

736-126AX-32

Bill No. CS/HB 787

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Representative(s) Rubio offered the following:

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13 **Amendment (with title amendment)**

14 On page 16, line 18, through page 33, line 4,

15 remove: all of said lines

16

17 and insert: members, managers, and managing members of a
18 limited liability company ~~nor the managers of a limited~~
19 ~~liability company managed by a manager or managing member~~ are
20 not liable, solely by reason of being a member or serving as a
21 manager or managing member, under a judgment, decree, or order
22 of a court, or in any other manner, for a debt, obligation, or
23 liability of the limited liability company;

24 (2) Any such member, managing member, ~~or manager,~~ or
25 other person acting under the articles of organization or
26 operating agreement of a limited liability company is ~~shall~~
27 not ~~be~~ liable to the limited liability company or to any such
28 other member, managing member, ~~or manager~~ for the member's,
29 managing member's, ~~or manager's,~~ or other person's good faith
30 reliance on the provisions of the limited liability company's
31 articles of organization or operating agreement; and

1 (3) The member's, managing member's, ~~or~~ manager's, or
 2 other person's duties and liabilities may be expanded or
 3 restricted by provisions in a limited liability company's
 4 articles of organization or operating agreement.

5 Section 14. Section 608.4228, Florida Statutes, is
 6 amended to read:

7 608.4228 Limitation of liability of managers and
 8 managing members.--

9 (1) A manager or a managing member shall not be
 10 personally liable for monetary damages to the limited
 11 liability company, its members, or any other person for any
 12 statement, vote, decision, or failure to act regarding
 13 management or policy decisions by a manager or a managing
 14 member, unless:

15 (a) The manager or managing member breached or failed
 16 to perform the duties as a manager or managing member; and

17 (b) The manager's or managing member's breach of, or
 18 failure to perform, those duties constitutes any of the
 19 following:

20 1. A violation of the criminal law, unless the manager
 21 or managing member had a reasonable cause to believe his or
 22 her conduct was lawful or had no reasonable cause to believe
 23 such conduct was unlawful. A judgment or other final
 24 adjudication against a manager or managing member in any
 25 criminal proceeding for a violation of the criminal law estops
 26 that manager or managing member from contesting the fact that
 27 such breach, or failure to perform, constitutes a violation of
 28 the criminal law, but does not estop the manager or managing
 29 member from establishing that he or she had reasonable cause
 30 to believe that his or her conduct was lawful or had no
 31 reasonable cause to believe that such conduct was unlawful.

1 2. A transaction from which the manager or managing
2 member derived an improper personal benefit, either directly
3 or indirectly.

4 3. A distribution in violation of s. 608.426.

5 4. In a proceeding by or in the right of the limited
6 liability company to procure a judgment in its favor or by or
7 in the right of a member, conscious disregard of the best
8 interest of the limited liability company, or willful
9 misconduct.

10 5. In a proceeding by or in the right of someone other
11 than the limited liability company or a member, recklessness
12 or an act or omission which was committed in bad faith or with
13 malicious purpose or in a manner exhibiting wanton and willful
14 disregard of human rights, safety, or property.

15 (2) For the purposes of this section, the term
16 "recklessness" means acting, or failing to act, in conscious
17 disregard of a risk known, or so obvious that it should have
18 been known, to the manager or managing member, and known to
19 the manager or managing member, or so obvious that it should
20 have been known, to be so great as to make it highly probable
21 that harm would follow from such action or failure to act.

22 (3) A manager or managing member is deemed not to have
23 derived an improper personal benefit from any transaction if
24 the transaction and the nature of any personal benefit derived
25 by the manager or managing member are not prohibited by state
26 or federal law or the articles of organization or operating
27 agreement and, without further limitation, the transaction and
28 the nature of any personal benefit derived by a manager or
29 managing member are disclosed or known to the members, and the
30 transaction was authorized, approved, or ratified by the vote
31 of a majority-in-interest of the members other than the

1 managing member, or the transaction was fair and reasonable to
2 the limited liability company at the time it was authorized by
3 the manager or managing member, notwithstanding that a manager
4 or managing member received a personal benefit.

5 (4) The circumstances set forth in subsection (3) are
6 not exclusive and do not preclude the existence of other
7 circumstances under which a manager will be deemed not to have
8 derived an improper benefit.

9 Section 15. Section 608.4229, Florida Statutes, is
10 amended to read:

11 608.4229 Indemnification of members, managers,
12 managing members, officers, employees, and agents.--

13 (1) Subject to such standards and restrictions, if
14 any, as are set forth in its articles of organization or
15 operating agreement, a limited liability company may, and
16 shall have the power to, but shall not be required to,
17 indemnify and hold harmless any member or manager or other
18 person from and against any and all claims and demands
19 whatsoever.

20 (2) Notwithstanding subsection (1), indemnification or
21 advancement of expenses shall not be made to or on behalf of
22 any member, manager, managing member, officer, employee, or
23 agent if a judgment or other final adjudication establishes
24 that the actions, or omissions to act, of such member,
25 manager, managing member, officer, employee, or agent were
26 material to the cause of action so adjudicated and constitute
27 any of the following:

28 (a) A violation of criminal law, unless the member,
29 manager, managing member, officer, employee, or agent had no
30 reasonable cause to believe such conduct was unlawful.

31 (b) A transaction from which the member, manager,

1 managing member, officer, employee, or agent derived an
2 improper personal benefit.

3 (c) In the case of a manager or managing member, a
4 circumstance under which the liability provisions of s.
5 608.426 are applicable.

6 (d) Willful misconduct or a conscious disregard for
7 the best interests of the limited liability company in a
8 proceeding by or in the right of the limited liability company
9 to procure a judgment in its favor or in a proceeding by or in
10 the right of a member.

11 Section 16. Subsections (1), (2), (3), and (6) of
12 section 608.423, Florida Statutes, are amended to read:

13 608.423 Limited liability company operating agreement;
14 nonwaivable provisions.--

15 (1) Except as otherwise provided in subsection (2),
16 all members of a limited liability company may enter into an
17 operating agreement, which need not be in writing, to regulate
18 the affairs of the limited liability company and the conduct
19 of its business, establish duties in addition to those set
20 forth in this chapter, and to govern relations among the
21 members, managers, and company. Any inconsistency between
22 written and oral operating agreements shall be resolved in
23 favor of the written agreement. The members of a limited
24 liability company may enter into an operating agreement
25 before, after, or at the time the articles of organization are
26 filed, and the operating agreement takes effect on the date of
27 the formation of the limited liability company or on any other
28 date provided in the operating agreement.To the extent the
29 operating agreement does not otherwise provide, this chapter
30 governs relations among the members, managers, and limited
31 liability company.

- 1 (2) The operating agreement may not:
- 2 (a) Unreasonably restrict a right to information or
- 3 access to records under s. 608.4101;
- 4 (b) Eliminate the duty of loyalty under s. 608.4225,
- 5 but the agreement may:
- 6 1. Identify specific types or categories of activities
- 7 that do not violate the duty of loyalty, if not manifestly
- 8 unreasonable; and
- 9 2. Specify the number or percentage of members or
- 10 disinterested managers that may authorize or ratify, after
- 11 full disclosure of all material facts, a specific act or
- 12 transaction that otherwise would violate the duty of loyalty;
- 13 (c) Unreasonably reduce the duty of care under s.
- 14 608.4225;
- 15 (d) Eliminate the obligation of good faith and fair
- 16 dealing under s. 608.4225, but the operating agreement may
- 17 determine the standards by which the performance of the
- 18 obligation is to be measured, if the standards are not
- 19 manifestly unreasonable;
- 20 ~~(e) Vary the right to expel a member in an event~~
- 21 ~~specified in this chapter;~~
- 22 (e)~~(f)~~ Vary the requirement to wind up the limited
- 23 liability company's business in a case specified in this
- 24 chapter; or
- 25 (f)~~(g)~~ Restrict rights of a person, other than a
- 26 manager, member, or transferee of a member's distributional
- 27 interest, under this chapter.
- 28 (3) The power to adopt, alter, amend, or repeal the
- 29 operating agreement of a limited liability company shall be
- 30 vested in the members of the limited liability company unless
- 31 vested in the manager or managers of the limited liability

1 company by the articles of organization or operating
2 agreement, provided that any amendment to a written operating
3 agreement shall be in writing. The operating agreement
4 adopted by the members or by the manager or managers may be
5 repealed or altered; a new operating agreement may be adopted
6 by the members; and the members may prescribe in any operating
7 agreement made by them that such operating agreement may not
8 be altered, amended, or repealed by the manager or managers.

9 (6) Actions taken by the limited liability company in
10 good faith in accordance with the emergency operating
11 agreement have the effect of binding the limited liability
12 company and may not be used to impose liability on a manager,
13 employee, or agent of the limited liability company.

14 Section 17. Subsections (3), (6), and (8) of section
15 608.4231, Florida Statutes, are amended to read:

16 608.4231 Voting by members and managers.--

17 (3) If no conflicting voting provision is contained in
18 the articles of organization or operating agreement:

19 (a) The members of a limited liability company shall
20 vote in proportion to their then-current percentage or other
21 allocable interest in the profits of the limited liability
22 company or, in the case of a member who has assigned the
23 member's entire economic interest in the limited liability
24 company to a person who has not been admitted as a member, in
25 proportion to the then-current percentage or other allocable
26 interest in the profits of the limited liability company that
27 the assigning member would have, had the assignment not been
28 made.

29 (b) In all matters in which a vote is required, a vote
30 of a majority-in-interest of the members shall be sufficient
31 unless provided otherwise in the limited liability company's

1 articles of organization or operating agreement or this
2 chapter.

3 (6) Except as otherwise provided in the articles of
4 organization or the operating agreement, if the members have
5 appointed more than one manager or managing member to manage
6 the business of the limited liability company, decisions of
7 the managers or managing members shall be made by majority
8 vote of the managers or managing members if at a meeting, or
9 by unanimous written consent. Unless otherwise provided in the
10 articles of organization or operating agreement, on any matter
11 that is to be voted on by one or more managers or managing
12 members, the managers or managing members may vote in person
13 or by proxy. Within 10 days after obtaining such authorization
14 by written consent, notice must be given to those managers or
15 managing members who have not consented in writing or who are
16 not entitled to vote on the action.

17 (8) Unless otherwise provided in the articles of
18 organization or operating agreement, on any matter that is to
19 be voted on by members, the members may take such action
20 without a meeting, without prior notice, and without a vote if
21 a consent or consents in writing, setting forth the action so
22 taken, are signed by the members having not less than the
23 minimum number of votes that would be necessary to authorize
24 or take such action at a meeting, but in no event by a vote of
25 less than a majority-in-interest of the members that would be
26 necessary to authorize or take such action at a meeting.
27 Unless otherwise provided in the articles of organization or
28 operating agreement, on any matter that is to be voted on by
29 members ~~or managers~~, the members ~~or managers~~ may vote in
30 person or by proxy. Within 10 days after obtaining such
31 authorization by written consent, notice must be given to

1 those members who have not consented in writing or who are not
2 entitled to vote on the action.

3 Section 18. Section 608.4235, Florida Statutes, is
4 amended to read:

5 608.4235 Agency of members and managers or managing
6 members.--

7 (1) Subject to subsections (2) and (3):

8 (a) In a member-managed company, each member is an
9 agent of the limited liability company for the purpose of its
10 business, and an act of a member, including the signing of an
11 instrument in the limited liability company's name, for
12 apparently carrying on in the ordinary course the limited
13 liability company's business or business of the kind carried
14 on by the company binds the limited liability company, unless
15 the member had no authority to act for the limited liability
16 company in the particular matter and the person with whom the
17 member was dealing knew or had notice that the member lacked
18 authority.

19 (b) An act of a member which is not apparently for
20 carrying on in the ordinary course the limited liability
21 company's business or business of the kind carried on by the
22 limited liability company binds the limited liability company
23 only if the act was authorized by appropriate vote of the
24 other members.

25 (2) Subject to subsection (3), in a manager-managed
26 company:

27 (a) A member is not an agent of the limited liability
28 company for the purpose of its business solely by reason of
29 being a member. Each manager is an agent of the limited
30 liability company for the purpose of its business, and an act
31 of a manager, including the signing of an instrument in the

1 limited liability company's name, for apparently carrying on
2 in the ordinary course the limited liability company's
3 business or business of the kind carried on by the company
4 binds the limited liability company, unless the manager had no
5 authority to act for the limited liability company in the
6 particular matter and the person with whom the manager was
7 dealing knew or had notice that the manager lacked authority.

8 (b) An act of a manager which is not apparently for
9 carrying on in the ordinary course the limited liability
10 company's business or business of the kind carried on by the
11 limited liability company binds the limited liability company
12 only if the act was authorized under s. 608.422.

13 (3) Unless the articles of organization or operating
14 agreement limit the authority of a member, any member of a
15 member-managed company or manager of a manager-managed company
16 may sign and deliver any instrument transferring or affecting
17 the limited liability company's interest in real property. The
18 instrument is conclusive in favor of a person who gives value
19 without knowledge of the lack of the authority of the person
20 signing and delivering the instrument.

21 Section 19. Section 608.4238, Florida Statutes, is
22 amended to read:

23 608.4238 Unauthorized assumption of powers.--All
24 persons purporting to act as or on behalf of a limited
25 liability company, having actual knowledge that there was no
26 organization of a limited liability company under this
27 chapter, are jointly and severally liable for all liabilities
28 created while so acting except for any liability to any person
29 who also had actual knowledge that there was no organization
30 of a limited liability company.

31 Section 20. Subsection (3) of section 608.425, Florida

1 Statutes, is amended to read:

2 608.425 Limited liability company property.--

3 (3) Instruments and documents providing for the
4 acquisition, mortgage, or disposition of property of the
5 limited liability company shall be valid and binding upon the
6 limited liability company, if they are executed in accordance
7 with this chapter.

8 Section 21. Subsection (2) of section 608.428, Florida
9 Statutes, is amended to read:

10 608.428 Liability upon wrongful distribution.--

11 (2) A member may not receive a distribution from a
12 limited liability company to the extent that, after giving
13 effect to the distribution, ~~all liabilities of the limited~~
14 ~~liability company would be insolvent, other than liabilities~~
15 ~~to members on account of their membership interests in the~~
16 ~~limited liability company, exceed the value of the limited~~
17 ~~liability company's assets.~~

18 Section 22. Subsection (1) of section 608.432, Florida
19 Statutes, is amended to read:

20 608.432 Assignment of member's interest.--

21 (1) A limited liability company interest is assignable
22 in whole or in part except as provided in the articles of
23 organization or operating agreement. The assignee of a
24 member's interest shall have no right to participate in the
25 management of the business and affairs of a limited liability
26 company except as provided in the articles of organization or
27 operating agreement and upon:

28 (a) The approval of all of the members of the limited
29 liability company other than the member assigning the limited
30 liability company interest; or

31 (b) Compliance with any procedure provided for in the

1 articles of organization or operating limited liability
2 company agreement.

3 Section 23. Paragraph (e) of subsection (3) of section
4 608.438, Florida Statutes, is amended to read:

5 608.438 Merger of limited liability company.--

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

7 (e) If a limited liability company is to be the
8 surviving entity, and management thereof is vested in one or
9 more managers or managing members, the names and business
10 addresses of such managers or managing members.

11 Section 24. Subsections (1) and (2) of section
12 608.441, Florida Statutes, are amended to read:

13 608.441 Dissolution.--

14 (1) A limited liability company organized under this
15 chapter shall be dissolved, and the limited liability
16 company's affairs shall be concluded, upon the first to occur
17 of any of the following events:

18 (a) At the time specified in the articles of
19 organization or operating agreement, but if no such time is
20 set forth in the articles of organization or operating
21 agreement, then the limited liability company shall have a
22 perpetual existence;

23 (b) Upon the occurrence of events specified in the
24 articles of organization or operating agreement;

25 (c) Unless otherwise provided in the articles of
26 organization or operating agreement, upon the written consent
27 of all of the members of the limited liability company;

28 (d) At any time there are no members; however, unless
29 otherwise provided in the articles of organization or
30 operating agreement, the limited liability company is not
31 dissolved and is not required to be wound up if, within 90

1 days, or such other period as provided in the articles of
 2 organization or operating agreement, after the occurrence of
 3 the event that terminated the continued membership of the last
 4 remaining member, the personal or other legal representative
 5 of the last remaining member agrees in writing to continue the
 6 limited liability company and agrees to the admission of the
 7 personal representative of such member or its nominee or
 8 designee to the limited liability company as a member,
 9 effective as of the occurrence of the event that terminated
 10 the continued membership of the last remaining member; or

11 (e) The entry of an order of dissolution by a circuit
 12 court pursuant to subsection (3).

13 (2) So long as the limited liability company continues
 14 to have at least one remaining member, and except as provided
 15 in paragraph (1)(d) or as otherwise provided in the articles
 16 of organization or operating agreement, the death, retirement,
 17 resignation, expulsion, bankruptcy, or dissolution of any
 18 member or the occurrence of any other event that terminates
 19 the continued membership of any member shall not cause the
 20 limited liability company to be dissolved, and upon the
 21 occurrence of any such event, the limited liability company
 22 shall be continued without dissolution.

23 Section 25. Subsection (3) of section 608.444, Florida
 24 Statutes, is amended to read:

25 608.444 Distribution of assets upon dissolution.--In
 26 settling accounts after dissolution of a limited liability
 27 company, the assets of the limited liability company must be
 28 distributed in the following order:

29 (3) Except as provided in the articles of organization
 30 or the operating agreement, to members pro rata in proportion
 31 to their then-current percentage, or other interests in the

1 profits, of the limited liability company.

2 Section 26. Subsection (6) of section 608.445, Florida
3 Statutes, is amended to read:

4 608.445 Articles of dissolution.--The articles of
5 dissolution shall set forth:

6 (6) The fact that there are no suits pending against
7 the limited liability company in any court or that adequate
8 provision has been made for the satisfaction of any judgment,
9 order, or decree which may be entered against it in any
10 pending suit.

11 Section 27. Subsection (2) of section 608.446, Florida
12 Statutes, is amended to read:

13 608.446 Filing of articles of dissolution.--

14 (2) The certificate of dissolution shall be returned
15 to the representative of the dissolved limited liability
16 company. Upon the issuance of such certificate of dissolution,
17 the existence of the limited liability company shall cease,
18 except for the purpose of suits, other proceedings, and
19 appropriate action as provided in this chapter. The manager or
20 managers in office at the time of dissolution, or the
21 survivors of them, or, if none, the members, shall thereafter
22 be trustees for the members and creditors of the dissolved
23 limited liability company; and as such the trustees shall have
24 authority to distribute any ~~company~~ property of the limited
25 liability company discovered after dissolution, to convey real
26 estate, and to take such other action as may be necessary on
27 behalf of and in the name of such dissolved limited liability
28 company.

29 Section 28. Subsection (2) of section 608.449, Florida
30 Statutes, is amended to read:

31 608.449 Grounds for judicial dissolution.--A circuit

1 court may dissolve a limited liability company:

2 (2) In a proceeding by a manager or member if it is
3 established that:

4 (a) The managers, managing members, or members are
5 deadlocked in the management of the limited liability company
6 affairs, the members are unable to break the deadlock, and
7 irreparable injury to the limited liability company is
8 threatened or being suffered; or

9 (b) The limited liability company's assets are being
10 misappropriated or wasted.

11 Section 29. Subsections (1) and (2) of section
12 608.463, Florida Statutes, are amended to read:

13 608.463 Service of process.--

14 (1) Process against a limited liability company may be
15 served:

16 (a) In accordance with chapter 48 or chapter 49, as if
17 the limited liability company were a partnership.

18 (b) Upon the registered agent at the agent's street
19 address.

20 (2) Any notice to or demand on a limited liability
21 company organized pursuant to this chapter may be made:

22 (a) By delivery to a manager of the limited liability
23 company, if the management of the limited liability company is
24 vested in one or more managers ~~a manager~~, or by delivery to a
25 member, if the management of the limited liability company is
26 vested in the members.

27 (b) By mailing a writing, which notice or demand in
28 writing is mailed to the registered office of the limited
29 liability company in this state or to another address in this
30 state which is the principal office of the limited liability
31 company.

1 Section 30. Subsection (1) of section 608.504, Florida
2 Statutes, is amended to read:

3 608.504 Amended certificate of authority.--

4 (1) A foreign limited liability company authorized to
5 transact business in this state shall make application to the
6 Department of State to obtain an amended certificate of
7 authority if any statement in the limited liability company's
8 application was false or becomes false due to change in
9 circumstances or if the foreign limited liability company
10 changes:

11 (a) Its limited liability company name.

12 (b) The period of its duration.

13 (c) The jurisdiction of its organization.

14 Section 31. Subsection (2) of section 608.507, Florida
15 Statutes, is amended to read:

16 608.507 Registered office and registered agent of
17 foreign limited liability company.--Each foreign limited
18 liability company in this state must continuously maintain in
19 this state:

20 (2) A registered agent, which ~~who~~ may be either:

21 (a) An individual who resides in this state and whose
22 business office is identical with the registered office; or

23 ~~(b) A domestic corporation or domestic limited~~
24 ~~liability company the business office of which is identical~~
25 ~~with the registered office; or~~

26 (b)(c) A foreign or domestic entity ~~corporation or~~
27 ~~foreign limited liability company~~ authorized to transact
28 business in this state which has a ~~the~~ business office ~~of~~
29 ~~which is~~ identical with the registered office.

30 Section 32. Section 608.704, Florida Statutes, is
31 created to read:

1 608.704 Reservation of power to amend or repeal.--The
2 Legislature has the power to amend or repeal all or part of
3 this chapter at any time, and all domestic and foreign limited
4 liability companies subject to this chapter shall be governed
5 by the amendment or repeal.

6 Section 33. Section 608.705, Florida Statutes, is
7 created to read:

8 608.705 Effect of repeal of prior acts.--

9 (1) Except as provided in subsection (2), the repeal
10 of a statute by this chapter does not affect:

11 (a) The operation of the statute or any action taken
12 under it before its repeal, including, without limiting the
13 generality of the foregoing, the continuing validity of any
14 provision of the articles of organization, regulations, or
15 operating agreements of a limited liability company authorized
16 by the statute at the time of its adoption;

17 (b) Any ratification, right, remedy, privilege,
18 obligation, or liability acquired, accrued, or incurred under
19 the statute before its repeal;

20 (c) Any violation of the statute, or any penalty,
21 forfeiture, or punishment incurred because of the violation,
22 before its repeal;

23 (d) Any proceeding, merger, sale of assets,
24 reorganization, or dissolution commenced under the statute
25 before its repeal, and the proceeding, merger, sale of assets,
26 reorganization, or dissolution

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29 ===== T I T L E A M E N D M E N T =====

30 And the title is amended as follows:

31 On page 2, line 1, after the word "of",

736-126AX-32

Bill No. CS/HB 787

Amendment No. ____ (for drafter's use only)

1 insert:
2 managers and
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