) Notwithstanding any provision of this section or  
9 ss. 607.1109 and 607.11101, any merger consisting solely of  
10 the merger of one or more domestic corporations with or into  
11 one or more foreign corporations shall be consummated solely  
12 in accordance with the requirements of s. 607.1107.

13 607.1109 Articles of merger.--

14 (1) After a plan of merger is approved by each  
15 domestic corporation and other business entity that is a party  
16 to the merger, the surviving entity shall deliver to the  
17 Department of State for filing articles of merger, which shall  
18 be executed by each domestic corporation as required by s.  
19 607.0120 and by each other business entity as required by  
20 applicable law, and which shall set forth:

21 (a) The plan of merger.

22 (b) A statement that the plan of merger was approved  
23 by each domestic corporation that is a party to the merger in  
24 accordance with the applicable provisions of this chapter,  
25 and, if applicable, a statement that the written consent of  
26 each shareholder of such domestic corporation who, as a result  
27 of the merger, becomes a general partner of the surviving  
28 entity has been obtained pursuant to s. 607.1108(5).

29 (c) A statement that the plan of merger was approved  
30 by each domestic partnership that is a party to the merger in  
31 accordance with the applicable provisions of chapter 620.

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1           (d) A statement that the plan of merger was approved  
2 by each domestic limited liability company that is a party to  
3 the merger in accordance with the applicable provisions of  
4 chapter 608.

5           (e) A statement that the plan of merger was approved  
6 by each other business entity that is a party to the merger,  
7 other than domestic corporations, limited liability companies,  
8 and partnerships formed, organized, or incorporated under the  
9 laws of this state, in accordance with the applicable laws of  
10 the state, country, or jurisdiction under which such other  
11 business entity is formed, organized, or incorporated.

12           (f) The effective date of the merger, which may be on  
13 or after the date of filing the articles of merger, provided,  
14 if the articles of merger do not provide for an effective date  
15 of the merger, the effective date shall be the date on which  
16 the articles of merger are filed.

17           (g) If the surviving entity is another business entity  
18 formed, organized, or incorporated under the laws of any  
19 state, country, or jurisdiction other than this state:

20           1. The address, including street and number, if any,  
21 of its principal office under the laws of the state, country,  
22 or jurisdiction in which it was formed, organized, or  
23 incorporated.

24           2. A statement that the surviving entity is deemed to  
25 have appointed the Secretary of State as its agent for service  
26 of process in a proceeding to enforce any obligation or the  
27 rights of dissenting shareholders of each domestic corporation  
28 that is a party to the merger.

29           3. A statement that the surviving entity has agreed to  
30 promptly pay to the dissenting shareholders of each domestic  
31 corporation that is a party to the merger the amount, if any,

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1 to which they are entitled under s. 607.1302.

2 (2) A copy of the articles of merger, certified by the  
3 Department of State, may be filed in the office of the  
4 official who is the recording officer of each county in this  
5 state in which real property of a party to the merger other  
6 than the surviving entity is situated.

7 607.11101 Effect of merger of domestic corporation and  
8 other business entity.--When a merger becomes effective:

9 (1) Every domestic corporation and other business  
10 entity that is a party to the merger merges into the surviving  
11 entity and the separate existence of every domestic  
12 corporation and other business entity that is a party to the  
13 merger except the surviving entity ceases.

14 (2) The title to all real estate and other property,  
15 or any interest therein, owned by each domestic corporation  
16 and other business entity that is a party to the merger is  
17 vested in the surviving entity without reversion or impairment  
18 and without any requirement to record any deed or other  
19 conveyance.

20 (3) The surviving entity shall thereafter be  
21 responsible and liable for all the liabilities and obligations  
22 of each domestic corporation and other business entity that is  
23 a party to the merger, including liabilities arising out of  
24 the rights of dissenters with respect to such merger under  
25 applicable law.

26 (4) Any claim existing or action or proceeding pending  
27 by or against any domestic corporation or other business  
28 entity that is a party to the merger may be continued as if  
29 the merger did not occur or the surviving entity may be  
30 substituted in the proceeding for the domestic corporation or  
31 other business entity which ceased existence.

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1       (5) Neither the rights of creditors nor any liens upon  
2 the property of any domestic corporation or other business  
3 entity shall be impaired by such merger.

4       (6) If a domestic corporation is the surviving entity,  
5 the articles of incorporation of such corporation in effect  
6 immediately prior to the time the merger becomes effective  
7 shall be the articles of incorporation of the surviving  
8 entity, except as amended or restated to the extent provided  
9 in the plan of merger.

10       (7) The shares, partnership interests, interests,  
11 obligations, or other securities, and the rights to acquire  
12 shares, partnership interests, interests, obligations, or  
13 other securities, of each domestic corporation and other  
14 business entity that is a party to the merger shall be  
15 converted into shares, partnership interests, interests,  
16 obligations, or other securities, or rights to such  
17 securities, of the surviving entity or any other domestic  
18 corporation or other business entity or, in whole or in part,  
19 into cash or other property as provided in the plan of merger,  
20 and the former holders of shares, partnership interests,  
21 interests, obligations, or other securities, or rights to such  
22 securities, shall be entitled only to the rights provided in  
23 the plan of merger and to their rights as dissenters, if any,  
24 under ss. 607.1301-607.1320, s. 608.4384, s. 620.205, or other  
25 applicable law.

26       Section 10. Sections 608.438, 608.4381, 608.4382,  
27 608.4383, and 608.4384, Florida Statutes, are created to read:

28       608.438 Merger of limited liability company.--

29       (1) As used in this section and ss. 608.4381-608.4384,  
30 the term "other business entity" includes a corporation, a  
31 business trust or association, a real estate investment trust,

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1 a common law trust, an unincorporated business, a general  
2 partnership, a limited partnership, a limited liability  
3 company other than a limited liability company organized under  
4 the laws of this chapter, or any other entity that is formed  
5 pursuant to the requirements of applicable law.

6 (2) Unless otherwise provided in the articles of  
7 organization or the regulations of a limited liability  
8 company, pursuant to a plan of merger, a limited liability  
9 company may merge with or into one or more limited liability  
10 companies or other business entities formed, organized, or  
11 incorporated under the laws of this state or any other state,  
12 the United States, foreign country, or other foreign  
13 jurisdiction, if:

14 (a) Each limited liability company that is a party to  
15 the merger complies with the applicable provisions of this  
16 chapter and complies with the terms of its articles of  
17 organization and regulations.

18 (b) Each domestic partnership that is a party to the  
19 merger complies with the applicable provisions of chapter 620.

20 (c) Each domestic corporation that is a party to the  
21 merger complies with the applicable provisions of chapter 607.

22 (d) The merger is permitted by the laws of the state,  
23 country, or jurisdiction under which each other business  
24 entity that is a party to the merger is formed, organized, or  
25 incorporated, and each such other business entity complies  
26 with such laws in effecting the merger.

27 (3) The plan of merger shall set forth:

28 (a) The name of each limited liability company and the  
29 name and jurisdiction of formation, organization, or  
30 incorporation of each other business entity planning to merge,  
31 and the name of the surviving or resulting limited liability

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1 company or other business entity into which each other limited  
2 liability company or other business entity plans to merge,  
3 which is, in this section and in ss. 608.4381-608.4384,  
4 designated as the surviving entity.

5 (b) The terms and conditions of the merger.

6 (c) The manner and basis of converting the interests  
7 of the members of each limited liability company that is a  
8 party to the merger and the interests, partnership interests,  
9 shares, obligations, or other securities of each other  
10 business entity that is a party to the merger into interests,  
11 partnership interests, shares, obligations, or other  
12 securities of the surviving entity or any other limited  
13 liability company or other business entity or, in whole or in  
14 part, into cash or other property, and the manner and basis of  
15 converting rights to acquire interests of each limited  
16 liability company that is a party to the merger and rights to  
17 acquire interests, partnership interests, shares, obligations,  
18 or other securities of each other business entity that is a  
19 party to the merger into rights to acquire interests,  
20 partnership interests, shares, obligations, or other  
21 securities of the surviving entity or any other limited  
22 liability company or other business entity or, in whole or in  
23 part, into cash or other property.

24 (d) If a partnership is to be the surviving entity,  
25 the names and business addresses of the general partners of  
26 the surviving entity.

27 (e) If a limited liability company is to be the  
28 surviving entity, and management thereof is vested in one or  
29 more managers, the names and business addresses of such  
30 managers.

31 (f) All statements required to be set forth in the

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1 plan of merger by the laws under which each other business  
2 entity that is a party to merger is formed, organized, or  
3 incorporated.

4 (4) The plan of merger may set forth:

5 (a) If a limited liability company is to be the  
6 surviving entity, any amendments to, or a restatement of, the  
7 articles of organization or the regulations of the surviving  
8 entity, and such amendments or restatement shall be effective  
9 at the effective date of the merger.

10 (b) The effective date of the merger, which may be on  
11 or after the date of filing the certificate of merger.

12 (c) A provision authorizing one or more of the limited  
13 liability companies that are parties to the merger to abandon  
14 the proposed merger pursuant to s. 608.4381(7).

15 (d) A statement of, or a statement of the method of  
16 determining, the "fair value," as defined in s.  
17 608.4384(1)(b), of an interest in any limited liability  
18 company that is a party to the merger.

19 (e) Other provisions relating to the merger.

20 608.4381 Action on plan of merger.--

21 (1) Unless the articles of organization or the  
22 regulations of a limited liability company require a  
23 greater-than-majority vote, the plan of merger shall be  
24 approved in writing by a majority of the managers of a limited  
25 liability company that is a party to the merger in which  
26 management is not reserved to its members. Unless the articles  
27 of organization or the regulations of a limited liability  
28 company require a greater-than-majority vote or provide for  
29 another method of determining the voting rights of each of its  
30 members, and whether or not management is reserved to its  
31 members, the plan of merger shall be approved in writing by a



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1 majority of the members of a limited liability company that is  
2 a party to the merger, and, if applicable, the vote of each  
3 member shall be weighted in accordance with s. 608.4231(1)(b),  
4 provided, unless the articles of organization or the  
5 regulations of the limited liability company require a  
6 greater-than-majority vote or provide for another method of  
7 determining the voting rights of each of its members, if there  
8 is more than one class or group of members, the merger shall  
9 be approved by a majority of the members of each such class or  
10 group, and, if applicable, the vote of each member shall be  
11 weighted in accordance with s. 608.4231(1)(b).

12 (2) In addition to the approval required by subsection  
13 (1), if the surviving entity is a partnership, no member of a  
14 limited liability company that is a party to the merger shall,  
15 as a result of the merger, become a general partner of the  
16 surviving entity unless such member specifically consents in  
17 writing to becoming a general partner of the surviving entity  
18 and unless such written consent is obtained from each such  
19 member who, as a result of the merger, would become a general  
20 partner of the surviving entity, such merger shall not become  
21 effective under s. 608.4383. Any member providing such  
22 consent in writing shall be deemed to have voted in favor of  
23 the plan of merger for purposes of s. 608.4384.

24 (3) All members of each limited liability company that  
25 is a party to the merger shall be given written notice of any  
26 meeting or other action with respect to the approval of a plan  
27 of merger as provided in subsection (4), not fewer than 30 or  
28 more than 60 days before the date of the meeting at which the  
29 plan of merger shall be submitted for approval by the members  
30 of such limited liability company, provided, if the plan of  
31 merger is submitted to the members of the limited liability

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1 company for their written approval or other action without a  
2 meeting, such notification shall be given to each member not  
3 fewer than 30 or more than 60 days before the effective date  
4 of the merger. Pursuant to s. 608.455, the notification  
5 required by this subsection may be waived in writing by the  
6 person or persons entitled to such notification.

7 (4) The notification required by subsection (3) shall  
8 be in writing and shall include:

9 (a) The date, time, and place of the meeting, if any,  
10 at which the plan of merger is to be submitted for approval by  
11 the members of the limited liability company, or, if the plan  
12 of merger is to be submitted for written approval or by other  
13 action without a meeting, a statement to that effect.

14 (b) A copy or summary of the plan of merger.

15 (c) A clear and concise statement that, if the plan of  
16 merger is effected, members dissenting therefrom may be  
17 entitled, if they comply with the provisions of s. 608.4384  
18 regarding the rights of dissenting members, to be paid the  
19 fair value of their interests, which shall be accompanied by a  
20 copy of s. 608.4384.

21 (d) A statement of, or a statement of the method of  
22 determining, the "fair value," as defined in s.  
23 608.4384(1)(b), of an interest in the limited liability  
24 company, in the case of a limited liability company in which  
25 management is not reserved to its members, as determined by  
26 the managers of such limited liability company, which  
27 statement may consist of a reference to the applicable  
28 provisions of such limited liability company's articles of  
29 organization or regulations that determine the fair value of  
30 an interest in the limited liability company for such  
31 purposes, and which shall constitute an offer by the limited

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1 liability company to purchase at such fair value any interests  
2 of a "dissenter," as defined in s. 608.4384(1)(a), unless and  
3 until such dissenter's right to receive the fair value of his  
4 interests in the limited liability company is terminated  
5 pursuant to s. 608.4384(8).

6 (e) The date on which such notification was mailed or  
7 delivered to the members.

8 (f) Any other information concerning the plan of  
9 merger.

10 (5) The notification required by subsection (3) shall  
11 be deemed to be given at the earliest date of:

12 (a) The date such notification is received;

13 (b) Five days after the date such notification is  
14 deposited in the United States mail addressed to the member at  
15 his address as it appears in the books and records of the  
16 limited liability company, with postage thereon prepaid;

17 (c) The date shown on the return receipt, if sent by  
18 registered or certified mail, return receipt requested, and  
19 the receipt is signed by or on behalf of the addressee; or

20 (d) The date such notification is given in accordance  
21 with the provisions of the articles of organization or the  
22 regulations of the limited liability company.

23 (6) A plan of merger may provide for the manner, if  
24 any, in which the plan of merger may be amended at any time  
25 before the effective date of the merger, except after the  
26 approval of the plan of merger by the members of a limited  
27 liability company that is a party to the merger, the plan of  
28 merger may not be amended to:

29 (a) Change the amount or kind of interests,  
30 partnership interests, shares, obligations, other securities,  
31 cash, rights, or any other property to be received by the

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1 members of such limited liability company in exchange for or  
2 on conversion of their interests;

3 (b) If the surviving entity is a limited liability  
4 company, change any term of the articles of organization or  
5 the regulations of the surviving entity, except for changes  
6 that otherwise could be adopted without the approval of the  
7 members of the surviving entity;

8 (c) If the surviving entity is not a limited liability  
9 company, change any term of the articles of incorporation or  
10 comparable governing document of the surviving entity, except  
11 for changes that otherwise could be adopted by the board of  
12 directors or comparable representatives of the surviving  
13 entity; or

14 (d) Change any of the terms and conditions of the plan  
15 of merger if any such change, alone or in the aggregate, would  
16 materially and adversely affect the members, or any class or  
17 group of members, of such limited liability company.

18  
19 If an amendment to a plan of merger is made in accordance the  
20 plan and articles of merger have been filed with the  
21 Department of State, amended articles of merger executed by  
22 each limited liability company and other business entity that  
23 is a party to the merger shall be filed with the Department of  
24 State prior to the effective date of the merger.

25 (7) Unless the limited liability company's articles of  
26 organization or regulations or the plan of merger provide  
27 otherwise, notwithstanding the prior approval of the plan of  
28 merger by any limited liability company that is a party to the  
29 merger in which management is not reserved to its members, and  
30 at any time prior to the filing of articles of merger with the  
31 Department of State, the planned merger may be abandoned,

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1 subject to any contractual rights, by any such limited  
2 liability company by the affirmative vote of a majority of its  
3 managers without further action by its members, in accordance  
4 with the procedure set forth in the plan of merger or if none  
5 is set forth, in the manner determined by the managers of such  
6 limited liability company.

7 608.4382 Articles of merger.--

8 (1) After a plan of merger is approved by each limited  
9 liability company and other business entity that is a party to  
10 the merger, the surviving entity shall deliver to the  
11 Department of State for filing articles of merger, which shall  
12 be executed by each limited liability company and by each  
13 other business entity as required by applicable law, and which  
14 shall set forth:

15 (a) The plan of merger.

16 (b) A statement that the plan of merger was approved  
17 by each limited liability company that is a party to the  
18 merger in accordance with the applicable provisions of this  
19 chapter, and, if applicable, a statement that the written  
20 consent of each member of such limited liability company who,  
21 as a result of the merger, becomes a general partner of the  
22 surviving entity has been obtained pursuant to s. 608.4381(2).

23 (c) A statement that the plan of merger was approved  
24 by each domestic partnership that is a party to the merger in  
25 accordance with the applicable provisions of chapter 620.

26 (d) A statement that the plan of merger was approved  
27 by each domestic corporation that is a party to the merger in  
28 accordance with the applicable provisions of chapter 607.

29 (e) A statement that the plan of merger was approved  
30 by each other business entity that is a party to the merger,  
31 other than limited liability companies, partnerships, and

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1 corporations formed, organized, or incorporated under the laws  
2 of this state, in accordance with the applicable laws of the  
3 state, country, or jurisdiction under which such other  
4 business entity is formed, organized, or incorporated.

5 (f) The effective date of the merger, which may be on  
6 or after the date of filing the articles of merger, provided,  
7 if the articles of merger do not provide for an effective date  
8 of the merger, the effective date shall be the date on which  
9 the articles of merger are filed.

10 (g) If the surviving entity is another business entity  
11 formed, organized, or incorporated under the laws of any  
12 state, country, or jurisdiction other than this state:

13 1. The address, including street and number, if any,  
14 of its principal office under the laws of the state, country,  
15 or jurisdiction in which it was formed, organized, or  
16 incorporated.

17 2. A statement that the surviving entity is deemed to  
18 have appointed the Secretary of State as its agent for service  
19 of process in a proceeding to enforce any obligation or the  
20 rights of dissenting members of each limited liability company  
21 that is a party to the merger.

22 3. A statement that the surviving entity has agreed to  
23 promptly pay to the dissenting members of each limited  
24 liability company that is a party to the merger the amount, if  
25 any, to which such dissenting members are entitled under s.  
26 608.4384.

27 (2) A copy of the articles of merger, certified by the  
28 Department of State, may be filed in the office of the  
29 official who is the recording officer of each county in this  
30 state in which real property of a party to the merger other  
31 than the surviving entity is situated.

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1           608.4383 Effect of merger.--When a merger becomes  
2 effective:

3           (1) Every limited liability company and other business  
4 entity that is a party to the merger merges into the surviving  
5 entity and the separate existence of every limited liability  
6 company and other business entity that is a party to the  
7 merger, except the surviving entity, ceases.

8           (2) The title to all real estate and other property,  
9 or any interest therein, owned by each limited liability  
10 company and other business entity that is a party to the  
11 merger is vested in the surviving entity without reversion or  
12 impairment and without any requirement to record any deed or  
13 other conveyance.

14           (3) The surviving entity shall thereafter be  
15 responsible and liable for all the liabilities and obligations  
16 of each limited liability company and other business entity  
17 that is a party to the merger, including liabilities arising  
18 out of the rights of dissenters with respect to such merger  
19 under applicable law.

20           (4) Any claim existing or action or proceeding pending  
21 by or against any limited liability company or other business  
22 entity that is a party to the merger may be continued as if  
23 the merger did not occur or the surviving entity may be  
24 substituted in the proceeding for the limited liability  
25 company or other business entity which ceased existence.

26           (5) Neither the rights of creditors nor any liens upon  
27 the property of any limited liability company or other  
28 business entity shall be impaired by such merger.

29           (6) If a limited liability company is the surviving  
30 entity, the articles of organization and the regulations of  
31 such limited liability company in effect immediately prior to

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1 the time the merger becomes effective shall be the articles of  
2 organization and the regulations of the surviving entity,  
3 except as amended or restated to the extent provided in the  
4 plan of merger.

5 (7) The interests, partnership interests, shares,  
6 obligations, or other securities, and the rights to acquire  
7 interests, partnership interests, shares, obligations, or  
8 other securities, of each limited liability company and other  
9 business entity that is a party to the merger shall be  
10 converted into interests, partnership interests, shares,  
11 obligations, or other securities, or rights to such  
12 securities, of the surviving entity or any other limited  
13 liability company or other business entity or, in whole or in  
14 part, into cash or other property as provided in the plan of  
15 merger, and the former holders of interests, partnership  
16 interests, shares, obligations, or other securities, or rights  
17 to such securities, shall be entitled only to the rights  
18 provided in the plan of merger and to their rights as  
19 dissenters, if any, under s. 608.4384, ss. 607.1301-607.1320,  
20 s. 620.205, or other applicable law.

21 608.4384 Rights of dissenting members.--

22 (1) For purposes of this section, the term:

23 (a) "Dissenter" means a member of a limited liability  
24 company who is a recordholder of the interests to which he  
25 seeks relief as of the date fixed for the determination of  
26 members entitled to notice of a plan of merger, who does not  
27 vote such interests in favor of the plan of merger, and who  
28 exercises the right to dissent from the plan of merger when  
29 and in the manner required by this section.

30 (b) "Fair value," with respect to a dissenter's  
31 interests, means the value of the interests in the limited



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1 liability company that is a party to a plan of merger as of  
2 the close of business of the day prior to the effective date  
3 of the merger to which the dissenter objects, excluding any  
4 appreciation or depreciation in anticipation of the merger,  
5 unless such exclusion would be inequitable.

6 (2) Each member of a limited liability company that is  
7 a party to a merger shall have the right to be paid the fair  
8 value of his interests as a dissenter only as provided in this  
9 section.

10 (3) Not later than 20 days after the date on which the  
11 notification required by s. 608.4381(3) is given to the  
12 members, or if such notification is waived in writing by the  
13 dissenter, not later than 20 days after the date of such  
14 written waiver, the dissenter shall deliver to the limited  
15 liability company a written demand for payment to him of the  
16 fair value of the interests as to which he seeks relief that  
17 states his address, the number and class, if any, of those  
18 interests, and, at the election of the dissenter, the amount  
19 claimed by him as the fair value of the interests. The  
20 statement of fair market value by the dissenter, if any, shall  
21 constitute an offer by the dissenter to sell the interests to  
22 the limited liability company at such amount. A dissenter may  
23 dissent as to less than all the interests registered in his  
24 name. In such event, the dissenter's rights shall be  
25 determined as if the interests as to which he has dissented  
26 and his remaining interests were registered in the names of  
27 different members. If the interests as to which a dissenter  
28 seeks relief are represented by certificates, the dissenter  
29 shall deposit such certificates with the limited liability  
30 company simultaneously with the delivery of the written demand  
31 for payment. Upon receiving a demand for payment from a

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1 dissenter who is a recordholder of uncertificated interests,  
2 the limited liability company shall make an appropriate  
3 notation of the demand for payment in its records. The limited  
4 liability company may restrict the transfer of uncertificated  
5 interests from the date the dissenter's written demand for  
6 payment is delivered. A written demand for payment served on  
7 the limited liability company in which the dissenter is a  
8 member shall constitute service on the surviving entity.

9 (4) The written demand for payment required by  
10 subsection (3) shall be deemed to be delivered to the limited  
11 liability company at the earliest of:

12 (a) The date such written demand is received;

13 (b) Five days after the date such written demand is  
14 deposited in the United States mail addressed to the principal  
15 business office of the limited liability company, with postage  
16 thereon prepaid;

17 (c) The date shown on the return receipt, if such  
18 written demand is sent by registered or certified mail, return  
19 receipt requested, and the receipt is signed by or on behalf  
20 of the addressee; or

21 (d) The date such written demand is given in  
22 accordance with the provisions of the limited liability  
23 company's articles of organization or regulations.

24 (5) Unless the articles of organization or regulations  
25 of the limited liability company in which the dissenter is a  
26 member provides a basis or method for determining and paying  
27 the fair value of the interests as to which the dissenter  
28 seeks relief, or unless the limited liability company or the  
29 surviving entity and the dissenter have agreed in writing as  
30 to the fair value of the interests as to which the dissenter  
31 seeks relief, the dissenter, the limited liability company, or

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1 the surviving entity, within 90 days after the dissenter  
2 delivers the written demand for payment to the limited  
3 liability company, may file an action in any court of  
4 competent jurisdiction in the county in this state where the  
5 registered office of the limited liability company is located  
6 or was located when the plan of merger was approved by its  
7 members, or in the county in this state in which the principal  
8 office of the limited liability company that issued the  
9 interests is located or was located when the plan of merger  
10 was approved by its partners, requesting that the fair value  
11 of the dissenter's interests be determined. The court shall  
12 also determine whether each dissenter that is a party to such  
13 proceeding, as to whom the limited liability company or the  
14 surviving entity requests the court to make such  
15 determination, is entitled to receive payment of the fair  
16 value for his interests. Other dissenters, within the 90-day  
17 period after a dissenter delivers a written demand to the  
18 limited liability company, may join such proceeding as  
19 plaintiffs or may be joined in any such proceeding as  
20 defendants, and any two or more such proceedings may be  
21 consolidated. If the limited liability company or surviving  
22 entity commences such a proceeding, all dissenters, whether or  
23 not residents of this state, other than dissenters who have  
24 agreed in writing with the limited liability company or the  
25 surviving entity as to the fair value of the interests as to  
26 which such dissenters seek relief, shall be made parties to  
27 such action as an action against their interests. The limited  
28 liability company or the surviving entity shall serve a copy  
29 of the initial pleading in such proceeding upon each dissenter  
30 who is a party to such proceeding and who is a resident of  
31 this state in the manner provided by law for the service of a

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1 summons and complaint and upon each such dissenter who is not  
2 a resident of this state either by registered or certified  
3 mail and publication or in such matter as is permitted by law.  
4 The jurisdiction of the court in such a proceeding shall be  
5 plenary and exclusive. All dissenters who are proper parties  
6 to the proceeding are entitled to judgment against the limited  
7 liability company or the surviving entity for the amount of  
8 the fair value of their interests as to which payment is  
9 sought hereunder. The court may, if it so elects, appoint one  
10 or more persons as appraisers to receive evidence and  
11 recommend a decision on the question of fair value. The  
12 appraisers shall have such power and authority as is specified  
13 in the order of their appointment or an amendment thereof.  
14 The limited liability company shall pay each dissenter the  
15 amount found to be due him within 10 days after final  
16 determination of the proceedings. Upon payment of the  
17 judgment, the dissenter shall cease to have any interest in  
18 the interests as to which payment is sought hereunder.

19 (6) The judgment may, at the discretion of the court,  
20 include a fair rate of interest, to be determined by the  
21 court.

22 (7) The costs and expenses of any such proceeding  
23 shall be determined by the court and shall be assessed against  
24 the limited liability company or the surviving entity, but all  
25 or any part of such costs and expenses may be apportioned and  
26 assessed as the court deems equitable against any or all of  
27 the dissenters who are parties to the proceeding, to whom the  
28 limited liability company or the surviving entity has made an  
29 offer to pay for the interests, if the court finds that the  
30 action of such dissenters in failing to accept such offer was  
31 arbitrary, vexatious or not in good faith. Such expenses shall

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1 include reasonable compensation for, and reasonable expenses  
2 of, the appraisers, but shall exclude the fees and expenses of  
3 counsel for, and experts employed by, any party. If the fair  
4 value of the interests, as determined, materially exceeds the  
5 amount which the limited liability company or the surviving  
6 entity offered to pay therefor, the court in its discretion  
7 may award to any dissenter who is a party to the proceeding  
8 such amount as the court determines to be reasonable  
9 compensation to any attorney or expert employed by the  
10 dissenter in the proceeding.

11 (8) The right of a dissenter to receive fair value for  
12 and the obligation to sell such interests as to which he seeks  
13 relief, and the right of the limited liability company or the  
14 surviving entity to purchase such interests and the obligation  
15 to pay the fair value of such interests, shall terminate if:

16 (a) The dissenter has not complied with this section,  
17 unless the limited liability company or the surviving entity  
18 waives, in writing, such noncompliance;

19 (b) The limited liability company abandons the merger  
20 or is finally enjoined or prevented from carrying it out, or  
21 the members rescind their adoption or approval of the merger;

22 (c) The dissenter withdraws his demand, with the  
23 consent of the limited liability company or the surviving  
24 entity; or

25 (d)1. The articles of organization or the regulations  
26 of the limited liability company in which the dissenter was a  
27 member does not provide a basis or method for determining and  
28 paying the dissenter the fair value of his interests.

29 2. The limited liability company or the surviving  
30 entity and the dissenter have not agreed upon the fair value  
31 of the dissenter's interests.

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1           3. Neither the dissenter, the limited liability  
2 company, nor the surviving entity has filed or is joined in a  
3 complaint under subsection (5) within the 90-day period  
4 provided in subsection (5).

5           (9) Unless otherwise provided in the articles of  
6 organization or the regulations of the limited liability  
7 company in which the dissenter was a member, after the date  
8 the dissenter delivers the written demand for payment in  
9 accordance with subsection (3) until either the termination of  
10 the rights and obligations arising under subsection (3) or the  
11 purchase of the dissenter's interests by the limited liability  
12 company or the surviving entity, the dissenter shall be  
13 entitled only to payment as provided in this section and shall  
14 not be entitled to any other rights accruing from such  
15 interests, including voting or distribution rights. If the  
16 right to receive fair value is terminated other than by the  
17 purchase of the dissenter's interests by the limited liability  
18 company or the surviving entity, all rights of the dissenter  
19 as a member of the limited liability company shall be  
20 reinstated effective as of the date the dissenter delivered  
21 the written demand for payment, including the right to receive  
22 any intervening payment or other distribution with respect to  
23 the dissenter's interests in the limited liability company,  
24 or, if any such rights have expired or any such distribution  
25 other than a cash payment has been completed, in lieu thereof  
26 at the election of the surviving entity, the fair value  
27 thereof in cash as determined by the surviving entity as of  
28 the time of such expiration or completion, but without  
29 prejudice otherwise to any action or proceeding of the limited  
30 liability company that may have been taken by the limited  
31 liability company on or after the date the dissenter delivered

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1 the written demand for payment.

2 (10) A member who is entitled under this section to  
3 demand payment for his interests shall not have any right at  
4 law or in equity to challenge the validity of any merger that  
5 creates his entitlement to demand payment hereunder, or to  
6 have the merger set aside or rescinded, except with respect to  
7 compliance with the provisions of the limited liability  
8 company's articles of organization or regulations or if the  
9 merger is unlawful or fraudulent with respect to such member.

10 (11) Unless otherwise provided in the articles of  
11 organization or the regulations of the limited liability  
12 company in which the dissenter was a member, this section does  
13 not apply with respect to a plan of merger if, as of the date  
14 fixed for the determination of members entitled to notice of a  
15 plan of merger:

16 (a) The interests of the limited liability company  
17 were held of record by not fewer than 500 members; or

18 (b) The interests were registered on a national  
19 securities exchange or quoted on the National Association of  
20 Securities Dealers Automated Quotation System.

21 Section 11. Sections 620.201, 620.202, 620.203,  
22 620.204, and 620.205, Florida Statutes, are created to read:

23 620.201 Merger of domestic limited partnership.

24 (1) As used in this section and ss. 620.202-620.205,  
25 the term "other business entity" includes a corporation, a  
26 limited liability company, a business trust or association, a  
27 real estate investment trust, a common law trust, an  
28 unincorporated business, a general partnership or a limited  
29 partnership but excluding a domestic limited partnership, or  
30 any other entity that is formed pursuant to the requirements  
31 of applicable law.

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1           (2) Unless otherwise provided in the partnership  
2 agreement of a domestic limited partnership, pursuant to a  
3 plan of merger, a domestic limited partnership may merge with  
4 or into one or more domestic limited partnerships or other  
5 business entities formed, organized, or incorporated under the  
6 laws of this state or any other state, the United States,  
7 foreign country, or other foreign jurisdiction, if:

8           (a) Each domestic partnership that is a party to the  
9 merger complies with the applicable provisions of this chapter  
10 and complies with the terms of its partnership agreement.

11           (b) Each domestic limited liability company that is a  
12 party to the merger complies with the applicable provisions of  
13 chapter 608.

14           (c) Each domestic corporation that is a party to the  
15 merger complies with the applicable provisions of chapter 607.

16           (d) The merger is permitted by the laws of the state,  
17 country, or jurisdiction under which each other business  
18 entity that is a party to the merger is formed, organized, or  
19 incorporated, and each such other business entity complies  
20 with such laws in effecting the merger.

21           (3) The plan of merger shall set forth:

22           (a) The name of each domestic limited partnership and  
23 the name and jurisdiction of formation, organization, or  
24 incorporation of each other business entity planning to merge,  
25 and the name of the surviving or resulting domestic limited  
26 partnership or other business entity into which each other  
27 domestic limited partnership or other business entity plans to  
28 merge, which is hereinafter and in ss. 620.202-620.205  
29 designated as the surviving entity.

30           (b) The terms and conditions of the merger.

31           (c) The manner and basis of converting the partnership



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1 interests of each domestic limited partnership that is a party  
2 to the merger and the partnership interests, interests,  
3 shares, obligations, or other securities of each other  
4 business entity that is a party to the merger into partnership  
5 interests, interests, shares, obligations, or other securities  
6 of the surviving entity or any other domestic limited  
7 partnership or other business entity or, in whole or in part,  
8 into cash or other property, and the manner and basis of  
9 converting rights to acquire the partnership interests of each  
10 domestic limited partnership that is a party to the merger and  
11 rights to acquire partnership interests, interests, shares,  
12 obligations, or other securities of each other business entity  
13 that is a party to the merger into rights to acquire  
14 partnership interests, interests, shares, obligations, or  
15 other securities of the surviving entity or any other domestic  
16 limited partnership or other business entity or, in whole or  
17 in part, into cash or other property.

18 (d) If a partnership is to be the surviving entity,  
19 the names and business addresses of the general partners of  
20 the surviving entity.

21 (e) If a limited liability company is to be the  
22 surviving entity, and management thereof is vested in one or  
23 more managers, the names and business addresses of such  
24 managers.

25 (f) All statements required to be set forth in the  
26 plan of merger by the laws under which each other business  
27 entity that is a party to merger is formed, organized, or  
28 incorporated.

29 (4) The plan of merger may set forth:

30 (a) If a domestic limited partnership is to be the  
31 surviving entity, any amendments to, or a restatement of, the

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1 certificate of limited partnership or partnership agreement of  
2 the surviving entity, and such amendments or restatement shall  
3 be effective on the effective date of the merger.

4 (b) The effective date of the merger, which may be on  
5 or after the date of filing the certificate of merger.

6 (c) A provision authorizing one or more of the  
7 domestic limited partnerships that are parties to the merger  
8 to abandon the proposed merger pursuant to s. 620.202(7).

9 (d) A statement of, or a statement of the method of  
10 determining, the "fair value," as defined in s. 620.205(1)(b),  
11 of a partnership interest in any domestic limited partnership  
12 that is a party to the merger.

13 (e) Any other provisions relating to the merger.

14 620.202 Action on plan of merger.--

15 (1) Unless otherwise provided in the partnership  
16 agreement of a domestic limited partnership, the plan of  
17 merger shall be approved in writing by all of the general  
18 partners of a domestic limited partnership that is a party to  
19 the merger. Unless the partnership agreement of a domestic  
20 limited partnership requires a greater vote, the plan of  
21 merger shall also be approved in writing by those limited  
22 partners who own more than a majority of the then current  
23 percentage or other interests in the profits of the domestic  
24 limited partnership owned by all of the limited partners,  
25 provided, unless the partnership agreement of the domestic  
26 limited partnership requires a greater vote, if there is more  
27 than one class or group of limited partners, the plan of  
28 merger shall be approved by those limited partners who own  
29 more than a majority of the then current percentage or other  
30 interests in the profits of the domestic limited partnership  
31 owned by the limited partners in each class or group.

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1           (2) In addition to the approval required by subsection  
2 (1):

3           (a) If a domestic limited partnership is to be the  
4 surviving entity, no person shall, as a result of the merger,  
5 continue to be or become a general partner of the surviving  
6 entity, unless such person specifically consents in writing to  
7 continuing to be or to becoming, as the case may be, a general  
8 partner of the surviving entity, and unless such written  
9 consent is obtained from each such person who, as a result of  
10 the merger, would become a general partner of the surviving  
11 entity, such merger shall not become effective under s.  
12 620.204.

13           (b) If a partnership other than a domestic limited  
14 partnership is to be the surviving entity, no partner of a  
15 domestic limited partnership that is a party to the merger  
16 shall, as a result of the merger, become a general partner of  
17 the surviving entity unless such partner specifically consents  
18 in writing to becoming a general partner of the surviving  
19 entity, and unless such written consent is obtained from each  
20 person who, as a result of the merger, would become a general  
21 partner of the surviving entity, such merger shall not become  
22 effective under s. 620.204. Any person providing such consent  
23 in writing shall be deemed to have voted in favor of the plan  
24 of merger for purposes of s. 620.205.

25           (3) All partners of each domestic limited partnership  
26 that is a party to the merger shall be given written notice of  
27 any meeting or other action with respect to the approval of a  
28 plan of merger as provided in subsection (4), not fewer than  
29 30 or more than 60 days before the date of the meeting at  
30 which the plan of merger shall be submitted for approval by  
31 the partners of such limited partnership. However, if the

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1 plan of merger is submitted to the partners of the limited  
2 partnership for their written approval or other action without  
3 a meeting, such notification shall be given to each partner  
4 not fewer than 30 or more than 60 days before the effective  
5 date of the merger. Notwithstanding the foregoing, the  
6 notification required by this subsection may be waived in  
7 writing by the person or persons entitled to such  
8 notification.

9 (4) The notification required by subsection (3) shall  
10 be in writing and shall include:

11 (a) The date, time, and place of the meeting, if any,  
12 at which the plan of merger shall be submitted for approval by  
13 the partners of the domestic limited partnership, or, if the  
14 plan of merger will be submitted for written approval or by  
15 other action without a meeting, a statement to that effect.

16 (b) A copy or summary of the plan of merger.

17 (c) A clear and concise statement that, if the plan of  
18 merger is effected, partners dissenting therefrom may be  
19 entitled, if they comply with the provisions of s. 620.205  
20 regarding the rights of dissenting partners, to be paid the  
21 fair value of their partnership interests, which shall be  
22 accompanied by a copy of s. 620.205.

23 (d) A statement of, or a statement of the method of  
24 determining, the "fair value," as defined in s. 620.205(1)(b),  
25 of an interest in the limited partnership as determined by the  
26 general partners of the limited partnership, which statement  
27 may consist of a reference to the applicable provisions of  
28 such limited partnership's partnership agreement that  
29 determine the fair value of an interest in the limited  
30 partnership for these purposes, and which shall constitute an  
31 offer by the limited partnership to purchase at such fair

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1 value any partnership interests of a "dissenter," as defined  
2 in s. 620.205(1)(a), unless and until such a dissenter's right  
3 to receive the fair value of his interests in the limited  
4 partnership are is terminated pursuant to s. 620.205(8).

5 (e) The date on which such notification was mailed or  
6 delivered to the partners.

7 (f) Any other information concerning the plan of  
8 merger.

9 (5) The notification required by subsection (3) shall  
10 be deemed to be given at the earliest of:

11 (a) The date such notification is received;

12 (b) Five days after the date such notification is  
13 deposited in the United States mail addressed to the partner  
14 at his address as it appears in the books and records of the  
15 limited partnership, with postage thereon prepaid;

16 (c) The date shown on the return receipt, if sent by  
17 registered or certified mail, return receipt requested, and  
18 the receipt is signed by or on behalf of the addressee; or

19 (d) The date such notification is given in accordance  
20 with the provisions of the limited partnership's partnership  
21 agreement.

22 (6) A plan of merger may provide for the manner, if  
23 any, in which the plan of merger may be amended at any time  
24 before the effective date of the merger, except, after the  
25 approval of the plan of merger by the limited partners of a  
26 domestic limited partnership that is a party to the merger,  
27 the general partners of such domestic limited partnership  
28 shall not be authorized to amend the plan of merger to:

29 (a) Change the amount or kind of partnership  
30 interests, interests, shares, obligations, other securities,  
31 cash, rights, or any other property to be received by the

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1 limited partners of such domestic limited partnership in  
2 exchange for or on conversion of their partnership interests;

3 (b) If the surviving entity is a partnership, change  
4 any term of the partnership agreement of the surviving entity,  
5 except for changes that otherwise could be adopted by the  
6 general partners of the surviving entity;

7 (c) If the surviving entity is not a partnership,  
8 change any term of the articles of incorporation or comparable  
9 governing document of the surviving entity, except for changes  
10 that otherwise could be adopted by the board of directors or  
11 comparable representatives of the surviving entity; or

12 (d) Change any of the terms and conditions of the plan  
13 of merger if any such change, alone or in the aggregate, would  
14 materially and adversely affect the limited partners, or any  
15 class or group of limited partners, of such domestic limited  
16 partnership.

17  
18 If an amendment to a plan of merger is made in accordance with  
19 such plan and articles of merger have been filed with the  
20 Department of State, amended articles of merger executed by  
21 the general partners of each domestic limited partnership and  
22 other business entity that is a party to the merger shall be  
23 filed with the Department of State prior to the effective date  
24 of the merger.

25 (7) Unless the domestic limited partnership's  
26 partnership agreement or the plan of merger provides  
27 otherwise, notwithstanding the prior approval of the plan of  
28 merger by any domestic limited partnership that is a party to  
29 the merger and at any time prior to the filing of articles of  
30 merger with the Department of State, the planned merger may be  
31 abandoned, subject to any contractual rights, by any such

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1 domestic limited partnership by the affirmative vote of all of  
2 its general partners, without further action by its limited  
3 partners, in accordance with the procedure set forth in the  
4 plan of merger or if none is set forth, in the manner  
5 determined by the general partners of such domestic limited  
6 partnership.

7 620.203 Articles of merger.--

8 (1) After a plan of merger is approved by each  
9 domestic limited partnership and other business entity that is  
10 a party to the merger, the surviving entity shall deliver  
11 articles of merger to the Department of State for filing,  
12 which articles shall be executed by the general partners of  
13 each domestic limited partnership and by each other business  
14 entity as required by applicable law, and which shall set  
15 forth:

16 (a) The plan of merger.

17 (b) A statement that the plan of merger was approved  
18 by each domestic partnership that is a party to the merger in  
19 accordance with the applicable provisions of this chapter,  
20 and, if applicable, a statement that the written consent of  
21 each person who, as a result of the merger, becomes a general  
22 partner of the surviving entity has been obtained pursuant to  
23 s. 620.202(2).

24 (c) A statement that the plan of merger was approved  
25 by each domestic corporation that is a party to the merger in  
26 accordance with the applicable provisions of chapter 607.

27 (d) A statement that the plan of merger was approved  
28 by each domestic limited liability company that is a party to  
29 the merger in accordance with the applicable provisions of  
30 chapter 608.

31 (e) A statement that the plan of merger was approved

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1 by each other business entity that is a party to the merger,  
2 other than partnerships, limited liability companies, and  
3 corporations formed, organized, or incorporated under the laws  
4 of this state, in accordance with the applicable laws of the  
5 state, country, or jurisdiction under which such other  
6 business entity is formed, organized, or incorporated.

7 (f) The effective date of the merger, which may be on  
8 or after the date of filing the articles of merger, provided,  
9 if the articles of merger do not provide for an effective date  
10 of the merger, the effective date shall be the date on which  
11 the articles of merger are filed.

12 (g) If the surviving entity is another business entity  
13 formed, organized, or incorporated under the laws of any  
14 state, country, or jurisdiction other than this state:

15 1. The address, including street and number, if any,  
16 of its principal office under the laws of the state, country,  
17 or jurisdiction in which it was formed, organized or  
18 incorporated.

19 2. A statement that the surviving entity is deemed to  
20 have appointed the Secretary of State as its agent for service  
21 of process in a proceeding to enforce any obligation or the  
22 rights of dissenting partners of each domestic limited  
23 partnership that is a party to the merger.

24 3. A statement that the surviving entity has agreed to  
25 promptly pay to the dissenting partners of each domestic  
26 limited partnership that is a party to the merger the amount,  
27 if any, to which they are entitled under s. 620.205.

28 (2) A copy of the articles of merger, certified by the  
29 Department of State, may be filed in the office of the  
30 official who is the recording officer of each county in this  
31 state in which real property of a party to the merger other



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1 than the surviving entity is situated.

2 (3) Articles of merger shall act as a certificate of  
3 cancellation for purposes of s. 620.113 for a domestic limited  
4 partnership that is a party to the merger that is not the  
5 surviving entity and such partnership's certificate of limited  
6 partnership shall be canceled upon the effective date of the  
7 merger.

8 620.204 Effect of merger.--

9 (1) When a merger becomes effective:

10 (a) Every domestic limited partnership and other  
11 business entity that is a party to the merger merges into the  
12 surviving entity and the separate existence of every domestic  
13 limited partnership and other business entity that is a party  
14 to the merger except the surviving entity ceases.

15 (b) The title to all real estate and other property,  
16 or any interest therein, owned by each domestic limited  
17 partnership and other business entity that is a party to the  
18 merger is vested in the surviving entity without reversion or  
19 impairment and without any requirement to record any deed or  
20 other conveyance.

21 (c) The surviving entity shall thereafter be  
22 responsible and liable for all the liabilities and obligations  
23 of each domestic limited partnership and other business entity  
24 that is a party to the merger, including liabilities arising  
25 out of the rights of dissenters with respect to such merger  
26 under applicable law.

27 (d) Any claim existing or action or proceeding pending  
28 by or against any domestic limited partnership or other  
29 business entity that is a party to the merger may be continued  
30 as if the merger did not occur or the surviving entity may be  
31 substituted in the proceeding for the domestic limited

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1 partnership or other business entity which ceased existence.

2 (e) Neither the rights of creditors nor any liens upon  
3 the property of any domestic limited partnership or other  
4 business entity shall be impaired by such merger.

5 (f) If a general partner of a partnership formed or  
6 organized under the laws of this state or any other state,  
7 country, or jurisdiction that is a party to the merger is not  
8 a general partner of the surviving entity, the former general  
9 partner shall have no liability for obligations arising out of  
10 the rights of dissenters with respect to such merger under  
11 applicable law or for any obligation incurred after the  
12 effective date of the merger, except to the extent that a  
13 former creditor of the partnership in which the former general  
14 partner was a general partner extends credit to the surviving  
15 entity reasonably believing that the former general partner  
16 continued as a general partner of the surviving entity.

17 (g) If a domestic limited partnership is the surviving  
18 entity, the certificate of limited partnership and partnership  
19 agreement of such partnership in effect immediately prior to  
20 the time the merger becomes effective shall be the certificate  
21 of limited partnership and partnership agreement of the  
22 surviving entity, except as amended or restated to the extent  
23 provided in the plan of merger.

24 (h) The partnership interests, interests, shares,  
25 obligations, or other securities, and the rights to acquire  
26 partnership interests, membership interests, shares,  
27 obligations, or other securities, of each domestic limited  
28 partnership and other business entity that is a party to the  
29 merger shall be converted into partnership interests,  
30 interests, shares, obligations, or other securities, or rights  
31 to such securities, of the surviving entity or any other

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1 domestic limited partnership or other business entity or, in  
2 whole or in part, into cash or other property as provided in  
3 the plan of merger, and the former holders of partnership  
4 interests, interests, shares, obligations, or other  
5 securities, or rights to such securities, shall be entitled  
6 only to the rights provided in the plan of merger and to their  
7 rights as dissenters, if any, under s. 620.205, ss.  
8 607.1301-607.1320, s. 608.4384, or other applicable law.

9 (2) Unless otherwise provided in the plan of merger, a  
10 merger of a domestic limited partnership, including a domestic  
11 limited partnership that is not the surviving entity, shall  
12 not require such domestic limited partnership to wind up its  
13 affairs under s. 620.159 or pay its liabilities and distribute  
14 its assets under s. 620.162.

15 620.205 Rights of dissenting partners.--

16 (1) For purposes of this section, the term:

17 (a) "Dissenter" means a partner of a domestic limited  
18 partnership who is a recordholder of the partnership interests  
19 to which he seeks relief as of the date fixed for the  
20 determination of partners entitled to notice of a plan of  
21 merger, who does not vote such interests in favor of the plan  
22 of merger, and who exercises the right to dissent from the  
23 plan of merger when and in the manner required by this  
24 section.

25 (b) "Fair value," with respect to a dissenter's  
26 partnership interests, means the value of the partnership  
27 interests in the domestic limited partnership that is a party  
28 to a plan of merger as of the close of business of the day  
29 prior to the effective date of the merger to which the  
30 dissenter objects, excluding any appreciation or depreciation  
31 in anticipation of the merger, unless such exclusion would be

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1 inequitable.

2 (2) Each partner of a domestic limited partnership  
3 that is a party to a merger shall have the right to be paid  
4 the fair value of his partnership interests as a dissenter as  
5 provided in this section.

6 (3) Not later than 20 days after the date on which the  
7 notification required by s. 620.202(3) is given to the  
8 partners, or if such notification was waived in writing by the  
9 dissenter, not later than 20 days after the date of such  
10 written waiver, the dissenter shall deliver to the limited  
11 partnership a written demand for payment to him of the fair  
12 value of the interests as to which he seeks relief that states  
13 his address, the number and class, if any, of those interests,  
14 and, at the election of the dissenter, the amount claimed by  
15 him as the fair value of the interests. The statement of fair  
16 market value by the dissenter, if any, shall constitute an  
17 offer by the dissenter to sell the partnership interests to  
18 the limited partnership for such amount. A dissenter may  
19 dissent as to less than all the partnership interests  
20 registered in his name. In such event, the dissenter's rights  
21 shall be determined as if the partnership interests as to  
22 which he has dissented and his remaining partnership interests  
23 were registered in the names of different partners. If the  
24 interests as to which a dissenter seeks relief are represented  
25 by certificates, the dissenter shall deposit such certificates  
26 with the limited partnership simultaneously with the delivery  
27 of the written demand for payment. Upon receiving a demand  
28 for payment from a dissenter who is a record holder of  
29 uncertificated interests, the limited partnership shall make  
30 an appropriate notation of the demand for payment in its  
31 records. The limited partnership may restrict the transfer of

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1 uncertificated interests from the date the dissenter's written  
2 demand for payment is delivered. A written demand for payment  
3 served on the domestic limited partnership in which the  
4 dissenter is a partner shall constitute service on the  
5 surviving entity.

6 (4) The written demand for payment required by  
7 subsection (3) shall be deemed to be delivered to the limited  
8 partnership at the earliest of:

9 (a) The date such written demand is received;

10 (b) Five days after the date such written demand is  
11 deposited in the United States mail addressed to the principal  
12 business office of the limited partnership, with postage  
13 thereon prepaid;

14 (c) The date shown on the return receipt, if such  
15 written demand is sent by registered or certified mail, return  
16 receipt requested, and the receipt is signed by or on behalf  
17 of the addressee; or

18 (d) The date such written demand is given in  
19 accordance with the provisions of the limited partnership's  
20 partnership agreement.

21 (5) Unless the partnership agreement of the limited  
22 partnership in which the dissenter is a partner provides a  
23 basis or method for determining and paying the fair value of  
24 the interests as to which the dissenter seeks relief, or  
25 unless the limited partnership or the surviving entity and the  
26 dissenter have agreed in writing as to the fair value of the  
27 interests as to which the dissenter seeks relief, the  
28 dissenter, the limited partnership, or the surviving entity,  
29 within 90 days after the dissenter delivers the written demand  
30 for payment to the limited partnership, may file an action in  
31 any court of competent jurisdiction in the county in this

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1 state where the registered office of the limited partnership  
2 is located or was located when the plan of merger was approved  
3 by its partners, or in the county in this state in which the  
4 principal office of the limited partnership that issued the  
5 partnership interests is located or was located when the plan  
6 of merger was approved by its partners, requesting a  
7 determination of the fair value of the dissenter's partnership  
8 interests. The court shall also determine whether each  
9 dissenter that is a party to such proceeding, as to whom the  
10 limited partnership or the surviving entity requests the court  
11 to make such determination, is entitled to receive payment of  
12 the fair value for his partnership interests. Other  
13 dissenters, within the 90-day period after a dissenter  
14 delivers a written demand to the partnership, may join such  
15 proceeding as plaintiffs or may be joined in any such  
16 proceeding as defendants, and any two or more such proceedings  
17 may be consolidated. If the limited partnership or surviving  
18 entity commences such a proceeding, all dissenters, whether or  
19 not residents of this state, other than dissenters who have  
20 agreed in writing with the limited partnership or the  
21 surviving entity as to the fair value of the partnership  
22 interests as to which such dissenters seek relief, shall be  
23 made parties to such action as an action against their  
24 partnership interests. The limited partnership or the  
25 surviving entity shall serve a copy of the initial pleading in  
26 such proceeding upon each dissenter who is a party to such  
27 proceeding and who is a resident of this state in the manner  
28 provided by law for the service of a summons and complaint and  
29 upon each such dissenter who is not a resident of this state  
30 either by registered or certified mail and publication or in  
31 such manner as is permitted by law. The jurisdiction of the

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1 court in such a proceeding shall be plenary and exclusive.  
2 All dissenters who are proper parties to the proceeding are  
3 entitled to judgment against the limited partnership or the  
4 surviving entity for the amount of the fair value of their  
5 partnership interests as to which payment is sought hereunder.  
6 The court may, if it so elects, appoint one or more persons as  
7 appraisers to receive evidence and recommend a decision on the  
8 question of fair value. The appraisers shall have such power  
9 and authority as is specified in the order of their  
10 appointment or an amendment thereof. The limited partnership  
11 shall pay each dissenter the amount found to be due him within  
12 10 days after final determination of the proceedings. Upon  
13 payment of the judgment, the dissenter shall cease to have any  
14 interest in the partnership interests as to which payment is  
15 sought hereunder.

16 (6) The judgment may, at the discretion of the court,  
17 include a fair rate of interest, to be determined by the  
18 court.

19 (7) The costs and expenses of any such proceeding  
20 shall be determined by the court and shall be assessed against  
21 the limited partnership or the surviving entity. However, all  
22 or any part of such costs and expenses may be apportioned and  
23 assessed as the court deems equitable against any or all of  
24 the dissenters who are parties to the proceeding, to whom the  
25 limited partnership or the surviving entity has made an offer  
26 to pay for the partnership interests, if the court finds that  
27 the action of such dissenters in failing to accept such offer  
28 was arbitrary, vexatious, or not in good faith. Such expenses  
29 shall include reasonable compensation for, and reasonable  
30 expenses of, the appraisers, but shall exclude the fees and  
31 expenses of counsel for, and experts employed by, any party.

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1 If the fair value of the partnership interests, as determined,  
2 materially exceeds the amount which the limited partnership or  
3 the surviving entity offered to pay therefor, the court in its  
4 discretion may award to any dissenter who is a party to the  
5 proceeding such amount as the court determines to be  
6 reasonable compensation to any attorney or expert employed by  
7 the dissenter in the proceeding.

8 (8) The right of a dissenter to receive fair value for  
9 and the obligation to sell such partnership interests as to  
10 which he seeks relief and the right of the domestic limited  
11 partnership or the surviving entity to purchase such interests  
12 and the obligation to pay the fair value of such interests  
13 shall terminate if:

14 (a) The dissenter has not complied with this section,  
15 unless the limited partnership or the surviving entity waives  
16 in writing such noncompliance;

17 (b) The limited partnership abandons the merger or is  
18 finally enjoined or prevented from carrying out the merger, or  
19 the partners rescind their adoption or approval of the merger;

20 (c) The dissenter withdraws his demand, with the  
21 consent of the limited partnership or the surviving entity; or

22 (d)1. The partnership agreement of the domestic  
23 limited partnership in which the dissenter was a partner does  
24 not provide a basis or method for determining and paying the  
25 dissenter the fair value of his partnership interests.

26 2. The limited partnership or the surviving entity and  
27 the dissenter have not agreed upon the fair value of the  
28 dissenter's partnership interests.

29 3. Neither the dissenter, the limited partnership nor  
30 the surviving entity has filed or is joined in a complaint  
31 under subsection (5) within the 90-day period provided in that



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1 subsection.

2 (9) Unless otherwise provided in the partnership  
3 agreement of the domestic limited partnership in which the  
4 dissenter was a partner, after the date the dissenter delivers  
5 the written demand for payment in accordance with subsection  
6 (3) until either the termination of the rights and obligations  
7 arising from it or the purchase of the dissenter's partnership  
8 interests by the limited partnership or the surviving entity,  
9 the dissenter shall be entitled only to payment as provided in  
10 this section and shall not be entitled to any other rights  
11 accruing from such interests, including voting or distribution  
12 rights. If the right to receive fair value is terminated  
13 other than by the purchase of the dissenter's partnership  
14 interests by the limited partnership or the surviving entity,  
15 all rights of the dissenter as a partner of the limited  
16 partnership shall be reinstated effective as of the date the  
17 dissenter delivered the written demand for payment, including  
18 the right to receive any intervening payment or other  
19 distribution with respect to the dissenter's interests in the  
20 limited partnership, or, if any such rights have expired or  
21 any such distribution other than a cash payment has been  
22 completed, in lieu thereof at the election of the surviving  
23 entity, the fair value thereof in cash as determined by the  
24 surviving entity as of the time of such expiration or  
25 completion, but without prejudice otherwise to any action or  
26 proceeding of the limited partnership that may have been taken  
27 by the limited partnership on or after the date the dissenter  
28 delivered the written demand for payment.

29 (10) A partner who is entitled under this section to  
30 demand payment for his partnership interests shall not have  
31 any right at law or in equity to challenge the validity of any

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1 merger that creates his entitlement to demand payment  
 2 hereunder, or to have the merger set aside or rescinded,  
 3 except with respect to compliance with the provisions of the  
 4 limited partnership's partnership agreement or if the merger  
 5 is unlawful or fraudulent with respect to such partner.

6 (11) Unless otherwise provided in the partnership  
 7 agreement of the domestic limited partnership in which the  
 8 dissenter was a partner, this section does not apply with  
 9 respect to a plan of merger if, as of the date fixed for the  
 10 determination of partners entitled to notice of a plan of  
 11 merger:

12 (a) The partnership interests of the limited  
 13 partnership were held of record by not fewer than 500  
 14 partners; or

15 (b) The partnership interests were registered on a  
 16 national securities exchange or quoted on the National  
 17 Association of Securities Dealers Automated Quotation System.

18  
 19 (Redesignate subsequent sections.)

20  
 21  
 22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 On page 1, line 16, after the semicolon,

25  
 26 insert:

27 amending s. 607.0730, F.S.; removing 10-year  
 28 limit on voting trusts; creating holding  
 29 company formation by merger by certain  
 30 corporations; amending s. 608.407, F.S.;

31 reducing minimum number of members necessary to

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1 form a limited liability company; creating ss.  
2 607.1108, 607.1109, 607.11101, F.S.; providing  
3 for mergers of domestic corporations and other  
4 business entities under certain circumstances;  
5 requiring a plan of merger; providing criteria;  
6 providing for articles of merger; providing for  
7 effect of merger; creating ss. 608.438,  
8 608.4381, 608.4382, 608.4383, 608.4384, F.S.;

9 providing for mergers of limited liability  
10 companies under certain circumstances;  
11 requiring a plan of merger; providing criteria;  
12 providing for action on a plan of merger;  
13 providing procedures; providing for articles of  
14 merger; providing for effect of merger;  
15 providing for rights of dissenting members;  
16 providing procedures; creating ss. 620.201,  
17 620.202, 620.203, 620.204, 620.205, F.S.;

18 providing for mergers of domestic limited  
19 partnerships under certain circumstances;  
20 requiring a plan of merger; providing criteria;  
21 providing for action on a plan of merger;  
22 providing procedures; providing for articles of  
23 merger; providing for effect of merger;  
24 providing for rights of dissenting partners;  
25 providing procedures;

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