

By Senator Sanderson

31-451A-02

1 A bill to be entitled
2 An act relating to limited liability companies;
3 amending s. 608.401, F.S.; conforming a
4 cross-reference to changes made by the act;
5 amending s. 608.402, F.S.; revising
6 definitions; amending s. 608.404, F.S.;
7 authorizing a limited liability company to
8 select managing members; amending s. 608.407,
9 F.S.; revising requirements of the articles of
10 organization for a company managed by one or
11 more managers; amending s. 608.408, F.S.;
12 providing requirements for executing articles
13 of organization; amending s. 608.4081, F.S.;
14 providing for filing a document with the
15 Department of State; amending s. 608.409, F.S.;
16 prohibiting the transaction of business or
17 incurrence of debt until the effective date of
18 the company's existence; amending s. 608.4101,
19 F.S.; providing additional requirements with
20 respect to recordkeeping; amending s. 608.411,
21 F.S.; providing for amendments to or
22 restatements of articles of organization;
23 amending s. 608.422, F.S.; providing
24 requirements for a member-managed company;
25 providing for appointing a proxy; amending s.
26 608.4225, F.S.; providing standards for
27 managers and managing members; amending s.
28 608.4226, F.S.; providing for validity of
29 contracts and other transactions
30 notwithstanding certain conflicts of interest;
31 amending s. 608.4227, F.S.; providing for

1 liability of managers and managing members;
2 amending s. 608.4228, F.S.; limiting the
3 liability of managers and managing members;
4 amending s. 608.4229, F.S.; providing for
5 indemnification of members of a limited
6 liability company; amending s. 608.423, F.S.;
7 providing requirements for operating agreements
8 by members of a limited liability company;
9 amending s. 608.4231, F.S.; providing for
10 voting by managing members; authorizing a vote
11 by proxy; amending s. 608.4235, F.S.;
12 authorizing a managing member to act as an
13 agent of the limited liability company;
14 amending s. 608.4238, F.S.; providing liability
15 for unauthorized actions; amending s. 608.425,
16 F.S.; providing for validity of certain
17 instruments and documents; amending s. 608.428,
18 F.S.; prohibiting certain distributions from a
19 limited liability company; amending s. 608.432,
20 F.S.; providing for assignment of a member's
21 interest in a limited liability company;
22 amending s. 608.438, F.S.; requiring that a
23 plan of merger specify the managing members;
24 amending s. 608.441, F.S.; providing for
25 dissolution of a limited liability company;
26 amending s. 608.444, F.S.; providing for
27 distribution of assets upon dissolution;
28 amending ss. 608.445, 608.446, F.S.; providing
29 requirements for articles of dissolution and
30 for filing the articles; amending s. 608.449,
31 F.S.; providing grounds for judicial

1 dissolution; amending s. 608.463, F.S.;
2 providing for service of process; amending s.
3 608.504, F.S.; providing for an amended
4 certificate of authority; amending s. 608.507,
5 F.S.; revising requirements for the registered
6 office of a domestic company; creating s.
7 608.704, F.S.; specifying the Legislature's
8 power to amend or repeal ch. 608, F.S.;
9 creating s. 608.705, F.S.; providing for the
10 effect of the repeal of a prior act; providing
11 an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 608.401, Florida Statutes, is
16 amended to read:

17 608.401 Short title.--Sections 608.401-608.705
18 ~~608.401-608.703~~ may be cited as the "Florida Limited Liability
19 Company Act."

20 Section 2. Subsections (1), (2), (3), (14), (19),
21 (21), and (24) of section 608.402, Florida Statutes, are
22 amended to read:

23 608.402 Definitions.--As used in this chapter:

24 (1) "Articles of merger" means initial, amended, and
25 restated articles of merger of a limited liability company
26 delivered to the Department of State in accordance with s.
27 608.4382. In the case of a foreign limited liability company,
28 the term includes all records serving a similar function
29 required to be filed with the Department of State or other
30 official having custody of the company records of the foreign
31

1 limited liability company in the state or country under whose
2 law it is organized.

3 (2) "Articles of organization" means initial, amended,
4 and restated articles of organization of a limited liability
5 company, including initial, amended, or restated articles of
6 merger, if any. In the case of a foreign limited liability
7 company, the term includes all records serving a similar
8 function required to be filed with the Department of State or
9 other official having custody of the company records of the
10 foreign limited liability company in the state or country
11 under whose law it is organized.

12 (3) "Authorized representative" means one or more
13 persons acting to form a limited liability company by
14 executing and filing the articles of organization of such
15 limited liability company in accordance with this chapter and
16 authorized by a member ~~identified in the articles of~~
17 ~~organization or operating agreement~~ of such limited liability
18 company, which authorized representative may, but need not be,
19 a member of the limited liability company that the authorized
20 representative forms.

21 (14) "Insolvent" means the inability of a limited
22 liability company to pay the limited liability company's debts
23 as they become due in the ordinary course of business or that
24 the fair value of the limited liability company's total assets
25 would be less than the sum of its total liabilities plus the
26 amount that would be needed, if the limited liability company
27 were to be dissolved and terminated at the time of the
28 distribution, to satisfy the preferential distribution rights
29 of the limited liability company's members accrued through
30 such dissolution and termination.

31

1 (19) "Manager-managed company" means a limited
2 liability company that ~~which~~ is designated to be managed by
3 one or more managers in its articles of organization or
4 ~~operating agreement~~.

5 (21) "Member" means any person who has been admitted
6 to a limited liability company as a member in accordance with
7 this chapter ~~as provided in s. 608.4232~~ and has an economic
8 interest in a limited liability company which may, but need
9 not, be represented by a capital account or, in the case of a
10 foreign limited liability company, has been admitted to a
11 limited liability company as a member in accordance with the
12 laws of the state or foreign country or other foreign
13 jurisdiction under which the foreign limited liability company
14 is organized.

15 (24) "Operating agreement" means, subject to s.
16 608.423, written or oral provisions that ~~which~~ are adopted for
17 the management and regulation of the affairs of the limited
18 liability company and that ~~which~~ set forth the relationships
19 of the members, managers, or managing members and the limited
20 liability company. The term includes amendments to the
21 operating agreement, ~~subject to s. 608.423~~.

22 Section 3. Subsection (8) of section 608.404, Florida
23 Statutes, is amended to read:

24 608.404 Powers.--Unless its articles of organization
25 or operating agreement provide otherwise, each limited
26 liability company organized and existing under this chapter
27 shall have the same powers as an individual to do all things
28 necessary to carry out its business and affairs, including,
29 without limitation, the power to:

30 (8) Select managers or managing members and appoint
31 officers, directors, employees, and agents of the limited

1 liability company, define their duties, fix their
2 compensation, and lend them money and credit.

3 Section 4. Section 608.407, Florida Statutes, is
4 amended to read:

5 608.407 Articles of organization.--

6 (1) In order to form a limited liability company,
7 articles of organization of a limited liability company shall
8 be executed and filed with the Department of State by one or
9 more members or authorized representatives of the limited
10 liability company. The articles of organization shall set
11 forth:

12 (a) The name of the limited liability company.

13 (b) The mailing address and the street address of the
14 principal office of the limited liability company.

15 (c) The name and street address of its initial
16 registered agent for service of process in the state. The
17 articles of organization shall include or be accompanied by
18 the written statement required by s. 608.415.

19 ~~(d) If the limited liability company is to be managed~~
20 ~~by one or more managers, a statement that the company is to be~~
21 ~~a manager-managed company.~~

22 (d)(e) Any other matters that the members elect to
23 include in the articles of organization.

24 (2) A limited liability company is formed at the time
25 described in s. 608.409 if the person filing the articles of
26 organization has substantially complied with the requirements
27 of this section.

28 (3) The articles of organization shall be executed by
29 at least one member or the authorized representative of a
30 member.

31

1 (4) If the limited liability company is to be managed
2 by one or more managers, the articles of organization may, but
3 need not, include a statement that the limited liability
4 company is to be a manager-managed company.

5 (5) The fact that articles of organization are on file
6 with the Department of State is notice that the entity formed
7 in connection with the filing of the articles of organization
8 is a limited liability company formed under the laws of this
9 state and is notice of all other facts set forth in the
10 articles of organization.

11 Section 5. Section 608.408, Florida Statutes, is
12 amended to read:

13 608.408 Execution of articles, certificate, or
14 statement.--

15 (1) Any articles, a certificate, or statement required
16 by this chapter to be filed with the Department of State must
17 be executed in the following manner:

18 (a) If it is the articles of organization, a
19 certificate of conversion, or a statement of change of
20 registered agent or registered office, it must be signed by a
21 member or by the authorized representative of a member, and by
22 the new registered agent, if applicable; and

23 (b) If it is the articles ~~a certificate~~ of dissolution
24 or revocation of dissolution, it must be signed by members
25 having the same percentage of membership interests necessary
26 to approve the dissolution or revocation of dissolution.

27 (2) Any person may sign a certificate through an
28 attorney in fact, but a power of attorney to sign a
29 certificate or statement authorizing the admission of a member
30 must specifically describe the admission.

31

1 (3) The execution of a certificate constitutes an
2 affirmation by the person executing the certificate, under the
3 penalties of perjury, that the facts stated therein are true.

4 (4) If the articles of organization contain or any
5 other document authorized or required to be filed under this
6 chapter contains a false statement, one who suffers loss by
7 reliance on the statement may recover damages for the loss
8 from a person who signed the record or caused another to sign
9 it on the person's behalf and knew the statement to be false
10 at the time the record was signed.

11 Section 6. Paragraphs (b) and (c) of subsection (1) of
12 section 608.4081, Florida Statutes, are amended to read:

13 608.4081 Filing requirements.--

14 (1) To be filed by the Department of State, a document
15 must satisfy the following requirements, as supplemented or
16 modified by any other section of this chapter:

17 (b) The document must be executed as required by s.
18 608.408 ~~s. 608.407~~.

19 (c) The document must contain any information required
20 by this chapter and may contain other information the limited
21 liability company elects to include.

22 Section 7. Subsections (2) and (4) of section 608.409,
23 Florida Statutes, are amended to read:

24 608.409 Effect of filing and issuance of time and date
25 endorsement on the articles of organization.--

26 (2) The articles of organization may specify a delayed
27 effective time and date of commencement of the limited
28 liability company's existence, and if so specified, the
29 articles of organization shall become effective, and the
30 limited liability company's existence shall commence, at the
31 time and date specified. If a delayed effective date, but no

1 time, is specified, the articles of organization shall become
2 effective, and the limited liability company's existence shall
3 commence, at the close of business on the delayed effective
4 date. Unless otherwise permitted by this chapter, a delayed
5 effective date for a document may not be later than the 90th
6 day after the date on which the document is filed.

7 (4) A limited liability company shall not transact
8 business or incur indebtedness, except that which is
9 incidental to its organization or to obtaining subscriptions
10 for or payment of contributions, until the effective date and
11 time of the commencement of the limited liability company's
12 existence ~~articles of organization have been filed by the~~
13 ~~Department of State.~~

14 Section 8. Paragraphs (a) and (b) of subsection (1)
15 and subsections (2) and (3) of section 608.4101, Florida
16 Statutes, are amended to read:

17 608.4101 Records to be kept; right to information.--

18 (1) Each limited liability company shall keep at its
19 principal office the following records:

20 (a) A current list of the full names and last known
21 business, residence, or mailing addresses of all members, and
22 managers, and managing members.

23 (b) A copy of the articles of organization, and all
24 certificates of conversion, and any other documents filed with
25 the Department of State concerning the limited liability
26 company, together with executed copies of any powers of
27 attorney pursuant to which any articles of organization or
28 certificates were executed.

29 (2) A limited liability company shall provide members
30 and their agents and attorneys access to its records at the
31 limited liability company's principal office or other

1 reasonable locations specified in the operating agreement. The
2 limited liability company shall provide former members and
3 their agents and attorneys access for proper purposes to
4 records pertaining to the period during which they were
5 members. The right of access provides the opportunity to
6 inspect and copy records during ordinary business hours. The
7 limited liability company may impose a reasonable charge,
8 limited to the costs of labor and material, for copies of
9 records furnished.

10 (3) A limited liability company shall furnish to a
11 member, and to the legal representative of a deceased member
12 or member under legal disability:

13 (a) Without demand, information concerning the limited
14 liability company's business or affairs reasonably required
15 for the proper exercise of the member's rights and performance
16 of the member's duties under the operating agreement or this
17 chapter; and

18 (b) On demand, other information concerning the
19 limited liability company's business or affairs, except to the
20 extent the demand or the information demanded is unreasonable
21 or otherwise improper under the circumstances.

22 Section 9. Subsections (4) and (6) of section 608.411,
23 Florida Statutes, are amended to read:

24 608.411 Amendments to or restatements of articles of
25 organization.--

26 (4) If the restated articles of organization merely
27 restate and integrate but do not further amend the
28 then-effective articles of organization, the limited liability
29 company shall title the filing "Restated Articles of
30 Organization," together with such other words as the limited
31 liability company deems appropriate. If the restated articles

1 restate and integrate and also further amend in any respect
2 the then-effective articles of organization, the limited
3 liability company shall title the filing "Amended and Restated
4 Articles of Organization," together with such other words as
5 the limited liability company deems appropriate. In each case
6 described in this subsection, the document shall be executed
7 as provided in this chapter for articles of organization and
8 filed as provided by this chapter with the Department of
9 State.

10 (6) Upon the filing of the restated articles of
11 organization with the Department of State, or upon any future
12 effective date or time provided in restated articles of
13 organization, the articles of organization existing prior to
14 such filing shall be superseded and the restated articles of
15 organization, including any further amendment or changes made
16 thereby, shall become the limited liability company's articles
17 of organization. The original effective date of the limited
18 liability company's formation shall remain unchanged.

19 Section 10. Section 608.422, Florida Statutes, is
20 amended to read:

21 608.422 Management of the limited liability company.--

22 (1) Unless otherwise provided in its articles of
23 organization or the operating agreement, the limited liability
24 company shall be a member-managed company.

25 (2) In a member-managed company, unless otherwise
26 provided in its articles of organization or operating
27 agreement:

28 ~~(a) Unless otherwise provided in the articles of~~
29 ~~organization or operating agreement,~~ Management shall be
30 vested in its members or elected managing members in
31 proportion to the then-current percentage or other interest of

1 members in the profits of the limited liability company owned
2 by all of the members or elected managing members.

3 (b) Except as otherwise provided in subsection (3) or
4 in this chapter, the decision of a majority-in-interest of the
5 members or elected managing members shall be controlling.

6 (3) If the articles of organization or the operating
7 agreement provide for the management of the limited liability
8 company by a manager or managers, the management of the
9 limited liability company shall be vested in a manager or
10 managers and the limited liability company shall be a
11 manager-managed company.

12 (4) In a manager-managed company, unless otherwise
13 provided in its articles of organization or operating
14 agreement:

15 (a) Each manager has equal rights in the management
16 and conduct of the limited liability company's business.

17 (b) Except as otherwise provided in subsection (3) or
18 in this chapter, any matter relating to the business of the
19 limited liability company may be exclusively decided by the
20 manager or, if there is more than one manager, by a majority
21 of the managers.

22 (c) A manager:

23 1. Must be designated, appointed, elected, removed, or
24 replaced by a vote, approval, or consent of a
25 majority-in-interest of the members; and

26 2. Holds office until a successor has been elected and
27 qualified, unless the manager sooner resigns or is removed.

28 (5) Action requiring the consent of members or
29 managers under this chapter may be taken without a meeting,
30 subject to the limitations of s. 608.4231.

31

1 (6) Unless otherwise provided in the articles of
2 organization or operating agreement, a member, managing
3 member, or manager may appoint a proxy to vote or otherwise
4 act for the member, managing member, or manager by signing an
5 appointment instrument, either personally or by the member's,
6 managing member's, or manager's attorney-in-fact.

7 (7) Unless otherwise provided in the articles of
8 organization or operating agreement, a member, managing
9 member, or ~~The manager or managers~~ may also hold the offices
10 and have such other responsibilities accorded to them by the
11 members and set out in the articles of organization or the
12 operating agreement of the limited liability company.

13 Section 11. Subsection (1) of section 608.4225,
14 Florida Statutes, is amended to read:

15 608.4225 General standards for managers and managing
16 members.--

17 (1) Subject to ss. 608.4226 and 608.423, each manager
18 and managing member shall owe a duty of loyalty and a duty of
19 care to the limited liability company and all of the ~~other~~
20 members of the limited liability company.

21 (a) The duty of loyalty includes, without limitation:

22 1. Accounting to the limited liability company and
23 holding as trustee for the limited liability company any
24 property, profit, or benefit derived by such manager or
25 managing member in the conduct or winding up of the limited
26 liability company business or derived from a use by such
27 manager or managing member of limited liability company
28 property, including the appropriation of a limited liability
29 company opportunity.

30 2. Refraining from dealing with the limited liability
31 company in the conduct or winding up of the limited liability

1 company business as or on behalf of a party having an interest
2 adverse to the limited liability company.

3 3. Refraining from competing with the limited
4 liability company in the conduct of the limited liability
5 company business before the dissolution of the limited
6 liability company.

7 (b) The duty of care is limited to refraining from
8 engaging in grossly negligent or reckless conduct, intentional
9 misconduct, or a knowing violation of law.

10 (c) Each manager and managing member shall discharge
11 the duties to the limited liability company and ~~its other~~
12 members under this chapter or under the articles of
13 organization or operating agreement and exercise any rights
14 consistent with the obligation of good faith and fair dealing.

15 (d) A manager or managing member does not violate a
16 duty or obligation under this chapter or under the articles of
17 organization or operating agreement merely because the
18 manager's or managing member's conduct furthers such manager's
19 or managing member's own interest.

20 (e) A manager or managing member may lend money to and
21 transact other business with the limited liability company. As
22 to each loan or transaction, the rights and obligations of the
23 manager or managing member are the same as those of a person
24 who is not a member, subject to other applicable law.

25 (f) This section applies to a person winding up the
26 limited liability company business as the personal or other
27 legal representative of the last surviving member as if such
28 person were a manager or managing member.

29 Section 12. Subsections (1) and (3) of section
30 608.4226, Florida Statutes, are amended to read:

31 608.4226 Conflicts of interest.--

1 (1) No contract or other transaction between a limited
2 liability company and one or more of its members, managers, or
3 managing members or any other limited liability company,
4 corporation, firm, association, or entity in which one or more
5 of its members, managers, or managing members are managers,
6 managing members, directors, or officers or are financially
7 interested shall be either void or voidable because of such
8 relationship or interest, because such members, managers, or
9 managing members are present at the meeting of the members,
10 managers, or managing members or a committee thereof which
11 authorizes, approves, or ratifies such contract or
12 transaction, or because their votes are counted for such
13 purpose, if:

14 (a) The fact of such relationship or interest is
15 disclosed or known to the managers or managing members or
16 committee which authorizes, approves, or ratifies the contract
17 or transaction by a vote or consent sufficient for the purpose
18 without counting the votes or consents of such interested
19 members, managers, or managing members;

20 (b) The fact of such relationship or interest is
21 disclosed or known to the members entitled to vote and they
22 authorize, approve, or ratify such contract or transaction by
23 vote or written consent; or

24 (c) The contract or transaction is fair and reasonable
25 as to the limited liability company at the time it is
26 authorized by the managers, managing members, a committee, or
27 the members.

28 (3) For purposes of paragraph (1)(b) only, a conflict
29 of interest transaction is authorized, approved, or ratified
30 if it receives the vote of a majority-in-interest of the
31 members entitled to be counted under this subsection.

1 Membership interests owned by or voted under the control of a
2 manager or managing member who has a relationship or interest
3 in the transaction described in subsection (1) may not be
4 counted in a vote of members to determine whether to
5 authorize, approve, or ratify a conflict of interest
6 transaction under paragraph (1)(b). The vote of those
7 membership interests, however, is counted in determining
8 whether the transaction is approved under other sections of
9 this act. A majority-in-interest of the members, whether or
10 not present, that are entitled to be counted in a vote on the
11 transaction under this subsection constitutes a quorum for the
12 purpose of taking action under this section.

13 Section 13. Section 608.4227, Florida Statutes, is
14 amended to read:

15 608.4227 Liability of members, managing members, and
16 managers.--

17 (1) Except as provided in this chapter, ~~neither~~ the
18 members, managers, and managing members of a limited liability
19 company ~~nor the managers of a limited liability company~~
20 ~~managed by a manager or managing member~~ are not liable, solely
21 by reason of being a member or serving as a manager or
22 managing member, under a judgment, decree, or order of a
23 court, or in any other manner, for a debt, obligation, or
24 liability of the limited liability company;

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

31

1 reliance on the provisions of the limited liability company's
2 articles of organization or operating agreement; and

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

7 Section 14. Section 608.4228, Florida Statutes, is
8 amended to read:

9 608.4228 Limitation of liability of managers and
10 managing members.--

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

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

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

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

1 to believe that his or her conduct was lawful or had no
2 reasonable cause to believe that such conduct was unlawful.

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

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

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

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

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

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

1 transaction was authorized, approved, or ratified by the vote
2 of a majority-in-interest of the members other than the
3 managing member, or the transaction was fair and reasonable to
4 the limited liability company at the time it was authorized by
5 the manager or managing member, notwithstanding that a manager
6 or managing member received a personal benefit.

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

11 Section 15. Section 608.4229, Florida Statutes, is
12 amended to read:

13 608.4229 Indemnification of members, managers,
14 managing members, officers, employees, and agents.--

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

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

30
31

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

4 (b) A transaction from which the member, manager,
5 managing member, officer, employee, or agent derived an
6 improper personal benefit.

7 (c) In the case of a manager or managing member, a
8 circumstance under which the liability provisions of s.
9 608.426 are applicable.

10 (d) Willful misconduct or a conscious disregard for
11 the best interests of the limited liability company in a
12 proceeding by or in the right of the limited liability company
13 to procure a judgment in its favor or in a proceeding by or in
14 the right of a member.

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

17 608.423 Limited liability company operating agreement;
18 nonwaivable provisions.--

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

1 date provided in the operating agreement.To the extent the
2 operating agreement does not otherwise provide, this chapter
3 governs relations among the members, managers, and limited
4 liability company.

5 (2) The operating agreement may not:

6 (a) Unreasonably restrict a right to information or
7 access to records under s. 608.4101;

8 (b) Eliminate the duty of loyalty under s. 608.4225,
9 but the agreement may:

10 1. Identify specific types or categories of activities
11 that do not violate the duty of loyalty, if not manifestly
12 unreasonable; and

13 2. Specify the number or percentage of members or
14 disinterested managers that may authorize or ratify, after
15 full disclosure of all material facts, a specific act or
16 transaction that otherwise would violate the duty of loyalty;

17 (c) Unreasonably reduce the duty of care under s.
18 608.4225;

19 (d) Eliminate the obligation of good faith and fair
20 dealing under s. 608.4225, but the operating agreement may
21 determine the standards by which the performance of the
22 obligation is to be measured, if the standards are not
23 manifestly unreasonable;

24 ~~(e) Vary the right to expel a member in an event~~
25 ~~specified in this chapter;~~

26 (e)~~(f)~~ Vary the requirement to wind up the limited
27 liability company's business in a case specified in this
28 chapter; or

29 (f)~~(g)~~ Restrict rights of a person, other than a
30 manager, member, or transferee of a member's distributional
31 interest, under this chapter.

1 (3) The power to adopt, alter, amend, or repeal the
2 operating agreement of a limited liability company shall be
3 vested in the members of the limited liability company unless
4 vested in the manager or managers of the limited liability
5 company by the articles of organization or operating
6 agreement, provided that any amendment to a written operating
7 agreement shall be in writing. The operating agreement
8 adopted by the members or by the manager or managers may be
9 repealed or altered; a new operating agreement may be adopted
10 by the members; and the members may prescribe in any operating
11 agreement made by them that such operating agreement may not
12 be altered, amended, or repealed by the manager or managers.

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

18 Section 17. Subsections (3), (6), and (8) of section
19 608.4231, Florida Statutes, are amended to read:

20 608.4231 Voting by members and managers.--

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

23 (a) The members of a limited liability company shall
24 vote in proportion to their then-current percentage or other
25 allocable interest in the profits of the limited liability
26 company or, in the case of a member who has assigned the
27 member's entire economic interest in the limited liability
28 company to a person who has not been admitted as a member, in
29 proportion to the then-current percentage or other allocable
30 interest in the profits of the limited liability company that
31

1 the assigning member would have, had the assignment not been
2 made.

3 (b) In all matters in which a vote is required, a vote
4 of a majority-in-interest of the members shall be sufficient
5 unless provided otherwise in the limited liability company's
6 articles of organization or operating agreement or this
7 chapter.

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

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

1 Unless otherwise provided in the articles of organization or
2 operating agreement, on any matter that is to be voted on by
3 members ~~or managers~~, the members ~~or managers~~ may vote in
4 person or by proxy. Within 10 days after obtaining such
5 authorization by written consent, notice must be given to
6 those members who have not consented in writing or who are not
7 entitled to vote on the action.

8 Section 18. Section 608.4235, Florida Statutes, is
9 amended to read:

10 608.4235 Agency of members and managers or managing
11 members.--

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

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

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

30 (2) Subject to subsection (3), in a manager-managed
31 company:

1 (a) A member is not an agent of the limited liability
2 company for the purpose of its business solely by reason of
3 being a member. Each manager is an agent of the limited
4 liability company for the purpose of its business, and an act
5 of a manager, including the signing of an instrument in the
6 limited liability company's name, for apparently carrying on
7 in the ordinary course the limited liability company's
8 business or business of the kind carried on by the company
9 binds the limited liability company, unless the manager had no
10 authority to act for the limited liability company in the
11 particular matter and the person with whom the manager was
12 dealing knew or had notice that the manager lacked authority.

13 (b) An act of a manager which is not apparently for
14 carrying on in the ordinary course the limited liability
15 company's business or business of the kind carried on by the
16 limited liability company binds the limited liability company
17 only if the act was authorized under s. 608.422.

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

26 Section 19. Section 608.4238, Florida Statutes, is
27 amended to read:

28 608.4238 Unauthorized assumption of powers.--All
29 persons purporting to act as or on behalf of a limited
30 liability company, having actual knowledge that there was no
31 organization of a limited liability company under this

1 chapter, are jointly and severally liable for all liabilities
2 created while so acting except for any liability to any person
3 who also had actual knowledge that there was no organization
4 of a limited liability company.

5 Section 20. Subsection (3) of section 608.425, Florida
6 Statutes, is amended to read:

7 608.425 Limited liability company property.--

8 (3) Instruments and documents providing for the
9 acquisition, mortgage, or disposition of property of the
10 limited liability company shall be valid and binding upon the
11 limited liability company, if they are executed in accordance
12 with this chapter.

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

15 608.428 Liability upon wrongful distribution.--

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

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

25 608.432 Assignment of member's interest.--

26 (1) A limited liability company interest is assignable
27 in whole or in part except as provided in the articles of
28 organization or operating agreement. The assignee of a
29 member's interest shall have no right to participate in the
30 management of the business and affairs of a limited liability
31

1 company except as provided in the articles of organization or
2 operating agreement and upon:

3 (a) The approval of all of the members of the limited
4 liability company other than the member assigning the limited
5 liability company interest; or

6 (b) Compliance with any procedure provided for in the
7 articles of organization or operating ~~limited liability~~
8 ~~company~~ agreement.

9 Section 23. Paragraph (e) of subsection (3) of section
10 608.438, Florida Statutes, is amended to read:

11 608.438 Merger of limited liability company.--

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

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

17 Section 24. Subsections (1) and (2) of section
18 608.441, Florida Statutes, are amended to read:

19 608.441 Dissolution.--

20 (1) A limited liability company organized under this
21 chapter shall be dissolved, and the limited liability
22 company's affairs shall be concluded, upon the first to occur
23 of any of the following events:

24 (a) At the time specified in the articles of
25 organization or operating agreement, but if no such time is
26 set forth in the articles of organization or operating
27 agreement, then the limited liability company shall have a
28 perpetual existence;

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

31

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

4 (d) At any time there are no members; however, unless
5 otherwise provided in the articles of organization or
6 operating agreement, the limited liability company is not
7 dissolved and is not required to be wound up if, within 90
8 days, or such other period as provided in the articles of
9 organization or operating agreement, after the occurrence of
10 the event that terminated the continued membership of the last
11 remaining member, the personal or other legal representative
12 of the last remaining member agrees in writing to continue the
13 limited liability company and agrees to the admission of the
14 personal representative of such member or its nominee or
15 designee to the limited liability company as a member,
16 effective as of the occurrence of the event that terminated
17 the continued membership of the last remaining member; or

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

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

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

1 608.444 Distribution of assets upon dissolution.--In
2 settling accounts after dissolution of a limited liability
3 company, the assets of the limited liability company must be
4 distributed in the following order:

5 (3) Except as provided in the articles of organization
6 or the operating agreement, to members pro rata in proportion
7 to their then-current percentage, or other interests in the
8 profits, of the limited liability company.

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

11 608.445 Articles of dissolution.--The articles of
12 dissolution shall set forth:

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

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

20 608.446 Filing of articles of dissolution.--

21 (2) The certificate of dissolution shall be returned
22 to the representative of the dissolved limited liability
23 company. Upon the issuance of such certificate of dissolution,
24 the existence of the limited liability company shall cease,
25 except for the purpose of suits, other proceedings, and
26 appropriate action as provided in this chapter. The manager or
27 managers in office at the time of dissolution, or the
28 survivors of them, or, if none, the members, shall thereafter
29 be trustees for the members and creditors of the dissolved
30 limited liability company; and as such the trustees shall have
31 authority to distribute any ~~company~~ property of the limited

1 liability company discovered after dissolution, to convey real
2 estate, and to take such other action as may be necessary on
3 behalf of and in the name of such dissolved limited liability
4 company.

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

7 608.449 Grounds for judicial dissolution.--A circuit
8 court may dissolve a limited liability company:

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

11 (a) The managers, managing members, or members are
12 deadlocked in the management of the limited liability company
13 affairs, the members are unable to break the deadlock, and
14 irreparable injury to the limited liability company is
15 threatened or being suffered; or

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

18 Section 29. Subsections (1) and (2) of section
19 608.463, Florida Statutes, are amended to read:

20 608.463 Service of process.--

21 (1) Process against a limited liability company may be
22 served:

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

25 (b) Upon the registered agent at the agent's street
26 address.

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

29 (a) By delivery to a manager of the limited liability
30 company, if the management of the limited liability company is
31 vested in one or more managers ~~a manager~~, or by delivery to a

1 member, if the management of the limited liability company is
2 vested in the members.

3 (b) By mailing a writing, which notice or demand in
4 writing is mailed to the registered office of the limited
5 liability company in this state or to another address in this
6 state which is the principal office of the limited liability
7 company.

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

10 608.504 Amended certificate of authority.--

11 (1) A foreign limited liability company authorized to
12 transact business in this state shall make application to the
13 Department of State to obtain an amended certificate of
14 authority if any statement in the limited liability company's
15 application was false or becomes false due to change in
16 circumstances or if the foreign limited liability company
17 changes:

18 (a) Its limited liability company name.

19 (b) The period of its duration.

20 (c) The jurisdiction of its organization.

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

23 608.507 Registered office and registered agent of
24 foreign limited liability company.--Each foreign limited
25 liability company in this state must continuously maintain in
26 this state:

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

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

30

31

1 ~~(b) A domestic corporation or domestic limited~~
2 ~~liability company the business office of which is identical~~
3 ~~with the registered office; or~~

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

8 Section 32. Section 608.704, Florida Statutes, is
9 created to read:

10 608.704 Reservation of power to amend or repeal.--The
11 Legislature has power to amend or repeal all or part of this
12 chapter at any time, and all domestic and foreign limited
13 liability companies subject to this chapter shall be governed
14 by the amendment or repeal.

15 Section 33. Section 608.705, Florida Statutes, is
16 created to read:

17 608.705 Effect of repeal of prior acts.--

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

20 (a) The operation of the statute or any action taken
21 under it before its repeal, including, without limiting the
22 generality of the foregoing, the continuing validity of any
23 provision of the articles of organization, regulations, or
24 operating agreements of a limited liability company authorized
25 by the statute at the time of its adoption;

26 (b) Any ratification, right, remedy, privilege,
27 obligation, or liability acquired, accrued, or incurred under
28 the statute before its repeal;

29 (c) Any violation of the statute, or any penalty,
30 forfeiture, or punishment incurred because of the violation,
31 before its repeal;

1 (d) Any proceeding, merger, sale of assets,
2 reorganization, or dissolution commenced under the statute
3 before its repeal, and the proceeding, merger, sale of assets,
4 reorganization, or dissolution may be completed in accordance
5 with the statute as if it had not been repealed.

6 (2) If a penalty or punishment imposed for violation
7 of a statute repealed by this chapter is reduced by this
8 chapter, the penalty or punishment if not already imposed
9 shall be imposed in accordance with this chapter.

10 Section 34. This act shall take effect October 1,
11 2002.

12
13 *****

14 SENATE SUMMARY

15 Revises various provisions of ch. 608, F.S., which
16 governs limited liability companies in this state.
17 Authorizes a limited liability company to select managing
18 members. Revises requirements for executing articles of
19 organization. Prohibits a limited liability company from
20 transacting business or incurring debt until its
21 effective date of existence. Provides for voting by
22 managing members and for the appointment of proxies.
23 Revises certain requirements for the registered office of
24 a foreign limited liability company. (See bill for
25 details.)
26
27
28
29
30
31