

1 A bill to be entitled
2 An act relating to business entities; creating ss.
3 607.1112-607.1115, F.S.; providing definitions,
4 requirements, criteria, and procedures for conversion of a
5 domestic corporation into another business entity;
6 providing for certificates of conversion; providing for
7 effect of conversion; providing definitions, requirements,
8 criteria, and procedures for conversion of another
9 business entity into a domestic corporation; amending ss.
10 607.1302, 608.407, and 608.4225, F.S., to conform;
11 creating ss. 608.4351-608.43595, F.S.; providing for
12 appraisals of interests in certain limited liability
13 companies; providing definitions; providing requirements,
14 criteria, and procedures for appraisals; providing for
15 appraisal rights of company members; providing for
16 assertion of appraisal rights by nominees and beneficial
17 owners; providing for notice of appraisal rights;
18 providing for notice of intent to demand payment;
19 providing for a written appraisal notice and form;
20 providing for perfection of appraisal rights; providing a
21 right to withdraw; providing for a member's acceptance of
22 certain offers; providing procedures for members
23 dissatisfied with company offers; providing for court
24 action to determine fair value of certain demands for
25 payment under certain circumstances; providing for award
26 of court costs and attorney fees; providing limitations on
27 payments by limited liability companies under certain
28 circumstances; amending ss. 608.438, 608.4381, 608.4382,

29 | 608.4383, and 608.439, F.S., to conform; creating ss.
30 | 608.4401-608.4404, F.S.; providing definitions,
31 | requirements, criteria, and procedures for conversion of a
32 | domestic limited liability company into another business
33 | entity; requiring a plan of conversion; requiring certain
34 | actions on a plan of conversion; providing for
35 | certificates of conversion; providing for effects of
36 | conversion; amending s. 608.452, F.S., to conform;
37 | amending ss. 617.0302 and 617.1107, F.S., to conform;
38 | creating ss. 620.1101-620.2205, F.S.; revising the Florida
39 | Revised Uniform Limited Liability Company Act; providing a
40 | popular name; providing definitions; specifying conditions
41 | of knowledge and notice; providing for nature, purpose,
42 | and duration of limited partnerships; providing powers of
43 | limited partnerships; specifying the governing law
44 | relating to limited partnerships; providing supplemental
45 | principles of law; providing for application of certain
46 | rates of interest under certain circumstances; providing
47 | for names of limited partnerships; specifying certain fees
48 | of the Department of State for certain purposes; providing
49 | for effect of partnership agreements; providing for
50 | nonwaivable provisions; requiring limited partnerships to
51 | maintain certain required information; authorizing certain
52 | business transactions of partners with a partnership;
53 | providing for dual capacity of certain persons; requiring
54 | a designated office, registered office, and registered
55 | agent of a limited partnership; providing for change of
56 | designated office, registered office, or registered agent;

57 providing for resignation of a registered agent; providing
58 for service of process for certain purposes; providing for
59 consent and proxies of partners; providing for formation
60 of limited partnerships; providing for a certificate of
61 limited partnership; providing for amendment or
62 restatement of a certificate of partnership; providing for
63 a certificate of dissolution; providing for a statement of
64 termination; requiring certain records to be signed;
65 providing for signing and filing of certain records
66 pursuant to court order; providing for delivery to and
67 filing of certain records by the Department of State;
68 providing for effective dates and times of certain records
69 and filings; providing for correcting certain filed
70 records; providing for liability for false information in
71 filed records; providing for a certificate of status;
72 requiring delivery of annual reports to the department;
73 providing conditions for becoming a partner; specifying
74 absence of right or power of a limited partner to bind a
75 limited partnership; providing for approval of certain
76 rights; specifying absence of liability of limited partner
77 for limited partnership obligations; specifying rights of
78 limited partners and former limited partners to certain
79 information; specifying limited duties of limited
80 partners; specifying conditions of liability or lack of
81 liability on the part of certain persons for certain
82 partnership obligations under certain circumstances;
83 specifying conditions for becoming a general partner;
84 specifying a general partner as an agent for the limited

85 partnership; specifying liability of limited partnership
86 for certain actions of general partners; providing for
87 liability of general partners; specifying certain actions
88 by and against limited partnerships and general partners;
89 specifying management rights of general partners;
90 providing certain approval rights of other partners;
91 specifying the right of general partners and former
92 general partners to certain information; providing general
93 standards of conduct for general partners; providing for
94 form of certain contributions by partners; providing for
95 liability for certain contributions; providing for sharing
96 of profits, losses, and distributions; providing for
97 interim distributions; specifying absence of right to
98 receive a distribution upon dissociation; providing for
99 distributions in kind; providing certain rights to
100 distributions; providing limitations on distributions;
101 providing for liability for certain improper
102 distributions; providing for dissociation as limited
103 partner under certain circumstances; providing for effect
104 of dissociation as limited partner; providing for
105 dissociation as general partner; specifying a person's
106 power to dissociate as general under certain
107 circumstances; specifying conditions and liability of
108 wrongful dissociation; providing for effect of
109 dissociation as general partner; providing to a
110 dissociated general partner a power to bind and liability
111 to a partnership before dissolution of the partnership;
112 providing for certain liability of dissociated general

113 partners; providing for a partner's transferable interest;
114 providing for transfers of partner's transferable
115 interest; providing rights of creditors of partners and
116 transferees; providing for powers of estates of deceased
117 partners; providing for nonjudicial dissolution of limited
118 partnerships; providing for judicial dissolutions;
119 providing for winding up activities of a limited
120 partnership; providing for a power of a general partner
121 and dissociated general partners to bind a partnership
122 after dissolution; providing for liability of certain
123 persons to the partnership after dissolution; providing
124 for disposition of known claims against dissolved limited
125 partnerships; providing for filing certain unknown claims
126 against dissolved limited partnerships; providing for
127 liability of certain persons for certain barred claims
128 against a limited partnership; providing for
129 administrative dissolution; providing for reinstatement
130 after administrative dissolution; providing for appeals
131 from reinstatement denials; providing for revocation of
132 dissolution; providing for disposition of assets upon
133 winding up of activities of a limited partnership;
134 specifying when contributions are required; specifying the
135 governing law relating to foreign limited partnerships;
136 providing for applications for certificates of authority
137 for foreign limited partnerships; specifying certain
138 activities as not constituting transacting business by a
139 foreign limited partnership; providing for filing a
140 certificate of authority for foreign limited partnerships

141 to transact business; prohibiting a foreign limited
142 partnership from obtaining a certificate of authority for
143 a noncomplying name; providing for revocation of a
144 certificate of authority for foreign limited partnerships;
145 providing for cancellation of a certificate of authority
146 for a foreign limited partnership; providing for effect of
147 failure to have a certificate; authorizing the Attorney
148 General to bring actions to restrain foreign limited
149 partnerships from transacting business under certain
150 circumstances; providing for reinstatement after
151 administrative revocation; providing for amending a
152 certificate of authority; providing for direct actions by
153 a partner against a limited partnership or another partner
154 under certain circumstances; authorizing partners to
155 maintain derivative actions for certain purposes;
156 specifying proper plaintiff in derivative actions;
157 specifying contents of certain pleadings; specifying
158 distribution of proceeds in derivative actions; providing
159 for court award of expenses and attorney fees under
160 certain circumstances; providing definitions; providing
161 for conversion of an organization to a limited partnership
162 or a limited partnership to another organization;
163 requiring a plan of conversion; specifying certain actions
164 on a plan of conversion; requiring a certificate of
165 conversion; specifying certain required filings with the
166 Department of State for a conversion; providing for effect
167 of conversion; providing for a merger of a limited
168 partnership with certain organizations; requiring a plan

169 of merger; specifying certain actions on a plan of merger;
170 requiring a certificate of merger; specifying certain
171 required filings for a merger; providing for effect of
172 merger; providing restrictions on approval of conversions
173 and mergers; providing for liability of a general partner
174 after conversion or merger; providing for power of certain
175 persons to bind an organization after conversion or
176 merger; providing for appraisals of interests in certain
177 limited partnerships; providing definitions; providing for
178 appraisal rights of limited partners; providing for
179 assertion of appraisal rights by nominees and beneficial
180 owners; providing for notice of appraisal rights;
181 providing for notice of intent to demand payment;
182 providing for a written appraisal notice and form;
183 providing for perfection of appraisal rights; providing a
184 right to withdraw; providing for a limited partner's
185 acceptance of certain offers; providing procedures for
186 limited partners dissatisfied with limited partnership
187 offers; providing for court action to determine fair value
188 of certain demands for payment under certain
189 circumstances; providing for award of court costs and
190 attorney fees; providing limitations on payments by
191 limited partnerships under certain circumstances;
192 providing for application of laws to provisions governing
193 conversions and mergers; providing for uniformity of
194 application and construction; providing severability;
195 providing for application to the Electronic Signatures in
196 Global and National Commerce Act; providing for

197 application to existing business entities; amending ss.
198 620.8103 and 620.8404, F.S., to conform; amending s.
199 620.8105, F.S.; providing requirements for partnership
200 registration statements, certificates of merger or
201 conversion, and amended partnership registrations and
202 certificates of merger or conversion; amending s.
203 620.81055, F.S.; providing a fee for a certificate of
204 conversion; creating ss. 620.8911-620.8923, F.S.;
205 providing definitions; providing for conversion of certain
206 organizations to a partnership or a partnership to another
207 organization; providing requirements, criteria, and
208 procedures for conversions; requiring a plan of
209 conversion; requiring certain actions by a converting
210 partnership on a plan of conversion; specifying certain
211 required filings with the Department of State for a
212 conversion; providing for effect of conversion; providing
213 for a merger of a partnership with certain organizations;
214 providing requirements, criteria, and procedures for
215 mergers; requiring a plan of merger; specifying certain
216 actions by a constituent partnership on a plan of merger;
217 specifying certain requiring filings with the Department
218 of State for a merger; providing for effect of merger;
219 providing restrictions on approval of conversions and
220 mergers; providing for liability of partners after
221 conversion or merger; providing for power of certain
222 persons to bind an organization after conversion or
223 merger; providing construction relating to application of
224 other laws to conversions and mergers; amending s.

225 620.9104, F.S.; specifying additional activities not
 226 constituting transacting business; repealing s. 608.4384,
 227 F.S., relating to rights of members of limited liability
 228 companies dissenting to a merger; repealing ss. 620.101,
 229 620.102, 620.103, 620.105, 620.1051, 620.106, 620.107,
 230 620.108, 620.109, 620.112, 620.113, 620.114, 620.115,
 231 620.116, 620.117, 620.118, 620.119, 620.122, 620.123,
 232 620.124, 620.125, 620.126, 620.127, 620.128, 620.129,
 233 620.132, 620.133, 620.134, 620.135, 620.136, 620.137,
 234 620.138, 620.139, 620.142, 620.143, 620.144, 620.145,
 235 620.146, 620.147, 620.148, 620.149, 620.152, 620.153,
 236 620.154, 620.155, 620.156, 620.157, 620.158, 620.159,
 237 620.162, 620.163, 620.164, 620.165, 620.166, 620.167,
 238 620.168, 620.169, 620.172, 620.173, 620.174, 620.175,
 239 620.176, 620.177, 620.178, 620.179, 620.182, 620.1835,
 240 620.184, 620.185, 620.186, 620.187, 620.192, 620.201,
 241 620.202, 620.203, 620.204, and 620.205, F.S., relating to
 242 the Florida Revised Uniform Limited Partnership Act(1986);
 243 repealing ss. 620.8901, 620.8902, 620.8903, 620.8904,
 244 620.8905, 6210.8906, 620.8907, and 620.8908, F.S.,
 245 relating to conversions of partnerships and limited
 246 partnerships under the Revised Uniform Partnership Act of
 247 1995; providing effective dates.

248
 249 Be It Enacted by the Legislature of the State of Florida:

250
 251 Section 1. Sections 607.1112, 607.1113, 607.1114, and
 252 607.1115, Florida Statutes, are created to read:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

253 607.1112 Conversion of domestic corporation into another
254 business entity.--

255 (1) As used in this section and ss. 607.1113 and 607.1114,
256 the term "another business entity" or "other business entity"
257 means a limited liability company; a not-for-profit corporation;
258 a common law or business trust or association; a real estate
259 investment trust; a general partnership, including a limited
260 liability partnership; a limited partnership, including a limited
261 liability limited partnership; or any other domestic or foreign
262 entity that is organized under a governing law or other
263 applicable law, provided such term shall not include a
264 corporation and shall not include any entity that has not been
265 organized for profit.

266 (2) Pursuant to a plan of conversion complying with and
267 approved in accordance with this section, a domestic corporation
268 may convert to another business entity organized under the laws
269 of this state or any other state, the United States, a foreign
270 country, or other foreign jurisdiction, if:

271 (a) The domestic corporation converting to the other
272 business entity complies with the applicable provisions of this
273 chapter.

274 (b) The conversion is permitted by the laws of the
275 jurisdiction that enacted the applicable laws under which the
276 other business entity is governed and the other business entity
277 complies with such laws in effecting the conversion.

278 (3) The plan of conversion shall set forth:

HB 0595

2005

279 (a) The name of the domestic corporation and the name and
280 jurisdiction of organization of the other business entity to
281 which the domestic corporation is to be converted.

282 (b) The terms and conditions of the conversion, including
283 the manner and basis of converting the shares, obligations, or
284 other securities, or rights to acquire shares, obligations, or
285 other securities, of the domestic corporation into the
286 partnership interests, limited liability company interests,
287 obligations, or other securities of the other business entity,
288 including any rights to acquire any such interests, obligations,
289 or other securities, or, in whole or in part, into cash or other
290 consideration.

291 (c) All statements required to be set forth in the plan of
292 conversion by the laws under which the other business entity is
293 governed.

294 (4) The plan of conversion shall include, or have attached
295 to it, the articles, certificate, registration, or other
296 organizational document by which the other business entity has
297 been or will be organized under its governing laws.

298 (5) The plan of conversion may also set forth any other
299 provisions relating to the conversion.

300 (6) The plan of conversion shall be adopted and approved by
301 the board of directors and shareholders of a domestic corporation
302 in the same manner as a merger of a domestic corporation under s.
303 607.1103. Notwithstanding such requirement, if the other business
304 entity is a partnership or limited partnership, no shareholder of
305 the converting domestic corporation shall, as a result of the
306 conversion, become a general partner of the partnership or

HB 0595

2005

307 limited partnership, unless such shareholder specifically
308 consents in writing to becoming a general partner of such
309 partnership or limited partnership and, unless such written
310 consent is obtained from each such shareholder, such conversion
311 shall not become effective under s. 607.1114. Any shareholder
312 providing such consent in writing shall be deemed to have voted
313 in favor of the plan of conversion pursuant to which the
314 shareholder became a general partner.

315 (7) Section 607.1103 and ss. 607.1301-607.1333 shall,
316 insofar as they are applicable, apply to a conversion of a
317 domestic corporation into another business entity in accordance
318 with this chapter.

319 607.1113 Certificate of conversion.--

320 (1) After a plan of conversion is approved by the board of
321 directors and shareholders of a converting domestic corporation,
322 such corporation shall deliver to the Department of State for
323 filing a certificate of conversion which shall be executed by the
324 domestic corporation as required by s. 607.0120 and shall set
325 forth:

326 (a) A statement that the domestic corporation has been
327 converted into another business entity in compliance with this
328 chapter and that the conversion complies with the applicable laws
329 governing the other business entity.

330 (b) A statement that the plan of conversion was approved by
331 the converting domestic corporation in accordance with this
332 chapter and, if applicable, a statement that the written consent
333 of each shareholder of such domestic corporation who, as a result

334 of the conversion, becomes a general partner of the surviving
335 entity has been obtained pursuant to s. 607.1112(6).

336 (c) The effective date of the conversion, which, subject to
337 the limitations in s. 607.0123(2), may be on or after the date of
338 filing the certificate of conversion but shall not be different
339 than the effective date of the conversion under the laws
340 governing the other business entity into which the domestic
341 corporation has been converted.

342 (d) The address, including street and number, if any, of
343 the principal office of the other business entity under the laws
344 of the state, country, or jurisdiction in which such other
345 business entity was organized.

346 (e) If the other business entity is a foreign entity and is
347 not authorized to transact business in this state, a statement
348 that the other business entity appoints the Secretary of State as
349 its agent for service of process in a proceeding to enforce
350 obligations of the converting domestic corporation, including any
351 appraisal rights of shareholders of the converting domestic
352 corporation under ss. 607.1301-607.1333 and the street and
353 mailing address of an office which the Department of State may
354 use for purposes of s. 607.1114(4).

355 (f) A statement that the other business entity has agreed
356 to pay any shareholders having appraisal rights the amount to
357 which they are entitled under ss. 607.1301-607.1333.

358 (2) A copy of the certificate of conversion, certified by
359 the Department of State, may be filed in the official records of
360 any county in this state in which the converting domestic
361 corporation holds an interest in real property.

362 607.1114 Effect of conversion of domestic corporation into
363 another business entity.--When a conversion becomes effective:

364 (1) A domestic corporation that has been converted into
365 another business entity pursuant to this chapter is for all
366 purposes the same entity that existed before the conversion.

367 (2) The title to all real property and other property, or
368 any interest therein, owned by the domestic corporation at the
369 time of its conversion into the other business entity remains
370 vested in the converted entity without reversion or impairment by
371 operation of this chapter.

372 (3) The other business entity into which the domestic
373 corporation was converted shall continue to be responsible and
374 liable for all the liabilities and obligations of the converting
375 domestic corporation, including liability to any shareholders
376 having appraisal rights under ss. 607.1301-607.1333 with respect
377 to such conversion.

378 (4) Any claim existing or action or proceeding pending by
379 or against any domestic corporation that is converted into
380 another business entity may be continued as if the conversion
381 did not occur. If the converted entity is a foreign entity, it
382 shall be deemed to have consented to the jurisdiction of the
383 courts of this state to enforce any obligation of the converting
384 domestic corporation if, before the conversion, the converting
385 domestic corporation was subject to suit in this state on the
386 obligation. A converted entity that is a foreign entity and not
387 authorized to transact business in this state shall appoint the
388 Department of State as its agent for service of process for
389 purposes of enforcing an obligation under this subsection,

390 including any appraisal rights of shareholders under ss.
 391 607.1301-607.1333 to the extent applicable to the conversion.
 392 Service on the Department of State under this subsection shall
 393 be made in the same manner and with the same consequences as
 394 under s. 48.141.

395 (5) Neither the rights of creditors nor any liens upon the
 396 property of a domestic corporation that is converted into another
 397 business entity under this chapter shall be impaired by such
 398 conversion.

399 (6) The shares, obligations, and other securities, or
 400 rights to acquire shares, obligations, or other securities, of
 401 the domestic corporation shall be converted into the partnership
 402 interests, limited liability company interests, obligations, or
 403 other securities of the other business entity, including any
 404 rights to acquire any such interests, obligations, or other
 405 securities, or, in whole or in part, into cash, or other
 406 consideration, as provided in the plan of conversion. The former
 407 shareholders of the converting domestic corporation shall be
 408 entitled only to the rights provided in the plan of conversion
 409 and to their appraisal rights, if any, under ss. 607.1301-
 410 607.1333 or other applicable law.

411 607.1115 Conversion of another business entity to a
 412 domestic corporation.--

413 (1) As used in this section, the term "other business
 414 entity" means a limited liability company; a common law or
 415 business trust or association; a real estate investment trust; a
 416 general partnership, including a limited liability partnership; a
 417 limited partnership, including a limited liability limited

418 partnership; or any other domestic or foreign entity that is
419 organized under a governing law or other applicable law, provided
420 such term shall not include a corporation and shall not include
421 any entity that has not been organized for profit.

422 (2) Any other business entity may convert to a domestic
423 corporation if the conversion is permitted by the laws of the
424 jurisdiction that enacted the applicable laws governing the other
425 business entity and the other business entity complies with such
426 laws and the requirements of this section in effecting the
427 conversion. The other business entity shall file with the
428 Department of State in accordance with s. 607.0120:

429 (a) A certificate of conversion that has been executed in
430 accordance with s. 607.0120.

431 (b) Articles of incorporation that comply with s. 607.0202
432 and have been executed in accordance with s. 607.0120.

433 (3) The certificate of conversion shall state:

434 (a) The date on which, and the jurisdiction in which, the
435 other business entity was first organized and, if the entity has
436 changed, its jurisdiction immediately prior to its conversion.

437 (b) The name of the other business entity immediately prior
438 to the filing of the certificate of conversion to a corporation.

439 (c) The name of the corporation as set forth in its
440 articles of incorporation filed in accordance with subsection
441 (2).

442 (d) The delayed effective date or time, which, subject to
443 the limitations in s. 607.0123(2), shall be a date or time
444 certain, of the conversion if the conversion is not to be
445 effective upon the filing of the certificate of conversion and

446 the articles of incorporation, provided such delayed effective
447 date may not be different than the effective date and time of the
448 articles of incorporation.

449 (4) Upon the filing with the Department of State of the
450 certificate of conversion and the articles of incorporation, or
451 upon the delayed effective date or time of the certificate of
452 conversion and the articles of incorporation, the other business
453 entity shall be converted into a domestic corporation and the
454 corporation shall thereafter be subject to all of the provisions
455 of this chapter, except notwithstanding s. 607.0123, the
456 existence of the corporation shall be deemed to have commenced
457 when the other business entity commenced its existence in the
458 jurisdiction in which the other business entity was first
459 organized.

460 (5) The conversion of any other business entity into a
461 domestic corporation shall not affect any obligations or
462 liabilities of the other business entity incurred prior to its
463 conversion to a domestic corporation or the personal liability of
464 any person incurred prior to such conversion.

465 (6) When any conversion becomes effective under this
466 section, for all purposes of the laws of this state, all of the
467 rights, privileges, and powers of the other business entity that
468 has been converted, and all property, real, personal, and mixed,
469 and all debts due to such other business entity, as well as all
470 other things and causes of action belonging to such other
471 business entity, shall be vested in the domestic corporation into
472 which it was converted and shall thereafter be the property of
473 the domestic corporation as they were of the other business

474 entity. Without limiting this provision, title to any real
475 property, or any interest therein, vested by deed or otherwise in
476 such other business entity at the time of conversion shall remain
477 vested in the converted entity without reversion or impairment by
478 operation of this chapter. All rights of creditors and all liens
479 upon any property of such other business entity shall be
480 preserved unimpaired, and all debts, liabilities, and duties of
481 such other business entity shall thenceforth attach to the
482 domestic corporation into which it was converted and may be
483 enforced against the domestic corporation to the same extent as
484 if said debts, liabilities, and duties had been incurred or
485 contracted by the domestic corporation.

486 (7) Unless otherwise agreed, or as required under
487 applicable laws of states other than this state, the converting
488 entity shall not be required to wind up its affairs or pay its
489 liabilities and distribute its assets and the conversion shall
490 not constitute a dissolution of such entity and shall constitute
491 a continuation of the existence of the converting entity in the
492 form of a domestic corporation.

493 (8) Prior to filing a certificate of conversion with the
494 Department of State, the conversion shall be approved in the
495 manner provided for by the document, instrument, agreement, or
496 other writing, as the case may be, governing the internal affairs
497 of the other business entity or by other applicable law, as
498 appropriate, and the articles of incorporation and bylaws of the
499 corporation shall be approved by the same authorization required
500 to approve the conversion. As part of such an approval, a plan of
501 conversion or other record may describe the manner and basis of

HB 0595

2005

502 converting the partnership interests, limited liability company
503 interests, obligations, or securities of, or other interests or
504 rights in, the other business entity, including any rights to
505 acquire any such interests, obligations, securities, or other
506 rights, into shares of the domestic corporation, or rights to
507 acquire shares, obligations, securities, or other rights, or, in
508 whole or in part, into cash or other consideration. Such a plan
509 or other record may also contain other provisions relating to the
510 conversion, including without limitation the right of the other
511 business entity to abandon a proposed conversion, or an effective
512 date for the conversion that is not inconsistent with paragraph
513 (2)(d).

514 Section 2. Paragraph (a) of subsection (1) of section
515 607.1302, Florida Statutes, is amended to read:

516 607.1302 Right of shareholders to appraisal.--

517 (1) A shareholder of a domestic corporation is entitled to
518 appraisal rights, and to obtain payment of the fair value of
519 that shareholder's shares, in the event of any of the following
520 corporate actions:

521 (a) Consummation of a conversion of such corporation
522 pursuant to s. 607.1112 if shareholder approval is required for
523 the conversion and the shareholder is entitled to vote on the
524 conversion under ss. 607.1103 and 607.1112(6), or the
525 consummation of a merger to which such ~~the~~ corporation is a
526 party if shareholder approval is required for the merger under
527 by s. 607.1103 and the shareholder is entitled to vote on the
528 merger or if such ~~the~~ corporation is a subsidiary and the merger
529 is governed by s. 607.1104;

530 Section 3. Subsections (1) and (5) of section 608.407,
 531 Florida Statutes, are amended, and subsection (6) is added to
 532 said section, to read:

533 608.407 Articles of organization.--

534 (1) In order to form a limited liability company, articles
 535 of organization of a limited liability company shall be ~~executed~~
 536 ~~and~~ filed with the Department of State by one or more members or
 537 authorized representatives of the limited liability company. The
 538 articles of organization shall set forth:

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

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

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

546 (d) Any other matters that the members elect to include in
 547 the articles of organization.

548 (5) The fact that articles of organization are on file
 549 with the Department of State is notice that the entity formed in
 550 connection with the filing of the articles of organization is a
 551 limited liability company formed under the laws of this state
 552 ~~and is notice of all other facts set forth in the articles of~~
 553 ~~organization.~~ If the articles of organization contain any
 554 information described in subsections (4) and (6), the articles
 555 of organization shall be deemed notice of that information as
 556 well, provided, if such information has been added or changed by
 557 an amendment or restatement of the articles of organization, the

HB 0595

2005

558 articles of organization shall not be deemed notice of such fact
559 until 90 days after the effective date of such amendment or
560 restatement.

561 (6) The articles of organization may also, but need not,
562 identify one or more persons authorized to serve as a manager or
563 managing member and may describe any limitations upon the
564 authority of a manager or managing member, provided a provision
565 in the articles of organization limiting the authority of a
566 manager or managing member to transfer real property held in the
567 name of the limited liability company is not notice of the
568 limitation, to a person who is not a member or manager of the
569 limited liability company, unless the limitation appears in an
570 affidavit, certificate, or other instrument that bears the name
571 of the limited liability company and is recorded in the office
572 for recording transfers of such real property.

573 Section 4. Paragraph (a) of subsection (1) of section
574 608.4225, Florida Statutes, is amended to read:

575 608.4225 General standards for managers and managing
576 members.--

577 (1) Subject to ss. 608.4226 and 608.423, each manager and
578 managing member shall owe a duty of loyalty and a duty of care
579 to the limited liability company and all of the members of the
580 limited liability company.

581 (a) Subject to s. 608.4226, the duty of loyalty is limited
582 to includes, without limitation:

583 1. Accounting to the limited liability company and holding
584 as trustee for the limited liability company any property,
585 profit, or benefit derived by such manager or managing member in

586 the conduct or winding up of the limited liability company
587 business or derived from a use by such manager or managing
588 member of limited liability company property, including the
589 appropriation of a limited liability company opportunity.

590 2. Refraining from dealing with the limited liability
591 company in the conduct or winding up of the limited liability
592 company business as or on behalf of a party having an interest
593 adverse to the limited liability company.

594 3. Refraining from competing with the limited liability
595 company in the conduct of the limited liability company business
596 before the dissolution of the limited liability company.

597 Section 5. Sections 608.4351, 608.4352, 608.4353,
598 608.4354, 608.4355, 608.4356, 608.4357, 608.43575, 608.4358,
599 608.43585, 608.4359, and 608.43595, Florida Statutes, are
600 created to read:

601 608.4351 Appraisal rights; definitions.--The following
602 definitions apply to this section and ss. 608.4352-608.43595:

603 (1) "Affiliate" means a person that directly or indirectly,
604 through one or more intermediaries, controls, is controlled by,
605 or is under common control with another person. For purposes of
606 s. 608.4352(2)(d), a person is deemed to be an affiliate of its
607 senior executives.

608 (2) "Appraisal event" means an event described in s.
609 608.4352(1).

610 (3) "Beneficial member" means a person who is the
611 beneficial owner of a membership interest held in a voting trust
612 or by a nominee on the beneficial owner's behalf.

613 (4) "Converted entity" means the other business entity into

614 which a domestic limited liability company converts pursuant to
615 ss. 608.4401-608.4404.

616 (5) "Fair value" means the value of the member's membership
617 interests determined:

618 (a) Immediately before the effectuation of the appraisal
619 event to which the member objects.

620 (b) Using customary and current valuation concepts and
621 techniques generally employed for similar businesses in the
622 context of the transaction requiring appraisal, excluding any
623 appreciation or depreciation in anticipation of the transaction
624 to which the member objects unless exclusion would be inequitable
625 to the limited liability company and its remaining members.

626 (6) "Interest" means interest from the effective date of
627 the appraisal event to which the member objects until the date of
628 payment, at the rate of interest determined for judgments in
629 accordance with s. 55.03, determined as of the effective date of
630 the appraisal event.

631 (7) "Limited liability company" means the domestic limited
632 liability company that issued the membership interest held by a
633 member demanding appraisal, and for matters covered in ss.
634 608.4352-608.43595, includes the converted entity in a conversion
635 or the surviving entity in a merger.

636 (8) "Record member" means each person who is identified as
637 a member in the current list of members maintained in accordance
638 with s. 608.4101 by the limited liability company, or to the
639 extent the limited liability company has failed to maintain a
640 current list, each person that is the rightful owner of a
641 membership interest in the limited liability company. An assignee

642 of a membership interest is not a record member.

643 (9) "Senior executive" means a manager or managing member
644 or the chief executive officer, chief operating officer, chief
645 financial officer, or anyone in charge of a principal business
646 unit or function of a limited liability company or of a manager
647 or managing member of the limited liability company.

648 (10) "Member" means a record member or a beneficial member.

649 (11) "Membership interest" has the same meaning set forth
650 in s. 608.402, except, if the appraisal rights of a member under
651 s. 608.4352 pertain to only a certain class or series of a
652 membership interest, the term "membership interest" means only
653 the membership interest pertaining to such class or series.

654 (12) "Surviving entity " means the other business entity
655 into which a domestic limited liability company is merged
656 pursuant to ss. 608.438-608.4383.

657 608.4352 Right of members to appraisal.--

658 (1) A member of a domestic limited liability company is
659 entitled to appraisal rights, and to obtain payment of the fair
660 value of that member's membership interest, in the following
661 events:

662 (a) Consummation of a merger of such limited liability
663 company pursuant to this act and the member possessed the right
664 to vote upon the merger; or

665 (b) Consummation of a conversion of such limited liability
666 company pursuant to this act and the member possessed the right
667 to vote upon the conversion.

668 (2) Notwithstanding subsection (1), the availability of
669 appraisal rights shall be limited in accordance with the

HB 0595

2005

670 following provisions:

671 (a) Appraisal rights shall not be available for membership
672 interests which are:

673 1. Listed on the New York Stock Exchange or the American
674 Stock Exchange or designated as a national market system security
675 on an interdealer quotation system by the National Association of
676 Securities Dealers, Inc.; or

677 2. Not listed or designated as provided in subparagraph 1.
678 but are issued by a limited liability company that has at least
679 500 members and all membership interests of the limited liability
680 company, including membership interests that are limited to a
681 right to receive distributions, have a market value of at least
682 \$10 million, exclusive of the value of any such interests held by
683 its managing members, managers, and other senior executives
684 owning more than 10 percent of the rights to receive
685 distributions from the limited liability company.

686 (b) The applicability of paragraph (a) shall be determined
687 as of the date fixed to determine the members entitled to receive
688 notice of, and to vote upon, the appraisal event.

689 (c) Paragraph (a) shall not apply, and appraisal rights
690 shall be available pursuant to subsection (1), for any members
691 who are required by the appraisal event to accept for their
692 membership interests anything other than cash or a proprietary
693 interest of an entity that satisfies the standards set forth in
694 paragraph (a) at the time the appraisal event becomes effective.

695 (d) Paragraph (a) shall not apply, and appraisal rights
696 shall be available pursuant to subsection (1), for the holders of
697 a membership interest if:

698 1. Any of the members' interests in the limited liability
699 company or the limited liability company's assets are being
700 acquired or converted, whether by merger, conversion, or
701 otherwise, pursuant to the appraisal event by a person, or by an
702 affiliate of a person, who:

703 a. Is, or at any time in the 1-year period immediately
704 preceding approval of the appraisal event was, the beneficial
705 owner of 20 percent or more of those interests in the limited
706 liability company entitled to vote on the appraisal event,
707 excluding any such interests acquired pursuant to an offer for
708 all interests having such voting rights if such offer was made
709 within 1 year prior to the appraisal event for consideration of
710 the same kind and of a value equal to or less than that paid in
711 connection with the appraisal event; or

712 b. Directly or indirectly has, or at any time in the 1-year
713 period immediately preceding approval of the appraisal event had,
714 the power, contractually or otherwise, to cause the appointment
715 or election of any senior executives; or

716 2. Any of the members' interests in the limited liability
717 company or the limited liability company's assets are being
718 acquired or converted, whether by merger, conversion, or
719 otherwise, pursuant to the appraisal event by a person, or by an
720 affiliate of a person, who is, or at any time in the 1-year
721 period immediately preceding approval of the appraisal event was,
722 a senior executive of the limited liability company or a senior
723 executive of any affiliate of the limited liability company, and
724 that senior executive will receive, as a result of the limited
725 liability company action, a financial benefit not generally

HB 0595

2005

726 available to members, other than:

727 a. Employment, consulting, retirement, or similar benefits
728 established separately and not as part of or in contemplation of
729 the appraisal event;

730 b. Employment, consulting, retirement, or similar benefits
731 established in contemplation of, or as part of, the appraisal
732 event that are not more favorable than those existing before the
733 appraisal event or, if more favorable, that have been approved by
734 the limited liability company; or

735 c. In the case of a managing member or manager of the
736 limited liability company who will, during or as the result of
737 the appraisal event, become a managing member, manager, general
738 partner, or director of the surviving or converted entity or one
739 of its affiliates, those rights and benefits as a managing
740 member, manager, general partner, or director that are provided
741 on the same basis as those afforded by the surviving or converted
742 entity generally to other managing members, managers, general
743 partners, or directors of the surviving or converted entity or
744 its affiliate.

745 (e) For the purposes of subparagraph (d)1.a. only, the term
746 "beneficial owner" means any person who, directly or indirectly,
747 through any contract, arrangement, or understanding, other than a
748 revocable proxy, has or shares the right to vote, or to direct
749 the voting of, an interest in a limited liability company with
750 respect to approval of the appraisal event, provided a member of
751 a national securities exchange shall not be deemed to be a
752 beneficial owner of an interest in a limited liability company
753 held directly or indirectly by it on behalf of another person

754 solely because such member is the recordholder of interests in
755 the limited liability company if the member is precluded by the
756 rules of such exchange from voting without instruction on
757 contested matters or matters that may affect substantially the
758 rights or privileges of the holders of the interests in the
759 limited liability company to be voted. When two or more persons
760 agree to act together for the purpose of voting such interests,
761 each member of the group formed thereby shall be deemed to have
762 acquired beneficial ownership, as of the date of such agreement,
763 of all voting interests in the limited liability company
764 beneficially owned by any member of the group.

765 (3) A member entitled to appraisal rights under this
766 section and ss. 608.4353-608.43595 may not challenge a completed
767 appraisal event unless the appraisal event:

768 (a) Was not effectuated in accordance with the applicable
769 provisions of this section and ss. 608.4353-608.43595, or the
770 limited liability company's articles of organization or operating
771 agreement; or

772 (b) Was procured as a result of fraud or material
773 misrepresentation.

774 (4) A limited liability company may modify, restrict, or
775 eliminate the appraisal rights provided in this section and ss.
776 608.4353-608.43595 in its operating agreement.

777 608.4353 Assertion of rights by nominees and beneficial
778 owners.--

779 (1) A record member may assert appraisal rights as to fewer
780 than all the membership interests registered in the record
781 member's name that are owned by a beneficial member only if the

HB 0595

2005

782 record member objects with respect to all membership interests of
783 the class or series owned by that beneficial member and notifies
784 the limited liability company in writing of the name and address
785 of each beneficial member on whose behalf appraisal rights are
786 being asserted. The rights of a record member who asserts
787 appraisal rights for only part of the membership interests of the
788 class or series held of record in the record member's name under
789 this subsection shall be determined as if the membership
790 interests to which the record member objects and the record
791 member's other membership interests were registered in the names
792 of different record members.

793 (2) A beneficial member may assert appraisal rights as to a
794 membership interest held on behalf of the member only if such
795 beneficial member:

796 (a) Submits to the limited liability company the record
797 member's written consent to the assertion of such rights no later
798 than the date referred to in s. 608.4356(2)(b)2.

799 (b) Does so with respect to all membership interests of the
800 class or series that are beneficially owned by the beneficial
801 member.

802 608.4354 Notice of appraisal rights.--

803 (1) If a proposed appraisal event is to be submitted to a
804 vote at a members' meeting, the meeting notice must state that
805 the limited liability company has concluded that members are, are
806 not, or may be entitled to assert appraisal rights under this
807 act.

808 (2) If the limited liability company concludes that
809 appraisal rights are or may be available, a copy of ss. 608.4351-

810 608.43595 must accompany the meeting notice sent to those record
 811 members entitled to exercise appraisal rights.

812 (3) If the appraisal event is to be approved other than by
 813 a members' meeting, the notice referred to in subsection (1) must
 814 be sent to all members at the time that consents are first
 815 solicited, whether or not consents are solicited from all
 816 members, and include the materials described in s. 608.4356.

817 608.4355 Notice of intent to demand payment.--

818 (1) If a proposed appraisal event is submitted to a vote at
 819 a members' meeting, or is submitted to a member pursuant to a
 820 consent vote, a member who is entitled to and who wishes to
 821 assert appraisal rights with respect to any class or series of
 822 membership interests:

823 (a) Must deliver to a manager or managing member of the
 824 limited liability company before the vote is taken, or within 20
 825 days after receiving the notice pursuant to s. 608.4353(3) if
 826 action is to be taken without a member meeting, written notice of
 827 such person's intent to demand payment if the proposed appraisal
 828 event is effectuated.

829 (b) Must not vote, or cause or permit to be voted, any
 830 membership interests of such class or series in favor of the
 831 appraisal event.

832 (2) A person who may otherwise be entitled to appraisal
 833 rights, but who does not satisfy the requirements of subsection
 834 (1), is not entitled to payment under ss. 608.4351-608.43595.

835 608.4356 Appraisal notice and form.--

836 (1) If the proposed appraisal event becomes effective, the
 837 limited liability company must deliver a written appraisal notice

838 and form required by paragraph (2)(a) to all members who
839 satisfied the requirements of s. 608.4355.

840 (2) The appraisal notice must be sent no earlier than the
841 date the appraisal event became effective and no later than 10
842 days after such date and must:

843 (a) Supply a form that specifies the date that the
844 appraisal event became effective and that provides for the member
845 to state:

846 1. The member's name and address.

847 2. The number, classes, and series of membership interests
848 as to which the member asserts appraisal rights.

849 3. That the member did not vote for the transaction.

850 4. Whether the member accepts the limited liability
851 company's offer as stated in subparagraph (b)4.

852 5. If the offer is not accepted, the member's estimated
853 fair value of the membership interests and a demand for payment
854 of the member's estimated value plus interest.

855 (b) State:

856 1. Where the form described in paragraph (a) must be sent.

857 2. A date by which the limited liability company must
858 receive the form, which date may not be fewer than 40 nor more
859 than 60 days after the date the appraisal notice and form
860 described in this subsection are sent, and that the member shall
861 have waived the right to demand appraisal with respect to the
862 membership interests unless the form is received by the limited
863 liability company by such specified date.

864 3. In the case of membership interests represented by a
865 certificate, the location at which certificates for such

866 certificated membership interests must be deposited, if that
867 action is required by the limited liability company, and the date
868 by which those certificates must be deposited, which date may not
869 be earlier than the date for receiving the required form under
870 subparagraph 2.

871 4. The limited liability company's estimate of the fair
872 value of the membership interests.

873 5. An offer to each member who is entitled to appraisal
874 rights to pay the limited liability company's estimate of fair
875 value set forth in subparagraph 4.

876 6. That, if requested in writing, the limited liability
877 company will provide to the member so requesting, within 10 days
878 after the date specified in subparagraph 2., the number of
879 members who return the forms by the specified date and the total
880 number of membership interests owned by them.

881 7. The date by which the notice to withdraw under s.
882 608.4357 must be received, which date must be within 20 days
883 after the date specified in subparagraph 2.

884 (c) Be accompanied by:

885 1. Financial statements of the limited liability company
886 that issued the membership interests to be appraised, consisting
887 of a balance sheet as of the end of the fiscal year ending not
888 more than 15 months prior to the date of the limited liability
889 company's appraisal notice, an income statement for that year, a
890 cash flow statement for that year, and the latest available
891 interim financial statements, if any.

892 2. A copy of ss. 608.4351-608.43595.

893 608.4357 Perfection of rights; right to withdraw.--

894 (1) A member who wishes to exercise appraisal rights must
895 execute and return the form received pursuant to s. 608.4356(1)
896 and, in the case of certificated membership interests and if the
897 limited liability company so requires, deposit the member's
898 certificates in accordance with the terms of the notice by the
899 date referred to in the notice pursuant to s. 608.4356(2)(b)2.
900 Once a member deposits that member's certificates or, in the case
901 of uncertificated membership interests, returns the executed form
902 described in s. 608.4356(2), the member loses all rights as a
903 member, unless the member withdraws pursuant to subsection (3).
904 Upon receiving a demand for payment from a member who holds an
905 uncertificated membership interest, the limited liability company
906 shall make an appropriate notation of the demand for payment in
907 its records.

908 (2) The limited liability company may restrict the transfer
909 of such membership interests from the date the member delivers
910 the items required by subsection (1).

911 (3) A member who has complied with subsection (1) may
912 nevertheless decline to exercise appraisal rights and withdraw
913 from the appraisal process by so notifying the limited liability
914 company in writing by the date set forth in the appraisal notice
915 pursuant to s. 608.4356(2)(b)7. A member who fails to so withdraw
916 from the appraisal process may not thereafter withdraw without
917 the limited liability company's written consent.

918 (4) A member who does not execute and return the form and,
919 in the case of certificated membership interests, deposit that
920 member's certificates, if so required by the limited liability
921 company, each by the date set forth in the notice described in

922 subsection (2), shall not be entitled to payment under this
 923 chapter.

924 (5) If the member's right to receive fair value is
 925 terminated other than by the purchase of the membership interest
 926 by the limited liability company, all rights of the member, with
 927 respect to such membership interest, shall be reinstated
 928 effective as of the date the member delivered the items required
 929 by subsection (1), including the right to receive any intervening
 930 payment or other distribution with respect to such membership
 931 interest, or, if any such rights have expired or any such
 932 distribution other than a cash payment has been completed, in
 933 lieu thereof at the election of the limited liability company,
 934 the fair value thereof in cash as determined by the limited
 935 liability company as of the time of such expiration or
 936 completion, but without prejudice otherwise to any action or
 937 proceeding of the limited liability company that may have been
 938 taken by the limited liability company on or after the date the
 939 member delivered the items required by subsection (1).

940 608.43575 Member's acceptance of limited liability
 941 company's offer.--

942 (1) If the member states on the form provided in s.
 943 608.4356(1) that the member accepts the offer of the limited
 944 liability company to pay the limited liability company's
 945 estimated fair value for the membership interest, the limited
 946 liability company shall make such payment to the member within 90
 947 days after the limited liability company's receipt of the items
 948 required by s. 608.4357(1).

949 (2) Upon payment of the agreed value, the member shall

950 cease to have any interest in the membership interest.

951 608.4358 Procedure if member is dissatisfied with offer.--

952 (1) A member who is dissatisfied with the limited liability
 953 company's offer as set forth pursuant to s. 608.4356(2)(b)5. must
 954 notify the limited liability company on the form provided
 955 pursuant to s. 608.4356(1) of the member's estimate of the fair
 956 value of the membership interest and demand payment of that
 957 estimate plus interest.

958 (2) A member who fails to notify the limited liability
 959 company in writing of the member's demand to be paid the member's
 960 estimate of the fair value plus interest under subsection (1)
 961 within the timeframe set forth in s. 608.4356(2)(b)2. waives the
 962 right to demand payment under this section and shall be entitled
 963 only to the payment offered by the limited liability company
 964 pursuant to s. 608.4356(2)(b)5.

965 608.43585 Court action.--

966 (1) If a member makes demand for payment under s. 608.4358
 967 which remains unsettled, the limited liability company shall
 968 commence a proceeding within 60 days after receiving the payment
 969 demand and petition the court to determine the fair value of the
 970 membership interest and accrued interest. If the limited
 971 liability company does not commence the proceeding within the 60-
 972 day period, any member who has made a demand pursuant to s.
 973 608.4358 may commence the proceeding in the name of the limited
 974 liability company.

975 (2) The proceeding shall be commenced in the appropriate
 976 court of the county in which the limited liability company's
 977 principal office in this state is located or, if none, the county

978 in which its registered agent is located. If the limited
979 liability company is a foreign limited liability company without
980 a registered agent in this state, the proceeding shall be
981 commenced in the county in this state in which the principal
982 office or registered agent of the domestic limited liability
983 company was located at the time of the appraisal event.

984 (3) All members, whether or not residents of this state,
985 whose demands remain unsettled shall be made parties to the
986 proceeding as in an action against their membership interests.
987 The limited liability company shall serve a copy of the initial
988 pleading in such proceeding upon each member party who is a
989 resident of this state in the manner provided by law for the
990 service of a summons and complaint and upon each nonresident
991 member party by registered or certified mail or by publication as
992 provided by law.

993 (4) The jurisdiction of the court in which the proceeding
994 is commenced under subsection (2) is plenary and exclusive. If it
995 so elects, the court may appoint one or more persons as
996 appraisers to receive evidence and recommend a decision on the
997 question of fair value. The appraisers shall have the powers
998 described in the order appointing them or in any amendment to the
999 order. The members demanding appraisal rights are entitled to the
1000 same discovery rights as parties in other civil proceedings.
1001 There shall be no right to a jury trial.

1002 (5) Each member made a party to the proceeding is entitled
1003 to judgment for the amount of the fair value of such member's
1004 membership interests, plus interest, as found by the court.

1005 (6) The limited liability company shall pay each such

1006 member the amount found to be due within 10 days after final
 1007 determination of the proceedings. Upon payment of the judgment,
 1008 the member shall cease to have any interest in the membership
 1009 interests.

1010 608.4359 Court costs and counsel fees.--

1011 (1) The court in an appraisal proceeding shall determine
 1012 all costs of the proceeding, including the reasonable
 1013 compensation and expenses of appraisers appointed by the court.
 1014 The court shall assess the costs against the limited liability
 1015 company, except that the court may assess costs against all or
 1016 some of the members demanding appraisal, in amounts the court
 1017 finds equitable, to the extent the court finds such members acted
 1018 arbitrarily, vexatiously, or not in good faith with respect to
 1019 the rights provided by this chapter.

1020 (2) The court in an appraisal proceeding may also assess
 1021 the fees and expenses of counsel and experts for the respective
 1022 parties, in amounts the court finds equitable:

1023 (a) Against the limited liability company and in favor of
 1024 any or all members demanding appraisal if the court finds the
 1025 limited liability company did not substantially comply with ss.
 1026 608.4353 and 608.4356; or

1027 (b) Against either the limited liability company or a
 1028 member demanding appraisal, in favor of any other party, if the
 1029 court finds that the party against whom the fees and expenses are
 1030 assessed acted arbitrarily, vexatiously, or not in good faith
 1031 with respect to the rights provided by this chapter.

1032 (3) If the court in an appraisal proceeding finds that the
 1033 services of counsel for any member were of substantial benefit to

HB 0595

2005

1034 other members similarly situated, and that the fees for those
1035 services should not be assessed against the limited liability
1036 company, the court may award to such counsel reasonable fees to
1037 be paid out of the amounts awarded the members who were
1038 benefited.

1039 (4) To the extent the limited liability company fails to
1040 make a required payment pursuant to s. 608.43575, the member may
1041 sue directly for the amount owed and, to the extent successful,
1042 shall be entitled to recover from the limited liability company
1043 all costs and expenses of the suit, including attorney fees.

1044 608.43595 Limitation on limited liability company
1045 payment.--

1046 (1) No payment shall be made to a member seeking appraisal
1047 rights if, at the time of payment, the limited liability company
1048 is unable to meet the distribution standards of s. 608.428. In
1049 such event, the member shall, at the member's option:

1050 (a) Withdraw the notice of intent to assert appraisal
1051 rights, which shall in such event be deemed withdrawn with the
1052 consent of the limited liability company; or

1053 (b) Retain the status as a claimant against the limited
1054 liability company and, if the limited liability company is
1055 liquidated, be subordinated to the rights of creditors of the
1056 limited liability company but have rights superior to the members
1057 not asserting appraisal rights and if it is not liquidated,
1058 retain the right to be paid for the membership interest, which
1059 right the limited liability company shall be obliged to satisfy
1060 when the restrictions of this section do not apply.

1061 (2) The member shall exercise the option under paragraph

1062 (1)(a) or paragraph (1)(b) by written notice filed with the
 1063 limited liability company within 30 days after the limited
 1064 liability company has given written notice that the payment for
 1065 the membership interests cannot be made because of the
 1066 restrictions of this section. If the member fails to exercise the
 1067 option, the member shall be deemed to have withdrawn the notice
 1068 of intent to assert appraisal rights.

1069 Section 6. Subsection (1), paragraphs (a), (d), (e), and
 1070 (f) of subsection (3), and paragraph (d) of subsection (4) of
 1071 section 608.438, Florida Statutes, are amended to read:

1072 608.438 Merger of limited liability company.--

1073 (1) As used in this section and ss. 608.4381-608.4383
 1074 ~~608.4384~~, the term "other business entity" or "another business
 1075 entity" means ~~includes~~ a corporation, a limited liability
 1076 company, a common law or business trust or association, a real
 1077 estate investment trust, ~~a common law trust, an unincorporated~~
 1078 ~~business~~, a general partnership, including a limited liability
 1079 partnership, a limited partnership, including a limited
 1080 liability partnership, ~~a limited liability company other than a~~
 1081 ~~limited liability company organized under the laws of this~~
 1082 ~~chapter~~, or any other domestic or foreign entity that is
 1083 organized under a governing law or other ~~formed pursuant to the~~
 1084 ~~requirements of~~ applicable law.

1085 (3) The plan of merger shall set forth:

1086 (a) The name of each limited liability company and the
 1087 name and jurisdiction of formation, organization, or
 1088 incorporation of each other business entity planning to merge,
 1089 and the name of the surviving or resulting limited liability

1090 company or other business entity into which each other limited
 1091 liability company or other business entity plans to merge, which
 1092 is, in this section and in ss. 608.4381-608.4383 ~~608.4384~~,
 1093 designated as the surviving entity.

1094 ~~(d) If a partnership is to be the surviving entity, the~~
 1095 ~~names and business addresses of the general partners of the~~
 1096 ~~surviving entity.~~

1097 ~~(e) If a limited liability company is to be the surviving~~
 1098 ~~entity, and management thereof is vested in one or more managers~~
 1099 ~~or managing members, the names and business addresses of such~~
 1100 ~~managers or managing members.~~

1101 (d)(f) All statements required to be set forth in the plan
 1102 of merger by the laws under which each other business entity
 1103 that is a party to the merger is formed, organized, or
 1104 incorporated.

1105 (4) The plan of merger may set forth:

1106 (d) A statement of, or a statement of the method of
 1107 determining, the "fair value," as defined in s. 608.4351
 1108 ~~608.4384(1)(b)~~, of an interest in any domestic limited liability
 1109 company that is a party to the merger.

1110 Section 7. Subsection (2), paragraphs (c), (d), (e), and
 1111 (f) of subsection (4), and subsection (6) of section 608.4381,
 1112 Florida Statutes, are amended to read:

1113 608.4381 Action on plan of merger.--

1114 (2) In addition to the approval required by subsection
 1115 (1), if the surviving entity is a partnership or limited
 1116 partnership, no member of a limited liability company that is a
 1117 party to the merger shall, as a result of the merger, become a

HB 0595

2005

1118 general partner of such partnership or limited partnership ~~the~~
1119 ~~surviving entity~~ unless such member specifically consents in
1120 writing to becoming a general partner of such partnership or
1121 limited partnership, ~~the surviving entity~~ and unless such
1122 written consent is obtained from each such member ~~who, as a~~
1123 ~~result of the merger, would become a general partner of the~~
1124 ~~surviving entity~~, such merger shall not become effective under
1125 s. 608.4383. Any member providing such consent in writing shall
1126 be deemed to have voted in favor of the plan of merger for
1127 purposes of ss. 608.4351-608.43595 ~~s. 608.4384~~.

1128 (4) The notification required by subsection (3) shall be
1129 in writing and shall include:

1130 (c) The statement or statements required by ss. 608.4351-
1131 608.43595 regarding availability of appraisal rights, if any, to
1132 members of the limited liability company ~~A clear and concise~~
1133 ~~statement that, if the plan of merger is effected, members~~
1134 ~~dissenting therefrom may be entitled, if they comply with the~~
1135 ~~provisions of s. 608.4384 regarding the rights of dissenting~~
1136 ~~members, to be paid the fair value of their interests, which~~
1137 ~~shall be accompanied by a copy of s. 608.4384.~~

1138 (d) ~~A statement of, or a statement of the method of~~
1139 ~~determining, the "fair value," as defined in s. 608.4384(1)(b),~~
1140 ~~of an interest in the limited liability company, in the case of~~
1141 ~~a limited liability company in which management is not reserved~~
1142 ~~to its members, as determined by the managers of such limited~~
1143 ~~liability company, which statement may consist of a reference to~~
1144 ~~the applicable provisions of such limited liability company's~~
1145 ~~articles of organization or operating agreement that determine~~

HB 0595

2005

1146 ~~the fair value of an interest in the limited liability company~~
1147 ~~for such purposes, and which shall constitute an offer by the~~
1148 ~~limited liability company to purchase at such fair value any~~
1149 ~~interests of a "dissenter," as defined in s. 608.4384(1)(a),~~
1150 ~~unless and until such dissenter's right to receive the fair~~
1151 ~~value of the dissenter's interests in the limited liability~~
1152 ~~company is terminated pursuant to s. 608.4384(8).~~

1153 (d)~~(e)~~ The date on which such notification was mailed or
1154 delivered to the members.

1155 (e)~~(f)~~ Any other information concerning the plan of
1156 merger.

1157 (6) A plan of merger may provide for the manner, if any,
1158 in which the plan of merger may be amended at any time before
1159 the effective date of the merger, except after the approval of
1160 the plan of merger by the members of a limited liability company
1161 that is a party to the merger, the plan of merger may not be
1162 amended to:

1163 (a) Change the amount or kind of interests, partnership
1164 interests, shares, obligations, other securities, cash, rights,
1165 or any other property to be received by the members of such
1166 limited liability company in exchange for or on conversion of
1167 their interests;

1168 (b) If the surviving entity is a limited liability
1169 company, change any term of the articles of organization or the
1170 operating agreement of the surviving entity, except for changes
1171 that otherwise could be adopted without the approval of the
1172 members of the surviving entity;

HB 0595

2005

1173 (c) If the surviving entity is not a limited liability
 1174 company, change any term of the articles of incorporation or
 1175 comparable governing document of the surviving entity, except
 1176 for changes that otherwise could be adopted by the board of
 1177 directors or comparable representatives of the surviving entity;
 1178 or

1179 (d) Change any of the terms and conditions of the plan of
 1180 merger if any such change, alone or in the aggregate, would
 1181 materially and adversely affect the members, or any class or
 1182 group of members, of such limited liability company.

1183

1184 If an amendment to a plan of merger is made in accordance the
 1185 plan and articles of merger have been filed with the Department
 1186 of State, an amended certificate ~~articles~~ of merger executed by
 1187 each limited liability company and other business entity that is
 1188 a party to the merger shall be filed with the Department of
 1189 State prior to the effective date of the merger.

1190 Section 8. Section 608.4382, Florida Statutes, is amended
 1191 to read:

1192 608.4382 Certificate ~~Articles~~ of merger.--

1193 (1) After a plan of merger is approved by each limited
 1194 liability company and each other business entity that is a party
 1195 to the merger, the surviving entity shall deliver to the
 1196 Department of State for filing a certificate ~~articles~~ of merger,
 1197 which shall be executed by each limited liability company and by
 1198 each other business entity as required by applicable law, and
 1199 which shall set forth:

1200 (a) The plan of merger.

1201 (b) A statement that the plan of merger was approved by
 1202 each limited liability company that is a party to the merger in
 1203 accordance with the applicable provisions of this chapter, and,
 1204 if applicable, a statement that the written consent of each
 1205 member of such limited liability company who, as a result of the
 1206 merger, becomes a general partner of the surviving entity has
 1207 been obtained pursuant to s. 608.4381(2).

1208 (c) A statement that the plan of merger was approved by
 1209 each domestic partnership that is a party to the merger in
 1210 accordance with the applicable provisions of chapter 620.

1211 (d) A statement that the plan of merger was approved by
 1212 each domestic corporation that is a party to the merger in
 1213 accordance with the applicable provisions of chapter 607.

1214 (e) A statement that the plan of merger was approved by
 1215 each other business entity that is a party to the merger, other
 1216 than limited liability companies, partnerships, and corporations
 1217 formed, organized, or incorporated under the laws of this state,
 1218 in accordance with the applicable laws of the state, country, or
 1219 jurisdiction under which such other business entity is formed,
 1220 organized, or incorporated.

1221 (f) The effective date of the merger, which may be on or
 1222 after the date of filing the certificate ~~articles~~ of merger,
 1223 subject to the limitations in s. 608.409(2), ~~+~~ provided, if the
 1224 certificate ~~articles~~ of merger does ~~de~~ not provide for an
 1225 effective date of the merger, the effective date shall be the
 1226 date on which the certificate ~~articles~~ of merger is ~~are~~ filed.

1227 (g) If the surviving entity is another business entity
 1228 formed, organized, or incorporated under the laws of any state,
 1229 country, or jurisdiction other than this state:

1230 1. The address, including street and number, if any, of
 1231 its principal office under the laws of the state, country, or
 1232 jurisdiction in which it was formed, organized, or incorporated.

1233 2. If the surviving entity is a foreign entity and is not
 1234 authorized to transact business in this state, a statement that
 1235 the surviving entity appoints ~~is deemed to have appointed~~ the
 1236 Secretary of State as its agent for service of process in a
 1237 proceeding to enforce obligations ~~any obligation or the rights~~
 1238 ~~of dissenting members~~ of each limited liability company that
 1239 merged into such entity, including any appraisal rights of its
 1240 members under ss. 608.4351-608.43595, and the street and mailing
 1241 address of an office which the Department of State may use for
 1242 purposes of s. 48.181 ~~is a party to the merger.~~

1243 3. A statement that the surviving entity has agreed to
 1244 ~~promptly~~ pay to any members with appraisal rights ~~the dissenting~~
 1245 ~~members of each limited liability company that is a party to the~~
 1246 ~~merger the amount, if any, to which such dissenting members are~~
 1247 entitled under ss. 608.4351-608.43595 ~~s. 608.4384.~~

1248 (2) A copy of the certificate ~~articles~~ of merger,
 1249 certified by the Department of State, may be filed in the
 1250 official records of any office of the official who is the
 1251 ~~recording officer of each county in this state in which any real~~
 1252 ~~property of a party to the merger~~ holds an interest in real
 1253 property other than the surviving entity is situated.

1254 Section 9. Subsections (2), (3), and (7) of section

HB 0595

2005

1255 608.4383, Florida Statutes, are amended to read:

1256 608.4383 Effect of merger.--When a merger becomes
 1257 effective:

1258 (2) The title to all real estate and other property, or
 1259 any interest therein, owned by each domestic limited liability
 1260 company and other business entity that is a party to the merger
 1261 is vested in the surviving entity without reversion or
 1262 impairment by reason of this chapter. ~~The surviving entity shall~~
 1263 ~~record a certified copy of the articles of merger in any county~~
 1264 ~~in which a merging entity holds an interest in real property.~~

1265 (3) The surviving entity shall thereafter be responsible
 1266 and liable for all the liabilities and obligations of each
 1267 limited liability company and other business entity that is a
 1268 party to the merger, including liabilities arising out of the
 1269 appraisal rights under ss. 608.4351-608.43595 ~~of dissenters~~ with
 1270 respect to such merger under applicable law.

1271 (7) The ~~interests,~~ partnership and membership interests,
 1272 shares, obligations, or other securities and other interests,
 1273 and the rights to acquire such interests, ~~partnership interests,~~
 1274 shares, obligations, or other securities and other interests, of
 1275 each limited liability company and other business entity that is
 1276 a party to the merger shall be converted into ~~interests,~~
 1277 partnership and membership interests, shares, obligations, or
 1278 other securities and other interests, or rights to such
 1279 securities, obligations, or other interests, of the surviving
 1280 entity or ~~any other limited liability company or other business~~
 1281 ~~entity or~~, in whole or in part, into cash or other property as
 1282 provided in the plan of merger, and the former members of each

1283 limited liability company merging into another business entity
 1284 ~~holders of interests, partnership interests, shares,~~
 1285 ~~obligations, or other securities, or rights to such securities,~~
 1286 shall be entitled only to the rights provided in the plan of
 1287 merger and to their appraisal rights ~~as dissenters~~, if any,
 1288 under ss. 608.4351-608.43595 ~~s. 608.4384, ss. 607.1301-607.1320,~~
 1289 ~~s. 620.205~~, or other applicable law.

1290 Section 10. Section 608.439, Florida Statutes, is amended
 1291 to read:

1292 608.439 Conversion of certain entities to a limited
 1293 liability company.--

1294 (1) As used in this section, the term "other business
 1295 entity" or "another business entity" means a common law or
 1296 business trust or association; ~~a real estate investment trust;~~
 1297 a general partnership ~~common law trust, or any other~~
 1298 ~~unincorporated business~~, including a limited liability
 1299 partnership; a limited partnership, ~~whether general~~ (including
 1300 a ~~registered~~ limited liability limited partnership;) or any
 1301 other domestic or foreign entity that is organized under a
 1302 governing law or other applicable law, provided such term shall
 1303 not include a domestic limited ~~(including a registered limited~~
 1304 ~~liability limited partnership)~~ or a ~~foreign limited liability~~
 1305 company.

1306 (2) Any other business entity may convert to a domestic
 1307 limited liability company if the conversion is permitted by the
 1308 laws of the jurisdiction that enacted the statute or other
 1309 applicable law governing the other business entity and the other
 1310 business entity complies with such laws and the requirements of

HB 0595

2005

1311 this section in effecting the conversion. The other business
1312 entity shall file with ~~by complying with subsection (8) and~~
1313 ~~filing in~~ the Department of State in accordance with s.
1314 608.4081:

1315 (a) A certificate of conversion ~~to a limited liability~~
1316 ~~company~~ that has been executed by one or more authorized persons
1317 in accordance with s. 608.408. ~~;~~ and

1318 (b) Articles of organization that comply with s. 608.407
1319 and have been executed by one or more authorized persons in
1320 accordance with s. 608.408.

1321 (3) The certificate of conversion to a limited liability
1322 company shall state:

1323 (a) The date on which and jurisdiction in which the other
1324 entity was first organized ~~created, formed, or otherwise came~~
1325 ~~into being~~ and, if it has changed, its jurisdiction immediately
1326 prior to its conversion to a domestic limited liability
1327 company. ~~;~~ and

1328 (b) The name of the other entity immediately prior to the
1329 filing of the certificate of conversion. to a limited liability
1330 ~~company;~~

1331 (c) The name of the limited liability company as set forth
1332 in its articles of organization filed in accordance with
1333 subsection (2). ~~;~~ and

1334 (d) Subject to the limitations in s. 608.409(2), the
1335 delayed future effective date or time (which shall be a date or
1336 time certain) of the conversion to a limited liability company
1337 if it is not to be effective upon the filing of the certificate
1338 of conversion ~~to a limited liability company~~ and the articles of

1339 organization, provided such delayed effective date and time may
1340 not be different than the effective date of the articles of
1341 organization.

1342 (4) Upon the filing in the Department of State of the
1343 certificate of conversion to a limited liability company and the
1344 articles of organization or upon the delayed ~~future~~ effective
1345 date or time of the certificate of conversion ~~to a limited~~
1346 ~~liability company~~ and the articles of organization, the other
1347 entity shall be converted into a domestic limited liability
1348 company and the limited liability company shall thereafter be
1349 subject to all of the provisions of this chapter, except that
1350 notwithstanding s. 608.409, the existence of the limited
1351 liability company shall be deemed to have commenced when ~~on the~~
1352 ~~date~~ the other entity commenced its existence in the
1353 jurisdiction in which the other entity was first organized
1354 ~~created, formed, incorporated, or otherwise came into being.~~

1355 (5) The conversion of any other entity into a domestic
1356 limited liability company shall not affect any obligations or
1357 liabilities of the other entity incurred prior to its conversion
1358 into ~~to~~ a domestic limited liability company or the personal
1359 liability of any person incurred prior to such conversion.

1360 (6) When any conversion becomes effective under this
1361 section, for all purposes of the laws of this state, all of the
1362 rights, privileges, and powers of the other entity that has
1363 converted, and all property, real, personal, and mixed, and all
1364 debts due to such other entity, as well as all other things and
1365 causes of action belonging to such other entity, shall be vested
1366 in the domestic limited liability company into which it was

HB 0595

2005

1367 converted and shall thereafter be the property of the domestic
1368 limited liability company as they were of the other entity that
1369 has converted, and the title to any real property vested by deed
1370 or otherwise in such other entity shall not revert or be in any
1371 way impaired by reason of this chapter, but all rights of
1372 creditors and all liens upon any property of such other entity
1373 shall be preserved unimpaired, and all debts, liabilities, and
1374 duties of the other entity that has converted shall thenceforth
1375 attach to the domestic limited liability company and may be
1376 enforced against it to the same extent as if said debts,
1377 liabilities, and duties had been incurred or contracted by it.

1378 (7) Unless otherwise agreed, or as required under
1379 applicable non-Florida law, the converting entity shall not be
1380 required to wind up its affairs or pay its liabilities and
1381 distribute its assets, and the conversion shall not constitute a
1382 dissolution of the converting ~~such~~ entity and shall constitute a
1383 continuation of the existence of the converting entity in the
1384 form of a domestic limited liability company.

1385 (8) Prior to filing a certificate of conversion ~~to limited~~
1386 ~~liability company~~ with the Department of State, the conversion
1387 shall be approved in the manner provided for by the document,
1388 instrument, agreement, or other writing, as the case may be,
1389 governing the internal affairs of the other entity and the
1390 conduct of its business or by applicable law, as appropriate,
1391 and the articles of organization or operating agreement shall be
1392 approved by the same authorization required to approve the
1393 conversion. As part of such an approval, a plan of conversion or
1394 other record may describe the manner and basis of converting the

1395 shares, partnership interests, limited liability company
1396 interests, obligations, or securities of, or other interests in,
1397 the other business entity which is to be converted, or any
1398 rights to acquire any such shares, interests, obligations, or
1399 other securities, into limited liability company interests,
1400 obligations, or other securities of the domestic limited
1401 liability company, or rights to acquire interests, obligations,
1402 or other securities, or, in whole or in part, into cash or other
1403 consideration. Such a plan or other record may also contain
1404 other provisions relating to the conversion, including without
1405 limitation the right of the other business entity to abandon a
1406 proposed conversion, or an effective date for the conversion
1407 that is not inconsistent with paragraph (3)(d).

1408 (9) The provisions of this section shall not be construed
1409 to limit the accomplishment of a change in the law governing, or
1410 the domicile of, any other entity to this state by any other
1411 means provided for in the articles of organization or operating
1412 agreement or other agreement or as otherwise permitted by law,
1413 including by the amendment of the articles of organization or
1414 operating agreement or other agreement.

1415 Section 11. Sections 608.4401, 608.4402, 608.4403, and
1416 608.4404, Florida Statutes, are created to read:

1417 608.4401 Conversion of a domestic limited liability company
1418 into another business entity.--

1419 (1) As used in this section and ss. 608.4402, 608.4403, and
1420 608.4404, the term "other business entity" or "another business
1421 entity" means a corporation; a common law or business trust or
1422 association; a real estate investment trust; a general

1423 partnership, including a limited liability partnership; a limited
1424 partnership, including a limited liability limited partnership;
1425 or any other domestic or foreign entity that is organized under a
1426 governing law or other applicable law, provided such term shall
1427 not include a domestic limited liability company.

1428 (2) Pursuant to a plan of conversion complying and approved
1429 in accordance with this section and s. 608.4402, a domestic
1430 limited liability company may convert to another business entity
1431 organized under the laws of this state or any other state, the
1432 United States, a foreign country, or any other foreign
1433 jurisdiction, if:

1434 (a) The domestic limited liability company converting to
1435 the other business entity complies with the applicable provisions
1436 of this chapter and any applicable terms in its articles of
1437 organization and operating agreement.

1438 (b) The conversion is permitted by the laws of the
1439 jurisdiction that enacted the law or other applicable law under
1440 which the other business entity is governed and the other
1441 business entity complies with such laws in effecting the
1442 conversion.

1443 (3) The plan of conversion shall set forth:

1444 (a) The name of the domestic limited liability company and
1445 the name and jurisdiction of the other business entity into which
1446 the domestic limited liability company is to be converted.

1447 (b) The terms and conditions of the conversion, including
1448 the manner and basis of converting the limited liability company
1449 interests or other securities, or any rights to acquire limited
1450 liability company interests or other securities, of the domestic

HB 0595

2005

1451 limited liability company into the partnership interests, shares,
1452 obligations, securities, or other interests in the other business
1453 entity, or any rights to acquire any partnership interests,
1454 shares, obligations, securities, or other interests, or, in whole
1455 or in part, into cash or other consideration.

1456 (c) The statements required to be set forth in the plan of
1457 conversion by the laws under which the other business entity is
1458 governed.

1459 (4) The plan of conversion shall include, or have attached,
1460 the articles, certificate, registration, or other organizational
1461 document by which the other business entity has been organized
1462 under its governing law.

1463 (5) A plan of conversion may provide for the manner, if
1464 any, in which the plan of conversion may be amended at any time
1465 before the effective date of the conversion, except after the
1466 approval of the plan of conversion by the members of the limited
1467 liability company to be converted, the plan of conversion may not
1468 be amended to:

1469 (a) Change the amount or kind of partnership interests,
1470 shares, obligations, securities, cash, rights, or any other
1471 consideration to be received by the members of such limited
1472 liability company in exchange for or on conversion of their
1473 member interests in or other securities of the limited liability
1474 company;

1475 (b) Change any term of the articles of incorporation or
1476 organization, bylaws, partnership or operating agreement, or
1477 comparable governing document of the surviving entity, except for

HB 0595

2005

1478 changes that otherwise could be adopted without approval of the
1479 members approving the plan of conversion; or

1480 (c) Change any of the terms and conditions of the plan of
1481 conversion if any such change, alone or in the aggregate, would
1482 materially and adversely affect the members, or any class or
1483 group of members, of such limited liability company.

1484
1485 If an amendment to a plan of conversion is made in accordance
1486 with the plan of conversion and a certificate of conversion has
1487 been filed with the Department of State, an amended certificate
1488 of conversion executed by the limited liability company shall be
1489 filed with the Department of State prior to the effective date of
1490 the conversion.

1491 (6) The plan of conversion may also set forth any other
1492 provisions relating to the conversion, including without
1493 limitation a statement of the method of determining, the fair
1494 value, as defined in s 608.4351, of an interest in the limited
1495 liability company.

1496 608.4402 Action on plan of conversion.--

1497 (1) Unless the articles of organization or the operating
1498 agreement of a limited liability company requires a greater than
1499 majority vote, the plan of conversion shall be approved in
1500 writing by a majority of the managers who are members of a
1501 converting limited liability company in which management is not
1502 reserved to its members. If no manager is a member, the plan of
1503 conversion shall be approved by vote of the members as set forth
1504 in this section. Unless the articles of organization or the
1505 operating agreement of the converting limited liability company

1506 requires a greater than majority vote or provides for another
1507 method of determining the voting rights of each of its members,
1508 and whether or not management is reserved to its members, the
1509 plan of conversion shall be approved in writing by a majority-in-
1510 interest of the members of the converting limited liability
1511 company and, if applicable, the vote of each member shall be
1512 weighted in accordance with s. 608.4231, provided, unless the
1513 articles of organization or the operating agreement of the
1514 converting limited liability company requires a greater than
1515 majority vote or provides for another method of determining the
1516 voting rights of each of its members, if there is more than one
1517 class or group of members, the conversion shall be approved by a
1518 majority-in-interest of the members of each such class or group,
1519 and, if applicable, the vote of each member shall be weighted in
1520 accordance with s. 608.4231.

1521 (2) In addition to the approval required by subsection (1),
1522 if the other business entity is a partnership or limited
1523 partnership, no member of a converting limited liability company
1524 shall become a general partner of such partnership or limited
1525 partnership as a result of the conversion unless such member
1526 specifically consents in writing to becoming a general partner of
1527 such partnership or limited partnership, and, unless such written
1528 consent is obtained from each such member, the conversion shall
1529 not become effective under s. 608.4404. Any member providing such
1530 consent in writing shall also be deemed to have voted in favor of
1531 the plan of conversion for purposes of ss. 608.4351-608.43595.

1532 (3) All members of the limited liability company to be
1533 converted shall be given written notice of any meeting or other

1534 action with respect to the approval of a plan of conversion as
1535 provided in subsections (4) and (5), not fewer than 30 or more
1536 than 60 days before the date of the meeting at which the plan of
1537 conversion shall be submitted for approval by the members of such
1538 limited liability company, provided, if the plan of conversion is
1539 submitted to the members of the limited liability company for
1540 their written approval or other action without a meeting, such
1541 notification shall be given to each member not fewer than 30 or
1542 more than 60 days before the effective date of the conversion.
1543 Pursuant to s. 608.455, the notification required by this
1544 subsection may be waived in writing by any person entitled to
1545 such notification.

1546 (4) The notification required by subsection (3) shall be in
1547 writing and shall include:

1548 (a) The date, time, and place of the meeting, if any, at
1549 which the plan of conversion is to be submitted for approval by
1550 the members of the limited liability company or, if the plan of
1551 conversion is to be submitted for written approval or by other
1552 action without a meeting, a statement to that effect.

1553 (b) A copy or summary of the plan of conversion.

1554 (c) The statement or statements required by ss. 608.4351-
1555 608.43595 concerning availability of appraisal rights, if any, to
1556 members of the limited liability company.

1557 (d) The date on which such notification was mailed or
1558 delivered to the members.

1559 (e) Any other information concerning the plan of
1560 conversion.

1561 (5) The notification required by subsection (3) shall be
1562 deemed to be given at the earliest date of:

1563 (a) The date such notification is received;

1564 (b) Five days after the date such notification is deposited
1565 in the United States mail addressed to the member at the member's
1566 address as it appears in the books and records of the limited
1567 liability company, with postage thereon prepaid;

1568 (c) The date shown on the return receipt, if sent by
1569 registered or certified mail, return receipt requested, and the
1570 receipt is signed by or on behalf of the addressee; or

1571 (d) The date such notification is given in accordance with
1572 the provisions of the articles of organization or the operating
1573 agreement of the limited liability company.

1574 (6) Unless the converting limited liability company's
1575 articles of organization or operating agreement or the plan of
1576 conversion provide otherwise, notwithstanding the prior approval
1577 of the plan of conversion by the managers or members of a
1578 converting limited liability company in which management is not
1579 reserved to its members, and at any time prior to the filing of
1580 the certificate of conversion with the Department of State, the
1581 planned conversion may be abandoned, subject to any contractual
1582 rights, by such limited liability company by the affirmative vote
1583 of a majority of its managers without further action by its
1584 members, in accordance with the procedure set forth in the plan
1585 of conversion, or if none is set forth in such plan, in the
1586 manner determined by the managers of such limited liability
1587 company.

1588 608.4403 Certificate of conversion.--

1589 (1) After a plan of conversion is approved by a converting
1590 limited liability company, the limited liability company shall
1591 deliver to the Department of State for filing a certificate of
1592 conversion, which shall be executed by the converting limited
1593 liability company, and which shall set forth:

1594 (a) A statement that the limited liability company has been
1595 converted into another business entity in compliance with this
1596 chapter and that the conversion complies with the law or other
1597 applicable law governing the other business entity.

1598 (b) A statement that the plan of conversion was approved by
1599 the converting limited liability company in accordance with this
1600 chapter and, if applicable, a statement that the written consent
1601 of each member of such limited liability company who, as a result
1602 of the conversion, becomes a general partner of the surviving
1603 entity has been obtained pursuant to s. 608.4402(2).

1604 (c) The effective date of the conversion, which, subject to
1605 the limitations in s. 608.409(2), may be on or after the date of
1606 filing the certificate of conversion, but which shall not be
1607 different than the effective date of the conversion under the
1608 laws governing the other business entity into which the limited
1609 liability company has been converted.

1610 (d) The address, including street and number, if any, of
1611 the principal office of the other business entity under the laws
1612 of the state, country, or jurisdiction in which such entity was
1613 organized.

1614 (e) If the other business entity is a foreign entity and is
1615 not authorized to transact business in this state, a statement
1616 that the other business entity appoints the Secretary of State as

HB 0595

2005

1617 its agent for service of process in a proceeding to enforce
1618 obligations of the converting limited liability company,
1619 including any appraisal rights of its members under ss. 608.4351-
1620 608.43595 and the street and mailing address of an office which
1621 the Department of State may use for purposes of s. 48.181.

1622 (f) A statement that the other business entity has agreed
1623 to pay to any members having appraisal rights the amount to which
1624 such members are entitled under ss. 608.4351-608.43595.

1625 (2) A copy of the certificate of conversion, certified by
1626 the Department of State, may be filed in the official records of
1627 any county in this state in which the converting limited
1628 liability company holds an interest in real property.

1629 608.4404 Effect of conversion.--When a conversion becomes
1630 effective:

1631 (1) A domestic limited liability company that has been
1632 converted into another business entity pursuant to this chapter
1633 is for all purposes the same entity that existed before the
1634 conversion.

1635 (2) The title to all real property and other property, or
1636 any interest therein, owned by the domestic limited liability
1637 company at the time of its conversion into the other business
1638 entity remains vested in the converted entity without reversion
1639 or impairment by operation of this chapter.

1640 (3) The other business entity into which the domestic
1641 limited liability company was converted shall continue to be
1642 responsible and liable for all the liabilities and obligations of
1643 such limited liability company, including any liability to

1644 members having appraisal rights under ss. 608.4351-608.43595 with
1645 respect to such conversion.

1646 (4) Any claim existing or action or proceeding pending by
1647 or against any domestic limited liability company that is
1648 converted into another business entity may be continued as if the
1649 conversion did not occur. If the converted entity is a foreign
1650 entity, such entity shall be deemed to have consented to the
1651 jurisdiction of the courts of this state to enforce any
1652 obligation of the converting domestic limited liability company
1653 if, before the conversion, the converting domestic limited
1654 liability company was subject to suit in this state on the
1655 obligation. A converted entity that is a foreign entity and not
1656 authorized to transact business in this state appoints the
1657 Department of State as its agent for service of process for
1658 purposes of enforcing an obligation under this subsection,
1659 including any appraisal rights of members under ss. 608.4351-
1660 608.43595 to the extent applicable to the conversion. Service on
1661 the Department of State under this subsection is made in the same
1662 manner and with the same consequences as under s. 48.141.

1663 (5) Neither the rights of creditors nor any liens upon the
1664 property of a domestic limited liability company that is
1665 converted into another business entity under this chapter shall
1666 be impaired by such conversion.

1667 (6) The member interests, obligations, and other
1668 securities, or rights to acquire any member interests,
1669 obligations, or other securities, of the domestic limited
1670 liability company shall be converted into the shares, partnership
1671 interests, interests, obligations, or other securities of the

HB 0595

2005

1672 other business entity, including any rights to acquire any such
 1673 shares, interests, obligations, or other securities, or, in whole
 1674 or in part, into cash or other consideration as provided in the
 1675 plan of conversion. The former members of the converting domestic
 1676 limited liability company shall be entitled only to the rights
 1677 provided in the plan of conversion and to their appraisal rights,
 1678 if any, under ss. 608.4351-608.43595 or other applicable law.

1679 Section 12. Subsection (3) of section 608.452, Florida
 1680 Statutes, is amended, subsections (9) and (10) of said section
 1681 are renumbered as subsections (10) and (11), respectively, and
 1682 new subsection (9) is added to said section, to read:

1683 608.452 Fees of the Department of State.--The fees of the
 1684 Department of State under this chapter are as follows:

1685 (3) For filing a certificate ~~articles~~ of merger of limited
 1686 liability companies or other business entities, \$25 per
 1687 constituent party to the merger, unless a specific fee is
 1688 required for a party in other applicable law.

1689 (9) For filing a certificate of conversion of a limited
 1690 liability company, \$25.

1691 Section 13. Subsection (16) of section 617.0302, Florida
 1692 Statutes, is amended to read:

1693 617.0302 Corporate powers.--Every corporation not for
 1694 profit organized under this act, unless otherwise provided in its
 1695 articles of incorporation or bylaws, shall have power to:

1696 (16) Merge with other corporations or other business
 1697 entities, both for profit and not for profit, domestic and
 1698 foreign, if the surviving corporation is a corporation not for
 1699 profit or other business entity that has been organized as a not-

1700 for-profit entity under a governing statute or other applicable
 1701 law that permits such a merger.

1702 Section 14. Subsection (5) is added to section 617.1107,
 1703 Florida Statutes, to read:

1704 617.1107 Merger of domestic and foreign corporations.--

1705 (5) Subject to s. 617.0302(16) and other applicable
 1706 provisions of this chapter, ss. 607.1108, 607.1109, and 607.11101
 1707 shall apply to a merger involving a corporation not for profit
 1708 organized under this act and one or more other business entities
 1709 identified in s. 607.1108(1).

1710 Section 15. Sections 620.1101, 620.1102, 620.1103,
 1711 620.1104, 620.1105, 620.1106, 620.1107, 620.1108, 620.1109,
 1712 620.1110, 620.1111, 620.1112, 620.1113, 620.1114, 620.1115,
 1713 620.1116, 620.1117, 620.1118, 620.1201, 620.1202, 620.1203,
 1714 620.1204, 620.1205, 620.1206, 620.1207, 620.1208, 620.1209,
 1715 620.1210, 620.1301, 620.1302, 620.1303, 620.1304, 620.1305,
 1716 620.1306, 620.1401, 620.1402, 620.1403, 620.1404, 620.1405,
 1717 620.1406, 620.1407, 620.1408, 620.1501, 620.1502, 620.1503,
 1718 620.1504, 620.1505, 620.1506, 620.1507, 620.1508, 620.1509,
 1719 620.1601, 620.1602, 620.1603, 620.1604, 620.1605, 620.1606,
 1720 620.1607, 620.1701, 620.1702, 620.1703, 620.1704, 620.1801,
 1721 620.1802, 620.1803, 620.1804, 620.1805, 620.1806, 620.1807,
 1722 620.1808, 620.1809, 620.1810, 620.1811, 620.1812, 620.1813,
 1723 620.1901, 620.1902, 620.1903, 620.1904, 620.1905, 620.1906,
 1724 620.1907, 620.1908, 620.1909, 620.1910, 620.2001, 620.2002,
 1725 620.2003, 620.2004, 620.2005, 620.2101, 620.2102, 620.2103,
 1726 620.2104, 620.2105, 620.2106, 620.2107, 620.2108, 620.2109,
 1727 620.2110, 620.2111, 620.2112, 620.2113, 620.2114, 620.2115,

HB 0595

2005

1728 620.2116, 620.2117, 620.2118, 620.2119, 620.2120, 620.2121,
1729 620.2122, 620.2123, 620.2124, 620.2125, 620.2201, 620.2202,
1730 620.2203, 620.2204, and 620.2205, Florida Statutes, are created
1731 to read:

1732 620.1101 Popular name.--This section and sections 620.1102-
1733 620.2205 may be cited as the "Florida Revised Uniform Limited
1734 Partnership Act of 2005."

1735 620.1102 Definitions.--As used in this act:

1736 (1) "Act" means the Florida Revised Uniform Limited
1737 Partnership Act of 2005, as amended.

1738 (2) "Certificate of limited partnership" means the
1739 certificate required by s. 620.1201. The term includes the
1740 certificate as amended or restated.

1741 (3) "Contribution," except in the phrase "right of
1742 contribution," means any benefit provided by a person to a
1743 limited partnership in order to become a partner or in the
1744 person's capacity as a partner.

1745 (4) "Debtor in bankruptcy" means a person that is the
1746 subject of:

1747 (a) An order for relief under Title 11 U.S.C. or a
1748 comparable order under a successor statute of general
1749 application; or

1750 (b) A comparable order under federal, state, or foreign law
1751 governing insolvency.

1752 (5) "Designated office" means:

1753 (a) With respect to a limited partnership, the office that
1754 the limited partnership is required to designate and maintain
1755 under s. 620.1114.

HB 0595

2005

1756 (b) With respect to a foreign limited partnership, its
1757 principal office.

1758 (6) "Distribution" means a transfer of money or other
1759 property from a limited partnership to a partner in the partner's
1760 capacity as a partner or to a transferee on account of a
1761 transferable interest owned by the transferee.

1762 (7) "Foreign limited liability limited partnership" means a
1763 foreign limited partnership whose general partners have limited
1764 liability for the obligations of the foreign limited partnership
1765 under a provision similar to s. 620.1404(3).

1766 (8) "Foreign limited partnership" means a partnership
1767 formed under the laws of a jurisdiction other than this state and
1768 required by those laws to have one or more general partners and
1769 one or more limited partners. The term includes a foreign limited
1770 liability limited partnership.

1771 (9) "General partner" means:

1772 (a) With respect to a limited partnership, a person that:

1773 1. Becomes a general partner under s. 620.1401; or

1774 2. Was a general partner in a limited partnership when the
1775 limited partnership became subject to this act under s.
1776 620.2204(1) or (2).

1777 (b) With respect to a foreign limited partnership, a person
1778 that has rights, powers, and obligations similar to those of a
1779 general partner in a limited partnership.

1780 (10) "Limited liability limited partnership," except in the
1781 phrase "foreign limited liability limited partnership," means a
1782 limited partnership whose certificate of limited partnership
1783 states that the limited partnership is a limited liability

HB 0595

2005

1784 limited partnership, or which was a limited liability limited
1785 partnership when the limited partnership became subject to this
1786 act under s. 620.2204(1) or (2).

1787 (11) "Limited partner" means:

1788 (a) With respect to a limited partnership, a person that:

1789 1. Becomes a limited partner under s. 620.1301; or

1790 2. Was a limited partner in a limited partnership when the
1791 limited partnership became subject to this act under subsection
1792 620.2204(1) or (2).

1793 (b) With respect to a foreign limited partnership, a person
1794 that has rights, powers, and obligations similar to those of a
1795 limited partner in a limited partnership.

1796 (12) "Limited partnership," except in the phrases "foreign
1797 limited partnership" and "foreign limited liability limited
1798 partnership," means an entity, having one or more general
1799 partners and one or more limited partners, which is formed under
1800 this act by two or more persons or becomes subject to this act as
1801 the result of a conversion or merger under this act, or which was
1802 a limited partnership governed by the laws of this state when
1803 this act became a law and became subject to this act under s.
1804 620.2204(1) or (2). The term includes a limited liability limited
1805 partnership.

1806 (13) "Partner" means a limited partner or general partner.

1807 (14) "Partnership agreement" means the partners' agreement,
1808 whether oral, implied, in a record, or in any combination
1809 thereof, concerning the limited partnership. The term includes
1810 the agreement as amended or restated.

1811 (15) "Person" means an individual, corporation, business
1812 trust, estate, trust, partnership, limited liability company,
1813 association, joint venture, or government; governmental
1814 subdivision, agency, or instrumentality; public corporation; or
1815 any other legal or commercial entity.

1816 (16) "Person dissociated as a general partner" means a
1817 person dissociated as a general partner of a limited partnership.

1818 (17) "Principal office" means the office at which the
1819 principal executive office of a limited partnership or foreign
1820 limited partnership is located, whether or not the office is
1821 located in this state.

1822 (18) "Record" means information that is inscribed on a
1823 tangible medium or that is stored in an electronic or other
1824 medium and is retrievable in perceivable form.

1825 (19) "Registered agent" means the person acting as the
1826 registered agent of the limited partnership for service of
1827 process and meeting the requirements in s. 620.1114.

1828 (20) "Registered office" means the address of the
1829 registered agent meeting the requirements of s. 620.1114.

1830 (21) "Required information" means the information that a
1831 limited partnership is required to maintain under s. 620.1111.

1832 (22) "Sign" means to:

1833 (a) Execute or adopt a tangible symbol with the present
1834 intent to authenticate a record; or

1835 (b) Attach or logically associate an electronic symbol,
1836 sound, or process to or with a record with the present intent to
1837 authenticate the record.

1838 (23) "State" means a state of the United States, the
1839 District of Columbia, Puerto Rico, the United States Virgin
1840 Islands, or any territory or insular possession subject to the
1841 jurisdiction of the United States.

1842 (24) "Transfer" includes an assignment, conveyance, deed,
1843 bill of sale, lease, mortgage, security interest, encumbrance,
1844 gift, or transfer by operation of law.

1845 (25) "Transferable interest" means a partner's right to
1846 receive distributions.

1847 (26) "Transferee" means a person to which all or part of a
1848 transferable interest has been transferred, whether or not the
1849 transferor is a partner.

1850 620.1103 Knowledge and notice.--

1851 (1) A person knows a fact if the person has actual
1852 knowledge of the fact.

1853 (2) A person has notice of a fact if the person:

1854 (a) Knows of the fact;

1855 (b) Has received a notification of the fact;

1856 (c) Has reason to know the fact exists from all of the
1857 facts known to the person at the time in question; or

1858 (d) Has notice of the fact under subsection (3) or
1859 subsection (4).

1860 (3) A certificate of limited partnership on file in the
1861 Department of State is notice that the partnership is a limited
1862 partnership and the persons designated in the certificate as
1863 general partners are general partners. Except as otherwise
1864 provided in subsection (4), the certificate is not notice of any
1865 other fact.

1866 (4) A person has notice of:
1867 (a) Another person's dissociation as a general partner 90
1868 days after the effective date of an amendment to the certificate
1869 of limited partnership which states that the other person has
1870 dissociated or 90 days after the effective date of a statement of
1871 dissociation pertaining to the other person, whichever occurs
1872 first;
1873 (b) A limited partnership's dissolution 90 days after the
1874 effective date of the certificate of dissolution of the limited
1875 partnership;
1876 (c) A limited partnership's termination 90 days after the
1877 effective date of a statement of termination;
1878 (d) A limited partnership's conversion under s. 620.2102 90
1879 days after the effective date of the certificate of conversion;
1880 (e) A merger under s. 620.2106 90 days after the effective
1881 date of the certificate of merger; or
1882 (f) Any limitations upon the authority of a general partner
1883 as set forth in the initial certificate of limited partnership
1884 or, if the limitations are added by an amendment or restatement
1885 of the certificate of limited partnership, 90 days after the
1886 effective date of the amendment or restatement, provided a
1887 provision in the certificate of limited partnership limiting the
1888 authority of a general partner to transfer real property held in
1889 the name of the limited partnership is not notice of the
1890 limitation to a person who is not a partner unless the limitation
1891 appears in an affidavit, certificate, or other instrument that
1892 bears the name of the limited partnership and is recorded in the
1893 office for recording transfers of such real property.

1894 (5) A person notifies or gives a notification to another
1895 person by taking steps reasonably required to inform the other
1896 person in the ordinary course, whether or not the other person
1897 learns of it.

1898 (6) A person receives a notification when the notification:

1899 (a) Comes to the person's attention; or

1900 (b) Is delivered at the person's place of business or at
1901 any other place held out by the person as a place for receiving
1902 communications.

1903 (7) Except as otherwise provided in subsection (8), a
1904 person other than an individual knows, has notice, or receives a
1905 notification of a fact for purposes of a particular transaction
1906 when the individual conducting the transaction for the person
1907 knows, has notice, or receives a notification of the fact, or in
1908 any event when the fact would have been brought to the
1909 individual's attention if the person had exercised reasonable
1910 diligence. A person other than an individual exercises reasonable
1911 diligence if such person maintains reasonable routines for
1912 communicating significant information to the individual
1913 conducting the transaction for the person and there is reasonable
1914 compliance with the routines. Reasonable diligence does not
1915 require an individual acting for the person to communicate
1916 information unless the communication is part of the individual's
1917 regular duties or the individual has reason to know of the
1918 transaction and that the transaction would be materially affected
1919 by the information.

1920 (8) A general partner's knowledge, notice, or receipt of a
1921 notification of a fact relating to the limited partnership is

1922 effective immediately as knowledge of, notice to, or receipt of a
 1923 notification by the limited partnership, except in the case of a
 1924 fraud on the limited partnership committed by or with the consent
 1925 of the general partner. A limited partner's knowledge, notice, or
 1926 receipt of a notification of a fact relating to the limited
 1927 partnership is not effective as knowledge of, notice to, or
 1928 receipt of a notification by the limited partnership.

1929 620.1104 Nature, purpose, and duration of entity.--

1930 (1) A limited partnership is an entity distinct from its
 1931 partners. A limited partnership is the same entity regardless of
 1932 whether its certificate states that the limited partnership is a
 1933 limited liability limited partnership.

1934 (2) A limited partnership may be organized under this act
 1935 for any lawful purpose.

1936 (3) A limited partnership has a perpetual duration.

1937 620.1105 Powers.--A limited partnership has the powers to
 1938 do all things necessary or convenient to carry on its activities,
 1939 including the power to sue, be sued, and defend in its own name
 1940 and to maintain an action against a partner for harm caused to
 1941 the limited partnership by a breach of the partnership agreement
 1942 or violation of a duty to the partnership.

1943 620.1106 Governing law.--The laws of this state govern
 1944 relations among the partners of a limited partnership and between
 1945 the partners and the limited partnership and the liability of
 1946 partners as partners for an obligation of the limited
 1947 partnership.

1948 620.1107 Supplemental principles of law; rate of
 1949 interest.--

1950 (1) Unless displaced by particular provisions of this act,
 1951 the principles of law and equity supplement this act.

1952 (2) If an obligation to pay interest arises under this act
 1953 and the rate is not specified, the same rate of interest that has
 1954 been determined for judgments in accordance with s. 55.03 shall
 1955 apply to the obligation in question.

1956 620.1108 Name.--

1957 (1) The name of a limited partnership may contain the name
 1958 of any partner.

1959 (2) The name of a limited partnership that is not a limited
 1960 liability limited partnership must contain the phrase "limited
 1961 partnership" or "limited" or the abbreviation "L.P." or "Ltd." or
 1962 the designation "LP," and may not contain the phrase "limited
 1963 liability limited partnership" or the abbreviation "L.L.L.P." or
 1964 the designation "LLLP."

1965 (3) The name of a limited liability limited partnership
 1966 must contain the phrase "limited liability limited partnership"
 1967 or the abbreviation "L.L.L.P." or designation "LLLP," except that
 1968 a limited liability limited partnership organized prior to the
 1969 effective date of this act that is using an abbreviation or
 1970 designation permitted under prior law shall be entitled to
 1971 continue using such abbreviation or designation until its
 1972 dissolution.

1973 (4) The name of a limited partnership must be
 1974 distinguishable in the records of the Department of State from
 1975 the names of all other entities or filings, except fictitious
 1976 name registrations pursuant to s. 865.09 organized, registered,

1977 or reserved under the laws of this state, the names of which are
 1978 on file with the Department of State.

1979 (5) Subject to s. 620.905, this section applies to any
 1980 foreign limited partnership transacting business in this state,
 1981 having a certificate of authority to transact business in this
 1982 state, or applying for a certificate of authority.

1983 620.1109 Department of State; fees.--In addition to the
 1984 supplemental corporate fee of \$88.75 imposed pursuant to s.
 1985 607.193, the fees of the Department of State under this act are
 1986 as follows:

1987 (1) For furnishing a certified copy, \$52.50 for the first
 1988 15 pages plus \$1.00 for each additional page.

1989 (2) For filing an original certificate of limited
 1990 partnership, \$965.

1991 (3) For filing an original application for registration as
 1992 a foreign limited partnership, \$965.

1993 (4) For filing certificate of conversion, \$52.50.

1994 (5) For filing certificate of merger, \$52.50 for each party
 1995 thereto.

1996 (6) For filing a reinstatement, \$500 for each calendar year
 1997 or part thereof the limited partnership was administratively
 1998 dissolved or foreign limited partnership was revoked in the
 1999 records of the Department of State.

2000 (8) For filing an annual report, \$411.25.

2001 (9) For filing a certificate:

2002 (a) Designating a registered agent, \$35;

2003 (b) Changing a registered agent or registered office
 2004 address, \$35;

2005 (c) Resigning as a registered agent, \$87.50; or
 2006 (d) Of amendment or restatement of the certificate of
 2007 limited partnership, \$52.50;
 2008 (10) For filing a statement of termination, \$52.50.
 2009 (11) For filing a notice of cancellation for foreign
 2010 limited partnership, \$52.50.
 2011 (12) For furnishing a certificate of status or
 2012 authorization, \$8.75.
 2013 (13) For filing a certificate of dissolution, \$52.50.
 2014 (14) For filing a certificate of revocation of dissolution,
 2015 \$52.50.
 2016 (15) For filing any other domestic or foreign limited
 2017 partnership document, \$52.50.
 2018 620.1110 Effect of partnership agreement; nonwaivable
 2019 provisions.--
 2020 (1) Except as otherwise provided in subsection (2), the
 2021 partnership agreement governs relations among the partners and
 2022 between the partners and the partnership. To the extent the
 2023 partnership agreement does not otherwise provide, this act
 2024 governs relations among the partners and between the partners and
 2025 the partnership.
 2026 (2) A partnership agreement may not:
 2027 (a) Vary a limited partnership's power under s. 620.1105 to
 2028 sue, be sued, and defend in its own name;
 2029 (b) Vary the law applicable to a limited partnership under
 2030 s. 620.106;
 2031 (c) Vary the requirements of s. 620.1204;

2032 (d) Vary the information required under s. 620.1111 or
2033 unreasonably restrict the right to information under s. 620.1304
2034 or s. 620.1407, but the partnership agreement may impose
2035 reasonable restrictions on the availability and use of
2036 information obtained under those sections and may define
2037 appropriate remedies, including liquidated damages, for a breach
2038 of any reasonable restriction on use;

2039 (e) Eliminate the duty of loyalty of a general partner
2040 under s. 620.1408 but the partnership agreement may:

2041 1. Identify specific types or categories of activities that
2042 do not violate the duty of loyalty, if not manifestly
2043 unreasonable; and

2044 2. Specify the number, percentage, class, or other type of
2045 partners that may authorize or ratify, after full disclosure to
2046 all partners of all material facts, a specific act or transaction
2047 that otherwise would violate the duty of loyalty;

2048 (f) Unreasonably reduce the duty of care of a general
2049 partner under s. 620.1408(3);

2050 (g) Eliminate the obligation of good faith and fair dealing
2051 under ss. 620.1305(2) and 620.1408(4), but the partnership
2052 agreement may prescribe the standards by which the performance of
2053 the obligation is to be measured, if the standards are not
2054 manifestly unreasonable;

2055 (h) Vary the power of a person to dissociate as a general
2056 partner under s. 620.1604(1), except to require that the notice
2057 under s. 620.1603(1) be in a record;

2058 (i) Vary the power of a court to decree dissolution in the
2059 circumstances specified in s. 620.1802;

2060 (j) Vary the requirement to wind up the partnership's
2061 business as specified in s. 620.1803;

2062 (k) Unreasonably restrict the right to maintain an action
2063 under s. 620.2001 or s. 620.2002;

2064 (l) Restrict the right of a partner under s. 620.2110(1) to
2065 approve a conversion or merger or the right of a general partner
2066 under s. 620.2110(2) to consent to an amendment to the
2067 certificate of limited partnership which deletes a statement that
2068 the limited partnership is a limited liability limited
2069 partnership; or

2070 (m) Restrict rights under this act of a person other than a
2071 partner or a transferee.

2072 620.1111 Required information.--A limited partnership shall
2073 maintain at its designated office the following information:

2074 (1) A current list showing the full name and last known
2075 street and mailing address of each partner, separately
2076 identifying the general partners, in alphabetical order, and the
2077 limited partners, in alphabetical order.

2078 (2) A copy of the initial certificate of limited
2079 partnership and all amendments to and restatements of the
2080 certificate, together with signed copies of any powers of
2081 attorney under which any certificate, amendment, or restatement
2082 has been signed.

2083 (3) A copy of any filed certificate of conversion or
2084 merger, together with the plan of conversion or plan of merger
2085 approved by the partners.

2086 (4) A copy of the limited partnership's federal, state, and
 2087 local income tax returns and reports, if any, for the 3 most
 2088 recent years.

2089 (5) A copy of any partnership agreement made in a record
 2090 and any amendment made in a record to any partnership agreement.

2091 (6) A copy of any financial statement of the limited
 2092 partnership for the 3 most recent years.

2093 (7) A copy of the three most recent annual reports
 2094 delivered by the limited partnership to the Department of State
 2095 pursuant to s. 620.1210.

2096 (8) A copy of any record made by the limited partnership
 2097 during the past 3 years of any consent given by or vote taken of
 2098 any partner pursuant to this act or the partnership agreement.

2099 (9) Unless contained in a partnership agreement made in a
 2100 record, a record stating:

2101 (a) The amount of cash and a description and statement of
 2102 the agreed value of the other benefits contributed and agreed to
 2103 be contributed by each partner.

2104 (b) The times at which, or events on the happening of
 2105 which, any additional contributions agreed to be made by each
 2106 partner are to be made.

2107 (c) For any person that is both a general partner and a
 2108 limited partner, a specification of transferable interest the
 2109 person owns in each capacity.

2110 (d) Any events upon the happening of which the limited
 2111 partnership is to be dissolved and its activities wound up.

2112 620.1112 Business transactions of partner with
 2113 partnership.--A partner may lend money to and transact other

2114 business with the limited partnership and, subject to s.
 2115 620.1408 and any other applicable provisions of this act, a
 2116 partner has the same rights and obligations with respect to the
 2117 loan or other transaction as a person that is not a partner.

2118 620.1113 Dual capacity.--A person may be both a general
 2119 partner and a limited partner. A person that is both a general
 2120 and limited partner has the rights, powers, duties, and
 2121 obligations provided by this act and the partnership agreement
 2122 in each of those capacities. When the person acts as a general
 2123 partner, the person is subject to the obligations, duties, and
 2124 restrictions under this act and the partnership agreement for
 2125 general partners. When the person acts as a limited partner, the
 2126 person is subject to the obligations, duties, and restrictions
 2127 under this act and the partnership agreement for limited
 2128 partners.

2129 620.1114 Designated office, registered office, and
 2130 registered agent.--

2131 (1) A limited partnership shall designate and continuously
 2132 maintain in this state:

2133 (a) A designated office, which need not be a place of its
 2134 activity in this state.

2135 (b) A registered agent for service of process upon the
 2136 limited partnership and a registered office, which shall be the
 2137 address of its registered agent.

2138 (2) A foreign limited partnership shall designate and
 2139 continuously maintain in this state a registered agent for
 2140 service of process and a registered office, which shall be the
 2141 address of its registered agent.

HB 0595

2005

2142 (3) A registered agent of a limited partnership or foreign
2143 limited partnership must be an individual who is a resident of
2144 this state or other person authorized to do business in this
2145 state.

2146 620.1115 Change of registered agent or registered office.--

2147 (1) In order to change its registered agent or registered
2148 office address, a limited partnership or a foreign limited
2149 partnership may deliver to the Department of State for filing a
2150 statement of change containing:

2151 (a) The name of the limited partnership or foreign limited
2152 partnership.

2153 (b) The name of its current registered agent.

2154 (c) If the registered agent is to be changed, the name and
2155 written acceptance of the new registered agent.

2156 (d) The street address of its current registered office
2157 address for its registered agent.

2158 (e) If the registered office address is to be changed, the
2159 new street address in this state of such office.

2160 (2) A statement of change is effective when filed by the
2161 Department of State.

2162 (3) The changes described in this section may also be made
2163 on the limited partnership or foreign limited partnership's
2164 annual report filed with the Department of State.

2165 620.1116 Resignation of registered agent.--

2166 (1) In order to resign as registered agent of a limited
2167 partnership or foreign limited partnership, the agent must
2168 deliver to the Department of State for filing a signed statement

2169 of resignation containing the name of the limited partnership or
2170 foreign limited partnership.

2171 (2) After filing the statement with the Department of
2172 State, the registered agent shall mail a copy to the limited
2173 partnership's or foreign limited partnership's current mailing
2174 address.

2175 (3) A registered agent is terminated on the 31st day after
2176 the Department of State files the statement of resignation.

2177 620.1117 Service of process.--

2178 (1) A registered agent appointed by a limited partnership
2179 or foreign limited partnership is an agent of the limited
2180 partnership or foreign limited partnership for service of any
2181 process, notice, or demand required or permitted by law to be
2182 served upon the limited partnership or foreign limited
2183 partnership.

2184 (2) If a limited partnership or foreign limited partnership
2185 does not appoint or maintain a registered agent in this state or
2186 the registered agent cannot with reasonable diligence be found at
2187 the address of the registered office, the Department of State
2188 shall be an agent of the limited partnership or foreign limited
2189 partnership upon whom process, notice, or demand may be served.

2190 (3) Service of any process, notice, or demand on the
2191 Department of State may be made by delivering to and leaving with
2192 the Department of State duplicate copies of the process, notice,
2193 or demand. If a process, notice, or demand is served on the
2194 Department of State, the Department of State shall forward one of
2195 the copies by registered or certified mail, return receipt

2196 requested, to the limited partnership or foreign limited
2197 partnership at its designated office.

2198 (4) Service is effected under subsection (3) at the
2199 earliest of:

2200 (a) The date the limited partnership or foreign limited
2201 partnership receives the process, notice, or demand;

2202 (b) The date shown on the return receipt, if signed on
2203 behalf of the limited partnership or foreign limited partnership;
2204 or

2205 (c) Five days after the process, notice, or demand is
2206 deposited in the mail, if mailed postpaid and correctly
2207 addressed.

2208 (5) The Department of State shall keep a record of each
2209 process, notice, and demand served pursuant to this section and
2210 record the time of, and the action taken regarding, the service.

2211 (6) This section does not affect the right to serve
2212 process, notice, or demand in any other manner provided by law.

2213 620.1118 Consent and proxies of partners.--Subject to the
2214 management and approval rights described in s. 620.1406, an
2215 action requiring the consent of partners under this act may be
2216 taken without a meeting, and a partner may appoint a proxy to
2217 consent or otherwise act for the partner by a record appointing
2218 the proxy that is signed, either personally or by the partner's
2219 attorney in fact.

2220 620.1201 Formation of limited partnership; certificate of
2221 limited partnership.--

2222 (1) In order for a limited partnership to be formed, a
 2223 certificate of limited partnership must be delivered to the
 2224 Department of State for filing. The certificate must state:

2225 (a) The name of the limited partnership, which must comply
 2226 with s. 620.1108.

2227 (b) The street and mailing address of the initial
 2228 designated office of the limited partnership, and the name,
 2229 street address in this state, and written acceptance of the
 2230 initial registered agent.

2231 (c) The name and the business address of each general
 2232 partner; each general partner that is not an individual must be
 2233 organized or otherwise registered with the Department of State as
 2234 required by law, must maintain an active status, and must not be
 2235 dissolved, revoked, or withdrawn.

2236 (d) Whether the limited partnership is a limited liability
 2237 limited partnership.

2238 (e) Any additional information which may be required by s.
 2239 620.2104 or s. 620.2108.

2240 (2) A certificate of limited partnership may also contain
 2241 any other matters, but may not vary or otherwise affect the
 2242 provisions specified in s. 620.1110(2) in a manner inconsistent
 2243 with that section.

2244 (3) If there has been substantial compliance with
 2245 subsection (1), then subject to s. 620.1206(3), a limited
 2246 partnership is formed when the Department of State files the
 2247 certificate of limited partnership.

2248 (4) Subject to subsection (2), if any provision of a
 2249 partnership agreement is inconsistent with the filed certificate

HB 0595

2005

2250 of limited partnership, or with a filed statement of
2251 dissociation, termination, or change, a filed certificate of
2252 conversion or merger, or a certificate of dissolution or
2253 revocation of dissolution, involving the limited partnership:

2254 (a) The partnership agreement prevails as to partners and
2255 transferees.

2256 (b) The filed certificate of limited partnership, statement
2257 of dissociation, termination, or change, certificate of
2258 conversion or merger, or certificate of dissolution or revocation
2259 of dissolution prevails as to persons, other than partners and
2260 transferees, that reasonably rely on the filed record to their
2261 detriment.

2262 620.1202 Amendment or restatement of certificate.--

2263 (1) In order to amend or restate its certificate of limited
2264 partnership, a limited partnership must deliver to the Department
2265 of State for filing an amendment or restatement or, pursuant to
2266 s. 620.2108, certificate of merger stating:

2267 (a) The name of the limited partnership.

2268 (b) The date of filing of its initial certificate.

2269 (c) The changes the amendment or restatement makes to the
2270 certificate as most recently amended or restated.

2271 (2) A limited partnership shall promptly deliver to the
2272 Department of State for filing an amendment to or restatement of
2273 a certificate of limited partnership to reflect:

2274 (a) The admission of a new general partner;

2275 (b) The dissociation of a person as a general partner; or

2276 (c) The appointment of a person to wind up the limited
2277 partnership's activities under s. 620.1803(3) or (4).

HB 0595

2005

2278 (3) A general partner that knows that any information in a
2279 filed certificate of limited partnership was false when the
2280 certificate was filed or has become false due to changed
2281 circumstances shall promptly:

2282 (a) Cause the certificate to be amended or restated; or

2283 (b) If appropriate, deliver to the Department of State for
2284 filing a statement of change pursuant to s. 620.1115 or a
2285 statement of correction pursuant to s. 620.1207.

2286 (4) A certificate of limited partnership may be amended or
2287 restated at any time for any other proper purpose as determined
2288 by the limited partnership.

2289 (5) Subject to s. 620.1206(3), an amendment or restated
2290 certificate is effective when filed by the Department of State.

2291 (6) A limited partnership may, whenever desired, integrate
2292 into a single instrument all of the provisions of its certificate
2293 of limited partnership which are then in effect and operative as
2294 a result of there having theretofore been filed with the
2295 Department of State one or more certificates or other instruments
2296 pursuant to any provision of this section, and the limited
2297 partnership may at the same time further amend its certificate of
2298 limited partnership by adopting a restated certificate of limited
2299 partnership in accordance with subsections (7)-(10).

2300 (7) If the restated certificate of limited partnership
2301 merely restates and integrates but does not further amend the
2302 initial certificate of limited partnership, as theretofore
2303 amended or restated by any instrument that was executed and filed
2304 pursuant to any of the subsections in this section, the restated
2305 certificate shall be specifically designated in its heading as a

2306 "Restated Certificate of Limited Partnership," together with such
 2307 other words as the limited partnership may deem appropriate, and
 2308 shall be executed by at least one general partner and filed as
 2309 provided by this act with the Department of State. If the
 2310 restated certificate restates and integrates and also further
 2311 amends in any respect the initial certificate of limited
 2312 partnership, as theretofore amended or restated, the restated
 2313 certificate shall be specifically designated in its heading as an
 2314 "Amended and Restated Certificate of Limited Partnership,"
 2315 together with such other words as the limited partnership may
 2316 deem appropriate, and shall be executed by at least one general
 2317 partner and by each other general partner designated in the
 2318 restated certificate of limited partnership as a new general
 2319 partner and filed as provided by this act with the Department of
 2320 State.

2321 (8) A restated certificate of limited partnership shall
 2322 state, either in its heading or in an introductory paragraph, the
 2323 limited partnership's present name, and, if it has been changed,
 2324 the name under which it was originally filed; the date of filing
 2325 of its original certificate of limited partnership with the
 2326 Department of State; and, subject to s. 620.1206(3), the delayed
 2327 effective date or time, which shall be a date or time certain, of
 2328 the restated certificate if it is not to be effective upon the
 2329 filing of the restated certificate. A restated certificate shall
 2330 also state that it was duly executed and is being filed in
 2331 accordance with this section. If the restated certificate only
 2332 restates and integrates and does not further amend the limited
 2333 partnership's certificate of limited partnership as theretofore

2334 amended or supplemented and there is no discrepancy between those
2335 provisions and the restated certificate, it shall state that fact
2336 as well.

2337 (9) Upon the filing of the restated certificate of limited
2338 partnership with the Department of State, or upon the delayed
2339 effective date or time of a restated certificate of limited
2340 partnership as provided for therein, the initial certificate of
2341 limited partnership, as theretofore amended or supplemented,
2342 shall be superseded. Thereafter, the restated certificate of
2343 limited partnership, including any further amendment or changes
2344 made thereby, shall be the certificate of limited partnership of
2345 the limited partnership, but the original effective date of
2346 formation shall remain unchanged.

2347 (10) Any amendment or change effected in accordance with
2348 subsections (7)-(9) and this subsection shall be subject to any
2349 other provisions of this act, not inconsistent with this
2350 section, which would apply if a separate certificate of
2351 amendment were filed to effect such amendment or change.

2352 620.1203 Certificate of dissolution; statement of
2353 termination.--

2354 (1) A certificate of dissolution shall be filed with the
2355 Department of State in accordance with s. 620.1801(2) and set
2356 forth:

2357 (a) The name of the limited partnership.

2358 (b) The date of filing of its initial certificate of
2359 limited partnership.

2360 (c) The reason for filing the certificate of dissolution.

2361 (d) Any other information as determined by the general
2362 partners filing the statement or by a person appointed pursuant
2363 to s. 620.1803(3) or (4).

2364 (2) If there has been substantial compliance with
2365 subsection (1), then subject to s. 620.1206(3) the dissolution of
2366 the limited partnership shall be effective when the Department of
2367 State files the certificate of dissolution.

2368 (3) A dissolved limited partnership that has completed
2369 winding up may deliver to the Department of State for filing a
2370 statement of termination that states:

2371 (a) The name of the limited partnership.

2372 (b) The date of filing of its initial certificate of
2373 limited partnership.

2374 (c) The limited partnership has completed winding up its
2375 affairs and wishes to file a statement of termination.

2376 (d) Any other information as determined by the general
2377 partners filing the statement or by a person appointed pursuant
2378 to s. 620.1803(3) or (4).

2379 620.1204 Signing of records.--

2380 (1) Each record delivered to the Department of State for
2381 filing pursuant to this act must be signed in the following
2382 manner:

2383 (a) An initial certificate of limited partnership must be
2384 signed by all general partners listed in the certificate of
2385 limited partnership.

2386 (b) An amendment adding or deleting a statement that the
2387 limited partnership is a limited liability limited partnership

HB 0595

2005

2388 must be signed by all general partners listed in the certificate
2389 of limited partnership.

2390 (c) An amendment designating as general partner a person
2391 admitted under s. 620.1801(1)(c) following the dissociation of a
2392 limited partnership's last general partner must be signed by that
2393 person.

2394 (d) An amendment required by s. 620.1803(3) following the
2395 appointment of a person to wind up the dissolved limited
2396 partnership's activities must be signed by that person.

2397 (e) Any other amendment must be signed by:

2398 1. At least one general partner listed in the certificate
2399 of limited partnership.

2400 2. Each other person designated in the amendment as a new
2401 general partner.

2402 3. Each person that the amendment indicates has dissociated
2403 as a general partner, unless:

2404 a. The person is deceased or a guardian or general
2405 conservator has been appointed for the person and the amendment
2406 so states; or

2407 b. The person has previously delivered to the Department of
2408 State for filing a statement of dissociation.

2409 (f) A restated certificate of limited partnership must be
2410 signed by at least one general partner listed in the certificate,
2411 and, to the extent the restated certificate of limited
2412 partnership effects a change described under any other paragraph
2413 of this subsection, the certificate of limited partnership must
2414 also be signed in a manner that satisfies that paragraph.

2415 (g) A certificate of dissolution, a statement of
2416 termination, and a certificate of revocation of dissolution must
2417 be signed by all general partners listed in the certificate of
2418 limited partnership or, if the certificate of limited partnership
2419 of a dissolved limited partnership lists no general partners, by
2420 the person appointed pursuant to s. 620.803(3) or (4) to wind up
2421 the dissolved limited partnership's activities.

2422 (h) A certificate of conversion must be signed as provided
2423 in s. 620.2104(1).

2424 (i) A certificate of merger must be signed as provided in
2425 s. 620.2108(1).

2426 (j) Any other record delivered on behalf of a limited
2427 partnership to the Department of State for filing must be signed
2428 by at least one general partner listed in the certificate of
2429 limited partnership.

2430 (k) A statement by a person pursuant to s. 620.1605(1)(d)
2431 stating that the person has dissociated as a general partner must
2432 be signed by that person.

2433 (l) A statement of withdrawal by a person pursuant to s.
2434 620.1306 must be signed by that person.

2435 (m) A record delivered on behalf of a foreign limited
2436 partnership to the Department of State for filing must be signed
2437 by at least one general partner of the foreign limited
2438 partnership.

2439 (n) Any other record delivered on behalf of any person to
2440 the Department of State for filing must be signed by that person.

2441 (2) Any person may sign by an attorney in fact any record
2442 to be filed pursuant to this act.

2443 620.1205 Signing and filing pursuant to judicial order.--

2444 (1) If a person required by this act to sign a record or
 2445 deliver a record to the Department of State for filing does not
 2446 do so, any other person that is aggrieved may petition the
 2447 circuit court to order:

2448 (a) The person to sign the record;

2449 (b) The person to deliver the record to the Department of
 2450 State for filing; or

2451 (c) The Department of State to file the record unsigned.

2452 (2) If the person aggrieved under subsection (1) is not the
 2453 limited partnership or foreign limited partnership to which the
 2454 record pertains, the aggrieved person shall make the limited
 2455 partnership or foreign limited partnership a party to the action.
 2456 A person aggrieved under subsection (1) may seek the remedies
 2457 provided in subsection (1) in the same action in combination or
 2458 in the alternative.

2459 (3) A record filed unsigned pursuant to this section is
 2460 effective without being signed.

2461 620.1206 Delivery to and filing of records by Department of
 2462 State; effective time and date.--

2463 (1) A record authorized or required to be delivered to the
 2464 Department of State for filing under this act must be captioned
 2465 to describe the record's purpose, be in a medium permitted by the
 2466 Department of State, and be delivered to the Department of State.
 2467 Unless the Department of State determines that a record does not
 2468 comply with the filing requirements of this act, and if all
 2469 filing fees have been paid, the Department of State shall file
 2470 the record.

2471 (2) Upon request and payment of a fee, the Department of
 2472 State shall send to the requester a certified copy of the
 2473 requested record.

2474 (3) Except as otherwise provided in ss. 620.1116 and
 2475 620.1207, a record delivered to the Department of State for
 2476 filing under this act may specify an effective time and a delayed
 2477 effective date. Except as otherwise provided in this act, a
 2478 record filed by the Department of State is effective:

2479 (a) If the record does not specify an effective time and
 2480 does not specify a delayed effective date, on the date and at the
 2481 time the record is filed as evidenced by the Department of
 2482 State's endorsement of the date and time on the record;

2483 (b) If the record specifies an effective time but not a
 2484 delayed effective date, on the date the record is filed at the
 2485 time specified in the record;

2486 (c) If the record specifies a delayed effective date but
 2487 not an effective time, at 12:01 a.m. on the earlier of:

- 2488 1. The specified date; or
- 2489 2. The 90th day after the record is filed; or

2490 (d) If the record specifies an effective time and a delayed
 2491 effective date, at the specified time on the earlier of:

- 2492 1. The specified date; or
- 2493 2. The 90th day after the record is filed.

2494 620.1207 Correcting filed record.--

2495 (1) A limited partnership or foreign limited partnership
 2496 may deliver to the Department of State for filing a statement of
 2497 correction to correct a record previously delivered by the
 2498 limited partnership or foreign limited partnership to the

2499 Department of State and filed by the Department of State, if at
 2500 the time of filing the record contained false or erroneous
 2501 information or was defectively signed.

2502 (2) A statement of correction may not state a delayed
 2503 effective date and must:

2504 (a) Describe the record to be corrected, including its
 2505 filing date.

2506 (b) Specify the incorrect information and the reason it is
 2507 incorrect or the manner in which the signing was defective.

2508 (c) Correct the incorrect information or defective
 2509 signature.

2510 (3) When filed by the Department of State, a statement of
 2511 correction is effective retroactively as of the effective date of
 2512 the record the statement corrects, but the statement is effective
 2513 when filed:

2514 (a) For the purposes of s. 620.103(3) and (4).

2515 (b) As to persons relying on the uncorrected record and
 2516 adversely affected by the correction.

2517 620.1208 Liability for false information in filed record.--

2518 (1) If a record delivered to the Department of State for
 2519 filing under this act and filed by the Department of State
 2520 contains false information, a person that suffers loss by
 2521 reliance on the information may recover damages for the loss
 2522 from:

2523 (a) A person that signed the record, or caused another to
 2524 sign the record on the person's behalf, and knew the information
 2525 to be false at the time the record was signed.

2526 (b) A general partner that has notice the information was
2527 false when the record was filed or has become false because of
2528 changed circumstances, if the general partner has notice for a
2529 reasonably sufficient time before the information is relied upon
2530 to enable the general partner to effect an amendment pursuant to
2531 s. 620.1202, file a petition pursuant to s. 620.1205, or deliver
2532 to the Department of State for filing a statement of change
2533 pursuant to s. 620.1115 or a statement of correction pursuant to
2534 s. 620.1207.

2535 (2) Signing a record authorized or required to be filed
2536 under this act constitutes an affirmation under the penalties of
2537 perjury that the facts stated in the record are true.

2538 620.1209 Certificate of status.--

2539 (1) The Department of State, upon request and payment of
2540 the requisite fee, shall furnish a certificate of status for a
2541 limited partnership if the records filed in the Department of
2542 State show that the Department of State has filed a certificate
2543 of limited partnership. A certificate of status must state:

2544 (a) The limited partnership's name.

2545 (b) That the limited partnership was duly formed under the
2546 laws of this state and the date of formation.

2547 (c) Whether all fees and penalties due to the Department of
2548 State under this act have been paid.

2549 (d) Whether the limited partnership's most recent annual
2550 report required by s. 620.1210 has been filed by the Department
2551 of State.

2552 (e) Whether the Department of State has administratively
2553 dissolved the limited partnership or received a record notifying

2554 the Department of State that the limited partnership has been
2555 dissolved by judicial action pursuant to s. 620.1802;

2556 (f) Whether the Department of State has filed a certificate
2557 of dissolution for the limited partnership.

2558 (g) Whether the Department of State has filed a statement
2559 of termination for the limited partnership.

2560 (2) The Department of State, upon request and payment of
2561 the requisite fee, shall furnish a certificate of status for a
2562 foreign limited partnership if the records filed in the
2563 Department of State show that the Department of State has filed a
2564 certificate of authority. A certificate of status must state:

2565 (a) The foreign limited partnership's name and any
2566 alternate name adopted under s. 620.1905(1) for use in this
2567 state.

2568 (b) That the foreign limited partnership is authorized to
2569 transact business in this state.

2570 (c) Whether all fees and penalties due to the Department of
2571 State under this act or other law have been paid.

2572 (d) Whether the foreign limited partnership's most recent
2573 annual report required by s. 620.1210 has been filed by the
2574 Department of State.

2575 (e) Whether the Department of State has revoked the foreign
2576 limited partnership's certificate of authority or filed a notice
2577 of cancellation.

2578 (3) Subject to any qualification stated in the certificate,
2579 a certificate of status issued by the Department of State may be
2580 relied upon as conclusive evidence that the limited partnership

2581 or foreign limited partnership is in existence or is authorized
2582 to transact business in this state.

2583 620.1210 Annual report for Department of State.--

2584 (1) A limited partnership or a foreign limited partnership
2585 authorized to transact business in this state shall deliver to
2586 the Department of State for filing an annual report that states:

2587 (a) The name of the limited partnership or, if a foreign
2588 limited partnership, the name under which the foreign limited
2589 partnership is registered to transact business in this state.

2590 (b) The street and mailing address of the limited
2591 partnership or foreign limited partnership, the name of its
2592 registered agent in this state, and the street address of its
2593 registered office in this state.

2594 (c) The name and business address of each general partner.
2595 Each general partner that is not an individual must be organized
2596 or otherwise registered with the Department of State as required
2597 by law, must maintain an active status, and must not be
2598 dissolved, revoked, or withdrawn.

2599 (d) Federal Employer Identification number.

2600 (e) Any additional information that is necessary or
2601 appropriate to enable the Department of State to carry out the
2602 provisions of this act.

2603 (2) Information in an annual report must be current as of
2604 the date the annual report is delivered to the Department of
2605 State for filing.

2606 (3) The first annual report must be delivered to the
2607 Department of State between January 1 and May 1 of the year
2608 following the calendar year in which a limited partnership was

2609 formed or a foreign limited partnership was authorized to
2610 transact business. An annual report must be delivered to the
2611 Department of State between January 1 and May 1 of each
2612 subsequent calendar year.

2613 (4) If an annual report does not contain the information
2614 required in subsection (1), the Department of State shall
2615 promptly notify the reporting limited partnership or foreign
2616 limited partnership and return the report to it for correction.
2617 If the report is corrected to contain the information required in
2618 subsection (1) and delivered to the Department of State within 30
2619 days after the effective date of the notice, it is timely
2620 delivered.

2621 (5) If a filed annual report contains the address of a
2622 designated office, name of a registered agent, or registered
2623 office address which differs from the information shown in the
2624 records of the Department of State immediately before the filing,
2625 the differing information in the annual report is considered a
2626 statement of change under s. 620.1115.

2627 620.1301 Becoming limited partner.--A person becomes a
2628 limited partner:

2629 (1) As provided in the partnership agreement;

2630 (2) As the result of a conversion or merger involving the
2631 limited partnership under this act as provided in the plan of
2632 conversion or merger; or

2633 (3) With the consent of all the partners.

2634 620.1302 No right or power as limited partner to bind
2635 limited partnership; certain approval rights.--

2636 (1) A limited partner does not have the right or the power
2637 as a limited partner to act for or bind the limited partnership.

2638 (2) The limited partners have only those approval rights as
2639 are described in s. 620.1406.

2640 620.1303 No liability as limited partner for limited
2641 partnership obligations.--An obligation of a limited
2642 partnership, whether arising in contract, tort, or otherwise, is
2643 not the obligation of a limited partner. A limited partner is
2644 not personally liable, directly or indirectly, by way of
2645 contribution or otherwise, for an obligation of the limited
2646 partnership solely by reason of being a limited partner, even if
2647 the limited partner participates in the management and control
2648 of the limited partnership.

2649 620.1304 Right of limited partner and former limited
2650 partner to information.--

2651 (1) Upon 10 days' demand, made in a record received by the
2652 limited partnership, a limited partner may inspect and copy
2653 required information during regular business hours in the
2654 limited partnership's designated office. The limited partner
2655 need not have any particular purpose for seeking the
2656 information.

2657 (2) During regular business hours and at a reasonable
2658 location specified by the limited partnership, a limited partner
2659 may obtain from the limited partnership and inspect and copy true
2660 and full information regarding the state of the activities and
2661 financial condition of the limited partnership and other
2662 information regarding the activities of the limited partnership
2663 as is just and reasonable if:

2664 (a) The limited partner seeks the information for a purpose
2665 reasonably related to the limited partner's interest as a limited
2666 partner.

2667 (b) The limited partner makes a demand in a record received
2668 by the limited partnership, describing with reasonable
2669 particularity the information sought and the purpose for seeking
2670 the information.

2671 (c) The information sought is directly connected to the
2672 limited partner's purpose.

2673 (3) Within 10 days after receiving a demand pursuant to
2674 subsection (2), the limited partnership in a record shall inform
2675 the limited partner that made the demand:

2676 (a) What information the limited partnership will provide
2677 in response to the demand.

2678 (b) When and where the limited partnership will provide the
2679 information.

2680 (c) If the limited partnership declines to provide any
2681 demanded information, the limited partnership's reasons for
2682 declining.

2683 (4) Subject to subsection (6), a person dissociated as a
2684 limited partner may inspect and copy required information during
2685 regular business hours in the limited partnership's designated
2686 office if:

2687 (a) The information pertains to the period during which the
2688 person was a limited partner.

2689 (b) The person seeks the information in good faith.

2690 (c) The person meets the requirements of subsection (2).

2691 (5) The limited partnership shall respond to a demand made
2692 pursuant to subsection (4) in the same manner as provided in
2693 subsection (3).

2694 (6) If a limited partner dies, s. 620.1704 applies.

2695 (7) Subject to s. 620.1110(2)(d), the limited partnership
2696 may impose reasonable restrictions on the use of information
2697 obtained under this section. In a dispute concerning the
2698 reasonableness of a restriction under this subsection, the
2699 limited partnership has the burden of proving reasonableness.

2700 (8) A limited partnership may charge a person that makes a
2701 demand under this section reasonable costs of copying, limited to
2702 the costs of labor and material.

2703 (9) Whenever this act or a partnership agreement provides
2704 for a limited partner to give or withhold consent to a matter,
2705 before the consent is given or withheld, the limited partnership
2706 shall, without demand, provide the limited partner with all
2707 information material to the limited partner's decision that the
2708 limited partnership knows.

2709 (10) A limited partner or person dissociated as a limited
2710 partner may exercise the rights under this section through an
2711 attorney or other agent. Any restriction imposed under subsection
2712 (7) or by the partnership agreement applies both to the attorney
2713 or other agent and to the limited partner or person dissociated
2714 as a limited partner.

2715 (11) The rights stated in this section do not extend to a
2716 person as transferee but may be exercised by the legal
2717 representative of an individual under legal disability who is a
2718 limited partner or person dissociated as a limited partner.

2719 620.1305 Limited duties of limited partners.--

2720 (1) A limited partner does not have any fiduciary duty to
2721 the limited partnership or to any other partner solely by reason
2722 of being a limited partner. To the extent a limited partner is
2723 vested with or delegated management powers or duties under the
2724 partnership agreement, the only fiduciary duties that such
2725 limited partner has to the limited partnership and the other
2726 partners with respect to the exercise of such powers or duties
2727 are those duties described in s. 620.1408, subject to the same
2728 standards and limitations that would apply to a general partner
2729 under that section with respect to the exercise of such powers or
2730 duties.

2731 (2) A limited partner shall discharge the duties to the
2732 limited partnership and the other partners under this act or
2733 under the partnership agreement and exercise any rights
2734 consistently with the obligation of good faith and fair dealing.

2735 (3) A limited partner does not violate a duty or obligation
2736 under this act or under the partnership agreement merely because
2737 the limited partner's conduct furthers the limited partner's own
2738 interest.

2739 620.1306 Person erroneously believing self to be limited
2740 partner.--

2741 (1) Except as otherwise provided in subsection (2), a
2742 person that makes an investment in a business enterprise and
2743 erroneously but in good faith believes that the person has become
2744 a limited partner in the enterprise is not liable for the
2745 enterprise's obligations by reason of making the investment,
2746 receiving distributions from the enterprise, or exercising any

HB 0595

2005

2747 rights of or appropriate to a limited partner, if, on
2748 ascertaining the mistake, the person:

2749 (a) Causes an appropriate certificate of limited
2750 partnership, amendment, or statement of correction to be signed
2751 and delivered to the Department of State for filing; or

2752 (b) Withdraws from future participation as an owner in the
2753 enterprise by signing and delivering to the Department of State
2754 for filing a statement of withdrawal under this section.

2755 (2) A person that makes an investment described in
2756 subsection (1) is liable to the same extent as a general partner
2757 to any third party that enters into a transaction with the
2758 enterprise, believing in good faith that the person is a general
2759 partner, before the Department of State files a statement of
2760 withdrawal, certificate of limited partnership, amendment, or
2761 statement of correction to show that the person is not a general
2762 partner.

2763 (3) If a person makes a diligent effort in good faith to
2764 comply with paragraph (1)(a) and is unable to cause the
2765 appropriate certificate of limited partnership, amendment, or
2766 statement of correction to be signed and delivered to the
2767 Department of State for filing, the person has the right to
2768 withdraw from the enterprise pursuant to paragraph (1)(b) even if
2769 the withdrawal would otherwise breach an agreement with others
2770 that are or have agreed to become coowners of the enterprise.

2771 620.1401 Becoming general partner.--A person becomes a
2772 general partner:

2773 (1) As provided in the partnership agreement;

HB 0595

2005

2774 (2) Under s. 620.1801(1)(c) following the dissociation of a
2775 limited partnership's last general partner;

2776 (3) As the result of a conversion or merger involving the
2777 limited partnership under this act as provided for in the plan of
2778 conversion or merger; or

2779 (4) With the consent of all the partners.

2780 620.1402 General partner agent of limited partnership.--

2781 (1) Each general partner is an agent of the limited
2782 partnership for the purposes of its activities. An act of a
2783 general partner, including the signing of a record in the
2784 partnership's name, for apparently carrying on in the ordinary
2785 course the limited partnership's activities or activities of the
2786 kind carried on by the limited partnership binds the limited
2787 partnership, unless the general partner did not have authority to
2788 act for the limited partnership in the particular matter and the
2789 person with which the general partner was dealing knew, had
2790 received a notification, or had notice under s. 620.1103(4) that
2791 the general partner lacked authority.

2792 (2) An act of a general partner which is not apparently
2793 for carrying on in the ordinary course the limited partnership's
2794 activities or activities of the kind carried on by the limited
2795 partnership binds the limited partnership only if the act was
2796 approved by the other partners as provided in s. 620.1406.

2797 620.1403 Limited partnership liable for general partner's
2798 actionable conduct.--

2799 (1) A limited partnership is liable for loss or injury
2800 caused to a person, or for a penalty incurred, as a result of a
2801 wrongful act or omission, or other actionable conduct, of a

HB 0595

2005

2802 general partner acting in the ordinary course of activities of
2803 the limited partnership or with authority of the limited
2804 partnership.

2805 (2) If, in the course of the limited partnership's
2806 activities or while acting with authority of the limited
2807 partnership, a general partner receives or causes the limited
2808 partnership to receive money or property of a person not a
2809 partner, and the money or property is misapplied by a general
2810 partner, the limited partnership is liable for the loss.

2811 620.1404 General partner's liability.--

2812 (1) Except as otherwise provided in subsections (2) and
2813 (3), all general partners are liable jointly and severally for
2814 all obligations of the limited partnership unless otherwise
2815 agreed by the claimant or provided by law.

2816 (2) A person that becomes a general partner of an existing
2817 limited partnership is not personally liable for an obligation of
2818 a limited partnership incurred before the person became a general
2819 partner.

2820 (3) An obligation of a limited partnership incurred while
2821 the limited partnership is a limited liability limited
2822 partnership, whether arising in contract, tort, or otherwise, is
2823 solely the obligation of the limited partnership. A general
2824 partner is not personally liable, directly or indirectly, by way
2825 of contribution or otherwise, for such an obligation solely by
2826 reason of being or acting as a general partner. This subsection
2827 applies despite anything inconsistent in the partnership
2828 agreement that existed immediately before the consent required to
2829 become a limited liability limited partnership under s. 620.1406.

HB 0595

2005

2830 620.1405 Actions by and against partnership and partners.--

2831 (1) To the extent not inconsistent with s. 620.1404, a
2832 general partner may be joined in an action against the limited
2833 partnership or named in a separate action.

2834 (2) A judgment against a limited partnership is not by
2835 itself a judgment against a general partner. A judgment against a
2836 limited partnership may not be satisfied from a general partner's
2837 assets unless there is also a judgment against the general
2838 partner.

2839 (3) A judgment creditor of a general partner may not levy
2840 execution against the assets of the general partner to satisfy a
2841 judgment based on a claim against the limited partnership, unless
2842 the partner is personally liable for the claim under s. 620.1404
2843 and:

2844 (a) A judgment based on the same claim has been obtained
2845 against the limited partnership and a writ of execution on the
2846 judgment has been returned unsatisfied in whole or in part;

2847 (b) The limited partnership is a debtor in bankruptcy;

2848 (c) The general partner has agreed that the creditor need
2849 not exhaust limited partnership assets;

2850 (d) A court grants permission to the judgment creditor to
2851 levy execution against the assets of a general partner based on a
2852 finding that limited partnership assets subject to execution are
2853 clearly insufficient to satisfy the judgment, that exhaustion of
2854 limited partnership assets is excessively burdensome, or that the
2855 grant of permission is an appropriate exercise of the court's
2856 equitable powers; or

2857 (e) Liability is imposed on the general partner by law or
2858 contract independent of the existence of the limited partnership.

2859 620.1406 Management rights of general partner; approval
2860 rights of other partners.--

2861 (1) Each general partner has equal rights in the management
2862 and conduct of the limited partnership's activities. Any matter
2863 relating to the activities of the limited partnership may be
2864 exclusively decided by the general partner or, if there is more
2865 than one general partner, by a majority of the general partners,
2866 except that the following actions require the approval of all
2867 general partners:

2868 (a) Amending the partnership agreement or the certificate
2869 of limited partnership, including any statement changing the
2870 status of the limited partnership to a limited liability limited
2871 partnership or deleting a statement that the limited partnership
2872 is a limited liability limited partnership.

2873 (b) Admitting a limited partner under s. 620.1301.

2874 (c) Admitting a general partner under s. 620.1401.

2875 (d) Compromising a partner's obligation to make
2876 contributions under s. 620.1502 or return an improper
2877 distribution under s. 620.1508.

2878 (e) Expelling a limited partner under s. 620.1601.

2879 (f) Redeeming a transferable interest subject to a
2880 charging order under s. 620.1703.

2881 (g) Dissolving the limited partnership under s. 620.1801.

2882 (h) Approving a plan of conversion under s. 620.2103 or a
2883 plan of merger under s. 620.2107.

2884 (i) Selling, leasing, exchanging, or otherwise disposing
2885 of all, or substantially all, of the limited partnership's
2886 property, with or without good will, other than in the usual and
2887 regular course of the limited partnership's activities.

2888 (2) The expulsion of a general partner under s. 620.1603
2889 shall require the consent of all of the other general partners.

2890 (3) In addition to the approval of the general partners
2891 required by subsections (1) and (2), the approval of all limited
2892 partners shall be required to take any of the actions under
2893 subsection (1) or subsection (2) with the exception of a
2894 transaction described in paragraph (1)(h) or a transaction
2895 described in paragraph (1)(i).

2896 (4) The approval of a plan of conversion under s. 620.2103
2897 or a plan of merger under s. 620.2107 shall require the consent
2898 of the limited partners in the manner described therein.

2899 (5) A transaction described in paragraph (1)(i) shall
2900 require approval of limited partners owning a majority of the
2901 rights to receive distributions as limited partners at the time
2902 the consent is to be effective

2903 (6) A limited partnership shall reimburse a general partner
2904 for payments made and indemnify a general partner for liabilities
2905 incurred by the general partner in the ordinary course of the
2906 activities of the partnership or for the preservation of its
2907 activities or property if such payments were made or such
2908 liabilities were incurred in good faith and either in the
2909 furtherance of the limited partnership's purposes or the ordinary
2910 scope of its activities.

2911 (7) A limited partnership shall reimburse a general partner
 2912 for an advance to the limited partnership beyond the amount of
 2913 capital the general partner agreed to contribute.

2914 (8) A payment or advance made by a general partner which
 2915 gives rise to an obligation of the limited partnership under
 2916 subsection (6) or subsection (7) constitutes a loan to the
 2917 limited partnership which accrues interest from the date of the
 2918 payment or advance.

2919 (9) A general partner is not entitled to remuneration for
 2920 services performed for the partnership.

2921 620.1407 Right of general partner and former general
 2922 partner to information.--

2923 (1) A general partner, without having any particular
 2924 purpose for seeking the information, may inspect and copy during
 2925 regular business hours:

2926 (a) In the limited partnership's designated office,
 2927 required information.

2928 (b) At a reasonable location specified by the limited
 2929 partnership, any other records maintained by the limited
 2930 partnership regarding the limited partnership's activities and
 2931 financial condition.

2932 (2) Each general partner and the limited partnership shall
 2933 furnish to a general partner:

2934 (a) Without demand, any information concerning the limited
 2935 partnership's activities, reasonably required for the proper
 2936 exercise of the general partner's rights and duties under the
 2937 partnership agreement or this act.

2938 (b) On demand, any other information concerning the limited
2939 partnership's activities, except to the extent the demand or the
2940 information demanded is unreasonable or otherwise improper under
2941 the circumstances.

2942 (3) Subject to subsection (5), upon 10 days' demand made in
2943 a record received by the limited partnership, a person
2944 dissociated as a general partner may have access to the
2945 information and records described in subsection (1) at the
2946 location specified in subsection (1) if:

2947 (a) The information or record pertains to the period during
2948 which the person was a general partner.

2949 (b) The person seeks the information or record in good
2950 faith.

2951 (c) The person satisfies the requirements imposed on a
2952 limited partner by s. 620.1304(2).

2953 (4) The limited partnership shall respond to a demand made
2954 pursuant to subsection (3) in the same manner as provided in s.
2955 620.1304(3).

2956 (5) If a general partner dies, s. 620.1704 applies.

2957 (6) The limited partnership may impose reasonable
2958 restrictions on the use of information under this section. In any
2959 dispute concerning the reasonableness of a restriction under this
2960 subsection, the limited partnership has the burden of proving
2961 reasonableness.

2962 (7) A limited partnership may charge a person dissociated
2963 as a general partner that makes a demand under this section
2964 reasonable costs of copying, limited to the costs of labor and
2965 material.

2966 (8) A general partner or person dissociated as a general
2967 partner may exercise the rights under this section through an
2968 attorney or other agent. Any restriction imposed under subsection
2969 (6) or by the partnership agreement applies both to the attorney
2970 or other agent and to the general partner or person dissociated
2971 as a general partner.

2972 (9) The rights under this section do not extend to a person
2973 as transferee, but the rights under subsection (3) of a person
2974 dissociated as a general partner may be exercised by the legal
2975 representative of an individual who dissociated as a general
2976 partner under s. 620.603(7)(b) or (c).

2977 620.1408 General standards of conduct for general
2978 partner.--

2979 (1) The only fiduciary duties that a general partner has to
2980 the limited partnership and the other partners are the duties of
2981 loyalty and care under subsections (2) and (3).

2982 (2) A general partner's duty of loyalty to the limited
2983 partnership and the other partners is limited to the following:

2984 (a) To account to the limited partnership and hold as
2985 trustee for it any property, profit, or benefit derived by the
2986 general partner in the conduct and winding up of the limited
2987 partnership's activities or derived from a use by the general
2988 partner of limited partnership property, including the
2989 appropriation of a limited partnership opportunity.

2990 (b) To refrain from dealing with the limited partnership in
2991 the conduct or winding up of the limited partnership's activities
2992 as or on behalf of a party having an interest adverse to the
2993 limited partnership.

2994 (c) To refrain from competing with the limited partnership
2995 in the conduct of the limited partnership's activities.

2996 (3) A general partner's duty of care to the limited
2997 partnership and the other partners in the conduct and winding up
2998 of the limited partnership's activities is limited to refraining
2999 from engaging in grossly negligent or reckless conduct,
3000 intentional misconduct, or a knowing violation of law.

3001 (4) A general partner shall discharge the duties to the
3002 partnership and the other partners under this act or under the
3003 partnership agreement and exercise any rights consistently with
3004 the obligation of good faith and fair dealing.

3005 (5) A general partner does not violate a duty or obligation
3006 under this act or under the partnership agreement merely because
3007 the general partner's conduct furthers the general partner's own
3008 interest.

3009 620.1501 Form of contribution.--A contribution of a partner
3010 may consist of tangible or intangible property or other benefit
3011 to the limited partnership, including money, services performed,
3012 promissory notes, other agreements to contribute cash or
3013 property, and contracts for services to be performed.

3014 620.1502 Liability for contribution.--

3015 (1) A partner's obligation to contribute money or other
3016 property or other benefit to, or to perform services for, a
3017 limited partnership shall be in a record signed by the partner,
3018 and such obligation shall not be excused by the partner's death,
3019 disability, or other inability to perform personally.

3020 (2) If a partner does not make a promised nonmonetary
3021 contribution, the partner is obligated at the option of the

3022 limited partnership to contribute money equal to that portion of
 3023 the value, as stated in the required information, of the stated
 3024 contribution which has not been made.

3025 (3) The obligation of a partner to make a contribution or
 3026 return money or other property paid or distributed in violation
 3027 of this act may be compromised only by consent of all partners. A
 3028 creditor of a limited partnership which extends credit or
 3029 otherwise acts in reliance on an obligation described in
 3030 subsection (1), without notice of any compromise under this
 3031 subsection, may enforce the original obligation.

3032 (4) A partnership agreement may provide that the interest
 3033 of any partner who fails to make any contribution that the
 3034 partner is obligated to make shall be subject to specified
 3035 penalties for, or specified consequences of, such failure. Such
 3036 penalty or consequence may take the form of reducing the
 3037 partner's proportionate interest in the limited partnership,
 3038 subordinating the partner's partnership interests to that of
 3039 nondefaulting partners, a forced sale, or the forfeiture of the
 3040 partner's interest in the limited partnership, the lending by
 3041 other partners of the amount necessary to meet the partner's
 3042 commitment, a fixing of the value of the partner's interest in
 3043 the limited partnership by appraisal or by formula and redemption
 3044 or sale of such interest at such value, or other penalty or
 3045 consequence.

3046 620.1503 Sharing of profits, losses, and distributions.--

3047 (1) Profits and losses of a limited partnership shall be
 3048 allocated among the partners on the basis of the value, as stated
 3049 in the required records when the limited partnership makes the

3050 allocations, of the contributions the limited partnership has
3051 received from each partner.

3052 (2) Distributions by a limited partnership shall be shared
3053 by the partners on the basis of the value, as stated in the
3054 required records when the limited partnership decides to make the
3055 distribution, of the contributions the limited partnership has
3056 received from each partner.

3057 620.1504 Interim distributions.--A partner does not have a
3058 right to any distribution before the dissolution and winding up
3059 of the limited partnership unless the limited partnership decides
3060 to make an interim distribution.

3061 620.1505 No distribution on account of dissociation.--A
3062 person does not have a right to receive a distribution on account
3063 of dissociation.

3064 620.1506 Distribution in kind.--A partner does not have a
3065 right to demand or receive any distribution from a limited
3066 partnership in any form other than cash. Subject to s. 620.1813,
3067 a limited partnership may distribute an asset in kind to the
3068 extent each partner receives a percentage of the asset equal to
3069 the partner's share of distributions.

3070 620.1507 Right to distribution.--When a partner or
3071 transferee becomes entitled to receive a distribution, the
3072 partner or transferee has the status of, and is entitled to all
3073 remedies available to, a creditor of the limited partnership
3074 with respect to the distribution. However, the limited
3075 partnership's obligation to make a distribution is subject to
3076 offset for any amount owed to the limited partnership by the
3077 partner or dissociated partner on whose account the distribution

3078 is made.

3079 620.1508 Limitations on distribution.--

3080 (1) A limited partnership may not make a distribution in
 3081 violation of the partnership agreement.

3082 (2) A limited partnership may not make a distribution if
 3083 after the distribution:

3084 (a) The limited partnership would not be able to pay its
 3085 debts as they become due in the ordinary course of the limited
 3086 partnership's activities; or

3087 (b) The limited partnership's total assets would be less
 3088 than the sum of its total liabilities plus the amount that would
 3089 be needed, if the limited partnership were to be dissolved, wound
 3090 up, and terminated at the time of the distribution, to satisfy
 3091 the preferential rights upon dissolution, winding up, and
 3092 termination of partners whose preferential rights are superior to
 3093 those of persons receiving the distribution.

3094 (3) A limited partnership may base a determination that a
 3095 distribution is not prohibited under subsection (2) on financial
 3096 statements prepared on the basis of accounting practices and
 3097 principles that are reasonable in the circumstances or on a fair
 3098 valuation or other method that is reasonable in the
 3099 circumstances.

3100 (4) Except as otherwise provided in subsection (7), the
 3101 effect of a distribution under subsection (2) is measured:

3102 (a) In the case of distribution by purchase, redemption, or
 3103 other acquisition of a transferable interest in the limited
 3104 partnership, as of the date money or other property is
 3105 transferred or debt incurred by the limited partnership.

3106 (b) In all other cases, as of the date:
 3107 1. The distribution is authorized, if the payment occurs
 3108 within 120 days after that date; or
 3109 2. The payment is made, if payment occurs more than 120
 3110 days after the distribution is authorized.
 3111 (5) A limited partnership's indebtedness to a partner
 3112 incurred by reason of a distribution made in accordance with this
 3113 section is at parity with the limited partnership's indebtedness
 3114 to its general, unsecured creditors.
 3115 (6) A limited partnership's indebtedness, including
 3116 indebtedness issued in connection with or as part of a
 3117 distribution, is not considered a liability for purposes of
 3118 subsection (2) if the terms of the indebtedness provide that
 3119 payment of principal and interest are made only to the extent
 3120 that a distribution could then be made to partners under this
 3121 section.
 3122 (7) If indebtedness is issued as a distribution, each
 3123 payment of principal or interest on the indebtedness is treated
 3124 as a distribution, the effect of which is measured on the date
 3125 the payment is made.
 3126 620.1509 Liability for improper distributions.--
 3127 (1) A general partner that consents to a distribution made
 3128 in violation of s. 620.1508 is personally liable to the limited
 3129 partnership for the amount of the distribution which exceeds the
 3130 amount that could have been distributed without the violation if
 3131 it is established that in consenting to the distribution the
 3132 general partner failed to comply with s. 620.1408.

3133 (2) A partner or transferee that received a distribution
 3134 knowing that the distribution to that partner or transferee was
 3135 made in violation of s. 620.1508 is personally liable to the
 3136 limited partnership but only to the extent that the distribution
 3137 received by the partner or transferee exceeded the amount that
 3138 could have been properly paid under s. 620.1508.

3139 (3) A general partner against which an action is commenced
 3140 under subsection (1) may:

3141 (a) Implead in the action any other person that is liable
 3142 under subsection (1) and compel contribution from the person.

3143 (b) Implead in the action any person that received a
 3144 distribution in violation of subsection (2) and compel
 3145 contribution from the person in the amount the person received in
 3146 violation of subsection (2).

3147 (4) An action under this section is barred if it is not
 3148 commenced within 2 years after the distribution.

3149 620.1601 Dissociation as limited partner.--

3150 (1) A person does not have a right to dissociate as a
 3151 limited partner before the termination of the limited
 3152 partnership.

3153 (2) A person is dissociated from a limited partnership as a
 3154 limited partner upon the occurrence of any of the following
 3155 events:

3156 (a) The limited partnership's having notice of the person's
 3157 express will to withdraw as a limited partner or on a later date
 3158 specified by the person;

3159 (b) An event agreed to in the partnership agreement as
 3160 causing the person's dissociation as a limited partner;

HB 0595

2005

3161 (c) The person's expulsion as a limited partner pursuant to
3162 the partnership agreement;

3163 (d) The person's expulsion as a limited partner by the
3164 unanimous consent of the other partners if:

3165 1. It is unlawful to carry on the limited partnership's
3166 activities with the person as a limited partner;

3167 2. There has been a transfer of all of the person's
3168 transferable interest in the limited partnership, other than a
3169 transfer for security purposes, or a court order charging the
3170 person's interest, which has not been foreclosed;

3171 3. The person is a corporation and, within 90 days after
3172 the limited partnership notifies the person that the corporation
3173 will be expelled as a limited partner because the corporation has
3174 filed a certificate of dissolution or the equivalent, the
3175 corporation's charter has been revoked, or its right to conduct
3176 business has been suspended by the jurisdiction of its
3177 incorporation, and there is no revocation of the certificate of
3178 dissolution or no reinstatement of its charter or its right to
3179 conduct business; or

3180 4. The person is a limited liability company or partnership
3181 that has been dissolved and whose business is being wound up;

3182 (e) On application by the limited partnership, the person's
3183 expulsion as a limited partner by judicial determination because:

3184 1. The person engaged in wrongful conduct that adversely
3185 and materially affected the limited partnership's activities;

3186 2. The person willfully or persistently committed a
3187 material breach of the partnership agreement, any duty the person

HB 0595

2005

3188 may have under s. 620.1305(1), or the obligation of good faith
3189 and fair dealing under s. 620.1305(2); or

3190 3. The person engaged in conduct relating to the limited
3191 partnership's activities which makes it not reasonably
3192 practicable to carry on the activities with the person as limited
3193 partner;

3194 (f) In the case of a person who is an individual, the
3195 person's death;

3196 (g) In the case of a person that is a trust or is acting as
3197 a limited partner by virtue of being a trustee of a trust,
3198 distribution of the trust's entire transferable interest in the
3199 limited partnership, but not merely by reason of the substitution
3200 of a successor trustee;

3201 (h) In the case of a person that is an estate or is acting
3202 as a limited partner by virtue of being a personal representative
3203 of an estate, distribution of the estate's entire transferable
3204 interest in the limited partnership, but not merely by reason of
3205 the substitution of a successor personal representative;

3206 (i) Termination of a limited partner that is not an
3207 individual, partnership, limited liability company, corporation,
3208 trust, or estate; or

3209 (j) The limited partnership's participation in a conversion
3210 or merger under this act, if the limited partnership:

3211 1. Is not the converted or surviving entity; or

3212 2. Is the converted or surviving entity but, as a result of
3213 the conversion or merger, the person ceases to be a limited
3214 partner.

3215 620.1602 Effect of dissociation as limited partner.--

3216 (1) Upon a person's dissociation as a limited partner:

3217 (a) Subject to s. 620.1704, the person does not have
 3218 further rights as a limited partner.

3219 (b) The person's obligation of good faith and fair dealing
 3220 as a limited partner under s. 620.1305(2) continues only as to
 3221 matters arising and events occurring before the dissociation and
 3222 such person's duties, if any, under s. 620.1305(1) terminate or
 3223 continue in the same manner as provided in s. 620.1605(1)(b) and
 3224 (c).

3225 (c) Subject to s. 620.1704 and ss. 620.2101-620.2125, any
 3226 transferable interest owned by the person in the person's
 3227 capacity as a limited partner immediately before dissociation is
 3228 owned by the person as a mere transferee.

3229 (2) A person's dissociation as a limited partner does not
 3230 of itself discharge the person from any obligation to the limited
 3231 partnership or the other partners which the person incurred while
 3232 a limited partner.

3233 620.1603 Dissociation as general partner.--A person is
 3234 dissociated from a limited partnership as a general partner upon
 3235 the occurrence of any of the following events:

3236 (1) The limited partnership's having notice of the person's
 3237 express will to withdraw as a general partner or on a later date
 3238 specified by the person;

3239 (2) An event agreed to in the partnership agreement as
 3240 causing the person's dissociation as a general partner;

3241 (3) The person's expulsion as a general partner pursuant to
 3242 the partnership agreement;

3243 (4) The person's expulsion as a general partner by the
3244 unanimous consent of the other partners if:

3245 (a) It is unlawful to carry on the limited partnership's
3246 activities with the person as a general partner;

3247 (b) There has been a transfer of all or substantially all
3248 of the person's transferable interest in the limited partnership,
3249 other than a transfer for security purposes, or a court order
3250 charging the person's interest, which has not been foreclosed;

3251 (c) The person is a corporation and, within 90 days after
3252 the limited partnership notifies the person that the corporation
3253 will be expelled as a general partner because the corporation has
3254 filed a certificate of dissolution or the equivalent, the
3255 corporation's charter has been revoked, or its right to conduct
3256 business has been suspended by the jurisdiction of its
3257 incorporation, and there is no revocation of the certificate of
3258 dissolution or no reinstatement of its charter or its right to
3259 conduct business; or

3260 (d) The person is a limited liability company or
3261 partnership that has been dissolved and whose business is being
3262 wound up;

3263 (5) On application by the limited partnership, the person's
3264 expulsion as a general partner by judicial determination because:

3265 (a) The person engaged in wrongful conduct that adversely
3266 and materially affected the limited partnership activities;

3267 (b) The person willfully or persistently committed a
3268 material breach of the partnership agreement or of a duty owed to
3269 the partnership or the other partners under s. 620.1408; or

3270 (c) The person engaged in conduct relating to the limited
 3271 partnership's activities which makes it not reasonably
 3272 practicable to carry on the activities of the limited partnership
 3273 with the person as a general partner;

3274 (6) The person's:

3275 (a) Becoming a debtor in bankruptcy;

3276 (b) Execution of an assignment for the benefit of
 3277 creditors;

3278 (c) Seeking, consenting to, or acquiescing in the
 3279 appointment of a trustee, receiver, or liquidator of the person
 3280 or of all or substantially all of the person's property; or

3281 (d) Failure, within 90 days after the appointment, to have
 3282 vacated or stayed the appointment of a trustee, receiver, or
 3283 liquidator of the general partner or of all or substantially all
 3284 of the person's property obtained without the person's consent or
 3285 acquiescence, or failing within 90 days after the expiration of a
 3286 stay to have the appointment vacated;

3287 (7) In the case of a person who is an individual:

3288 (a) The person's death;

3289 (b) The appointment of a guardian or general conservator
 3290 for the person; or

3291 (c) A judicial determination that the person has otherwise
 3292 become incapable of performing the person's duties as a general
 3293 partner under the partnership agreement;

3294 (8) In the case of a person that is a trust or is acting as
 3295 a general partner by virtue of being a trustee of a trust,
 3296 distribution of the trust's entire transferable interest in the

3297 limited partnership, but not merely by reason of the substitution
 3298 of a successor trustee;

3299 (9) In the case of a person that is an estate or is acting
 3300 as a general partner by virtue of being a personal representative
 3301 of an estate, distribution of the estate's entire transferable
 3302 interest in the limited partnership, but not merely by reason of
 3303 the substitution of a successor personal representative;

3304 (10) Termination of a general partner that is not an
 3305 individual, partnership, limited liability company, corporation,
 3306 trust, or estate; or

3307 (11) The limited partnership's participation in a
 3308 conversion or merger under this act, if the limited partnership:

3309 (a) Is not the converted or surviving entity; or

3310 (b) Is the converted or surviving entity but, as a result
 3311 of the conversion or merger, the person ceases to be a general
 3312 partner.

3313 620.1604 Person's power to dissociate as general partner;
 3314 wrongful dissociation.--

3315 (1) A person has the power to dissociate as a general
 3316 partner at any time, rightfully or wrongfully, by express will
 3317 pursuant to s. 620.1603(1).

3318 (2) A person's dissociation as a general partner is
 3319 wrongful only if:

3320 (a) It is in breach of an express provision of the
 3321 partnership agreement; or

3322 (b) It occurs before the termination of the limited
 3323 partnership, and:

HB 0595

2005

- 3324 1. The person withdraws as a general partner by express
3325 will;
- 3326 2. The person is expelled as a general partner by judicial
3327 determination under s. 620.1603(5);
- 3328 3. The person is dissociated as a general partner by
3329 becoming a debtor in bankruptcy; or
- 3330 4. In the case of a person that is not an individual, trust
3331 other than a business trust, or estate, the person is expelled or
3332 otherwise dissociated as a general partner because it willfully
3333 dissolved or terminated.
- 3334 (3) A person that wrongfully dissociates as a general
3335 partner is liable to the limited partnership and, subject to s.
3336 620.2001, to the other partners for damages caused by the
3337 dissociation. The liability is in addition to any other
3338 obligation of the general partner to the limited partnership or
3339 to the other partners.
- 3340 620.1605 Effect of dissociation as general partner.--
- 3341 (1) Upon a person's dissociation as a general partner:
- 3342 (a) The person's right to participate as a general partner
3343 in the management and conduct of the partnership's activities
3344 terminates.
- 3345 (b) The person's duty of loyalty as a general partner under
3346 s. 620.1408(2)(c) terminates.
- 3347 (c) The person's duty of loyalty as a general partner under
3348 s. 620.1408(2)(a) and (b) and duty of care under s. 620.1408(3)
3349 continue only with regard to matters arising and events occurring
3350 before the person's dissociation as a general partner.

HB 0595

2005

3351 (2) The person may sign and deliver to the Department of
3352 State for filing a statement of dissociation pertaining to the
3353 person and, at the request of the limited partnership, shall sign
3354 an amendment to the certificate of limited partnership which
3355 states that the person has dissociated.

3356 (3) Subject to s. 620.1704 and ss. 620.2101-620.2125, any
3357 transferable interest owned by the person immediately before
3358 dissociation in the person's capacity as a general partner is
3359 owned by the person as a mere transferee.

3360 (4) A person's dissociation as a general partner does not
3361 of itself discharge the person from any obligation to the limited
3362 partnership or the other partners which the person incurred while
3363 a general partner.

3364 620.1606 Power to bind and liability to limited partnership
3365 before dissolution of partnership of person dissociated as
3366 general partner.--

3367 (1) After a person is dissociated as a general partner and
3368 before the limited partnership is dissolved, converted under s.
3369 620.2102, or merged out of existence under s. 620.2106, the
3370 limited partnership is bound by an act of the person only if:

3371 (a) The act would have bound the limited partnership under
3372 s. 620.1402 before the dissociation.

3373 (b) At the time the other party enters into the
3374 transaction:

3375 1. Less than 2 years have passed since the dissociation.

3376 2. The other party does not have notice of the dissociation
3377 and reasonably believes that the person is a general partner.

HB 0595

2005

3378 (2) If a limited partnership is bound under subsection (1),
3379 the person dissociated as a general partner which caused the
3380 limited partnership to be bound is liable:

3381 (a) To the limited partnership for any damage caused to the
3382 limited partnership arising from the obligation incurred under
3383 subsection (1).

3384 (b) If a general partner or another person dissociated as a
3385 general partner is liable for the obligation, to the general
3386 partner or other person for any damage caused to the general
3387 partner or other person arising from the liability.

3388 620.1607 Liability to other persons of person dissociated
3389 as general partner.--

3390 (1) A person's dissociation as a general partner does not
3391 of itself discharge the person's liability as a general partner
3392 for an obligation of the limited partnership incurred before
3393 dissociation. Except as otherwise provided in subsections (2) and
3394 (3), the person is not liable for a limited partnership's
3395 obligation incurred after dissociation.

3396 (2) A person whose dissociation as a general partner
3397 resulted in a dissolution and winding up of the limited
3398 partnership's activities is liable to the same extent as a
3399 general partner under s. 620.1404 on an obligation incurred by
3400 the limited partnership under s. 620.1804.

3401 (3) A person that has dissociated as a general partner but
3402 whose dissociation did not result in a dissolution and winding up
3403 of the limited partnership's activities is liable on a
3404 transaction entered into by the limited partnership after the
3405 dissociation only if:

HB 0595

2005

3406 (a) A general partner would be liable on the transaction.

3407 (b) At the time the other party enters into the
3408 transaction:

3409 1. Less than 2 years have passed since the dissociation.

3410 2. The other party does not have notice of the dissociation
3411 and reasonably believes that the person is a general partner.

3412 (4) By agreement with a creditor of a limited partnership
3413 and the limited partnership, a person dissociated as a general
3414 partner may be released from liability for an obligation of the
3415 limited partnership.

3416 (5) A person dissociated as a general partner is released
3417 from liability for an obligation of the limited partnership if
3418 the limited partnership's creditor, with notice of the person's
3419 dissociation as a general partner but without the person's
3420 consent, agrees to a material alteration in the nature or time of
3421 payment of the obligation.

3422 620.1701 Partner's transferable interest; certificates.--

3423 (1) The only interest of a partner which is transferable is
3424 the partner's transferable interest. A transferable interest is
3425 personal property.

3426 (2) The partnership agreement may provide that a partner's
3427 interest in a limited partnership may be evidenced by a
3428 certificate issued by the limited partnership and may also
3429 provide for the assignment or transfer of any interest in the
3430 limited partnership represented by such a certificate and make
3431 other provisions with respect to such certificates.

3432 620.1702 Transfer of partner's transferable interest.--

- 3433 (1) A transfer, in whole or in part, of a partner's
3434 transferable interest:
- 3435 (a) Is permissible.
- 3436 (b) Does not by itself cause the partner's dissociation or
3437 a dissolution and winding up of the limited partnership's
3438 activities.
- 3439 (c) Does not, as against the other partners or the limited
3440 partnership, entitle the transferee to participate in the
3441 management or conduct of the limited partnership's activities, to
3442 require access to any information to which a limited partner
3443 would otherwise have access under s. 620.1304, except as
3444 otherwise provided in subsection (3), or to inspect or copy the
3445 required information or the limited partnership's other records.
- 3446 (2) A transferee has a right to receive, in accordance with
3447 the transfer:
- 3448 (a) Distributions to which the transferor would otherwise
3449 be entitled.
- 3450 (b) Upon the dissolution and winding up of the limited
3451 partnership's activities the net amount otherwise distributable
3452 to the transferor.
- 3453 (3) In a dissolution and winding up, a transferee is
3454 entitled to an account of the limited partnership's transactions
3455 only from the date of dissolution.
- 3456 (4) Upon transfer, the transferor retains the rights of a
3457 partner other than the interest in distributions transferred and
3458 retains all duties and obligations of a partner.

3459 (5) A limited partnership need not give effect to a
3460 transferee's rights under this section until the limited
3461 partnership has notice of the transfer.

3462 (6) A transfer of a partner's transferable interest in the
3463 limited partnership in violation of a restriction on transfer
3464 contained in the partnership agreement is ineffective as to a
3465 person having notice of the restriction at the time of transfer.

3466 (7) A transferee that becomes a partner with respect to a
3467 transferable interest is liable for the transferor's obligations
3468 under ss. 620.1502 and 620.1509. However, the transferee is not
3469 obligated for liabilities unknown to the transferee at the time
3470 the transferee became a partner.

3471 620.1703 Rights of creditor of partner or transferee.--

3472 (1) On application to a court of competent jurisdiction by
3473 any judgment creditor of a partner or transferee, the court may
3474 charge the partnership interest of the partner or transferable
3475 interest of a transferee with payment of the unsatisfied amount
3476 of the judgment with interest. To the extent so charged, the
3477 judgment creditor has only the rights of a transferee of the
3478 partnership interest.

3479 (2) This act shall not deprive any partner or transferee of
3480 the benefit of an exemption law applicable to the partner's
3481 partnership or transferee's transferable interest.

3482 (3) This section provides the exclusive remedy which a
3483 judgment creditor of a partner or transferee may use to satisfy a
3484 judgment out of the judgment debtor's interest in the limited
3485 partnership or transferable interest. Other remedies, including
3486 foreclosure on the partner's interest in the limited partnership

HB 0595

2005

3487 or a transferee's transferable interest and a court order for
3488 directions, accounts, and inquiries that the debtor general or
3489 limited partner might have made, are not available to the
3490 judgment creditor attempting to satisfy the judgment out of the
3491 judgment debtor's interest in the limited partnership and may not
3492 be ordered by a court.

3493 620.1704 Power of estate of deceased partner.--If a partner
3494 dies, the deceased partner's personal representative or other
3495 legal representative may exercise the rights of a transferee as
3496 provided in s. 620.1702 and, for the purposes of settling the
3497 estate, may exercise the rights of a current limited partner
3498 under s. 620.1304.

3499 620.1801 Nonjudicial dissolution.--

3500 (1) Except as otherwise provided in s. 620.1802, a limited
3501 partnership is dissolved, and its activities must be wound up,
3502 only upon the occurrence of any of the following:

3503 (a) The happening of an event specified in the partnership
3504 agreement;

3505 (b) The consent of all general partners and of all limited
3506 partners;

3507 (c) After the dissociation of a person as a general
3508 partner:

3509 1. If the limited partnership has at least one remaining
3510 general partner, the consent to dissolve the limited partnership
3511 by all partners at the time the consent is to be effective; or

3512 2. If the limited partnership does not have a remaining
3513 general partner, the passage of 90 days after the dissociation,
3514 unless before the end of the period:

HB 0595

2005

3515 a. Consent to continue the activities of the limited
3516 partnership and admit at least one general partner is given by
3517 all partners at the time the consent is to be effective;

3518 b. At least one person is admitted as a general partner in
3519 accordance with the consent;

3520 (d) The passage of 90 days after the dissociation of the
3521 limited partnership's last limited partner, unless before the end
3522 of the period the limited partnership admits at least one limited
3523 partner; or

3524 (e) The signing and filing of a declaration of dissolution
3525 by the Department of State under s. 620.1809(3).

3526 (2) Upon the occurrence of an event specified in paragraphs
3527 (1)(a)-(d), the limited partnership shall file a certificate of
3528 dissolution as provided in s. 620.1203.

3529 620.1802 Judicial dissolution.--On application by a
3530 partner, the circuit court may order dissolution of a limited
3531 partnership if it is not reasonably practicable to carry on the
3532 activities of the limited partnership in conformity with the
3533 partnership agreement.

3534 620.1803 Winding up.--

3535 (1) A limited partnership continues after dissolution only
3536 for the purpose of winding up its activities.

3537 (2) In winding up its activities, the limited partnership:

3538 (a) May preserve the limited partnership business or
3539 property as a going concern for a reasonable time, prosecute and
3540 defend actions and proceedings, whether civil, criminal, or
3541 administrative, transfer the limited partnership's property,

3542 settle disputes by mediation or arbitration, and perform other
3543 necessary acts.

3544 (b) Shall discharge, make provision for, or otherwise
3545 address the limited partnership's liabilities, settle and close
3546 the limited partnership's activities, and marshal and distribute
3547 the assets of the partnership.

3548 (c) May file a statement of termination as provided in s.
3549 620.1203.

3550 (3) If a dissolved limited partnership does not have a
3551 general partner, a person to wind up the dissolved limited
3552 partnership's activities may be appointed by the consent of
3553 limited partners owning a majority of the rights to receive
3554 distributions as limited partners at the time the consent is to
3555 be effective. A person appointed under this subsection:

3556 (a) Has the powers of a general partner under s. 620.1804.

3557 (b) Shall promptly amend the certificate of limited
3558 partnership to state:

3559 1. That the limited partnership does not have a general
3560 partner.

3561 2. The name of the person that has been appointed to wind
3562 up the limited partnership.

3563 3. The street and mailing address of the person.

3564 (4) On the application of any partner, the circuit court
3565 may order judicial supervision of the winding up, including the
3566 appointment of a person to wind up the dissolved limited
3567 partnership's activities, if:

3568 (a) A limited partnership does not have a general partner
 3569 and within a reasonable time following the dissolution no person
 3570 has been appointed pursuant to subsection (3); or

3571 (b) The applicant establishes other good cause.

3572 620.1804 Power of general partner and person dissociated
 3573 as general partner to bind partnership after dissolution.--

3574 (1) A limited partnership is bound by a general partner's
 3575 act after dissolution which:

3576 (a) Is appropriate for winding up the limited partnership's
 3577 activities; or

3578 (b) Would have bound the limited partnership under s.
 3579 620.1402 before dissolution, if, at the time the other party
 3580 enters into the transaction, the other party does not have notice
 3581 of the dissolution.

3582 (2) A person dissociated as a general partner binds a
 3583 limited partnership through an act occurring after dissolution
 3584 if:

3585 (a) At the time the other party enters into the
 3586 transaction:

3587 1. Less than 2 years have passed since the dissociation.

3588 2. The other party does not have notice of the dissociation
 3589 and reasonably believes that the person is a general partner.

3590 (b) The act:

3591 1. Is appropriate for winding up the limited partnership's
 3592 activities; or

3593 2. Would have bound the limited partnership under s.
 3594 620.1402 before dissolution and at the time the other party

3595 enters into the transaction the other party does not have notice
3596 of the dissolution.

3597 620.1805 Liability after dissolution of general partner and
3598 person dissociated as general partner to limited partnership,
3599 other general partners, and persons dissociated as general
3600 partner.--

3601 (1) If a general partner having knowledge of the
3602 dissolution causes a limited partnership to incur an obligation
3603 under s. 620.1804(1) by an act that is not appropriate for
3604 winding up the partnership's activities, the general partner is
3605 liable:

3606 (a) To the limited partnership for any damage caused to the
3607 limited partnership arising from the obligation.

3608 (b) If another general partner or a person dissociated as a
3609 general partner is liable for the obligation, to that other
3610 general partner or person for any damage caused to that other
3611 general partner or person arising from the liability.

3612 (2) If a person dissociated as a general partner causes a
3613 limited partnership to incur an obligation under s. 620.1804(2),
3614 the person is liable:

3615 (a) To the limited partnership for any damage caused to the
3616 limited partnership arising from the obligation.

3617 (b) If a general partner or another person dissociated as a
3618 general partner is liable for the obligation, to the general
3619 partner or other person for any damage caused to the general
3620 partner or other person arising from the liability.

3621 620.1806 Known claims against dissolved limited
3622 partnership.--

HB 0595

2005

3623 (1) A dissolved limited partnership or successor entity, as
3624 defined in subsection (14), may dispose of the known claims
3625 against it by following the procedure described in subsections
3626 (2), (3), and (4).

3627 (2) A dissolved limited partnership or successor entity
3628 shall deliver to each of its known claimants written notice of
3629 the dissolution at any time after its effective date. The written
3630 notice shall:

3631 (a) Provide a reasonable description of the claim that the
3632 claimant may be entitled to assert.

3633 (b) State whether the claim is admitted or not admitted, in
3634 whole or in part, and, if admitted:

3635 1. The amount that is admitted, which may be as of a given
3636 date.

3637 2. Any interest obligation if fixed by an instrument of
3638 indebtedness.

3639 (c) Provide a mailing address to which a claim may be sent.

3640 (d) State the deadline, which may not be fewer than 120
3641 days after the effective date of the written notice, by which
3642 confirmation of the claim must be delivered to the dissolved
3643 limited partnership or successor entity.

3644 (e) State that the dissolved limited partnership or
3645 successor entity may make distributions thereafter to other
3646 claimants and to the partners or transferees of the limited
3647 partnership or persons interested as having been such without
3648 further notice.

3649 (f) Unless the limited partnership has been throughout its
3650 existence a limited liability limited partnership, state that the

HB 0595

2005

3651 barring of a claim against the limited partnership will also bar
3652 any corresponding claim against any general partner or person
3653 dissociated as a general partner which is based on s. 620.1404.

3654 (3) A dissolved limited partnership or successor entity may
3655 reject, in whole or in part, any claim made by a claimant
3656 pursuant to this subsection by mailing notice of such rejection
3657 to the claimant within 90 days after receipt of such claim and,
3658 in all events, at least 150 days before expiration of 3 years
3659 following the effective date of dissolution. A notice sent by the
3660 dissolved limited partnership or successor entity pursuant to
3661 this subsection shall be accompanied by a copy of this section.

3662 (4) A dissolved limited partnership or successor entity
3663 electing to follow the procedures described in subsections (2)
3664 and (3) shall also give notice of the dissolution of the limited
3665 partnership to persons with known claims, that are contingent
3666 upon the occurrence or nonoccurrence of future events or
3667 otherwise conditional or unmatured, and request that such persons
3668 present such claims in accordance with the terms of such notice.
3669 Such notice shall be in substantially the form, and sent in the
3670 same manner, as described in subsection (2).

3671 (5) A dissolved limited partnership or successor entity
3672 shall offer any claimant whose known claim is contingent,
3673 conditional, or unmatured such security as the limited
3674 partnership or such entity determines is sufficient to provide
3675 compensation to the claimant if the claim matures. The dissolved
3676 limited partnership or successor entity shall deliver such offer
3677 to the claimant within 90 days after receipt of such claim and,
3678 in all events, at least 150 days before expiration of 3 years

3679 following the effective date of dissolution. If the claimant
3680 offered such security does not deliver in writing to the
3681 dissolved limited partnership or successor entity a notice
3682 rejecting the offer within 120 days after receipt of such offer
3683 for security, the claimant is deemed to have accepted such
3684 security as the sole source from which to satisfy his or her
3685 claim against the limited partnership.

3686 (6) A dissolved limited partnership or successor entity
3687 which has given notice in accordance with subsections (2) and
3688 (4), and is seeking the protection offered by subsections (9)
3689 and (12), shall petition the circuit court in the county in
3690 which the limited partnership's principal office is located or
3691 was located at the effective date of dissolution to determine
3692 the amount and form of security that will be sufficient to
3693 provide compensation to any claimant who has rejected the offer
3694 for security made pursuant to subsection (5).

3695 (7) A dissolved limited partnership or successor entity
3696 which has given notice in accordance with subsection (2), and is
3697 seeking the protection offered by subsections (9) and (12),
3698 shall petition the circuit court in the county in which the
3699 limited partnership's principal office is located or was located
3700 at the effective date of dissolution to determine the amount and
3701 form of security which will be sufficient to provide
3702 compensation to claimants whose claims are known to the limited
3703 partnership or successor entity but whose identities are
3704 unknown. The court shall appoint a guardian ad litem to
3705 represent all claimants whose identities are unknown in any
3706 proceeding brought under this subsection. The reasonable fees

3707 and expenses of such guardian, including all reasonable expert
3708 witness fees, shall be paid by the petitioner in such
3709 proceeding.

3710 (8) The giving of any notice or making of any offer
3711 pursuant to the provisions of this section shall not revive any
3712 claim then barred or constitute acknowledgment by the dissolved
3713 limited partnership or successor entity that any person to whom
3714 such notice is sent is a proper claimant and shall not operate
3715 as a waiver of any defense or counterclaim in respect of any
3716 claim asserted by any person to whom such notice is sent.

3717 (9) A dissolved limited partnership or successor entity
3718 which has followed the procedures described in subsections (2)-
3719 (7):

3720 (a) Shall pay the claims admitted or made and not rejected
3721 in accordance with subsection (3).

3722 (b) Shall post the security offered and not rejected
3723 pursuant to subsection (5).

3724 (c) Shall post any security ordered by the circuit court
3725 in any proceeding under subsections (6) and (7).

3726 (d) Shall pay or make provision for all other known
3727 obligations of the limited partnership or such successor entity.

3728
3729 If there are sufficient funds, such claims or obligations shall
3730 be paid in full, and any such provision for payments shall be
3731 made in full. If there are insufficient funds, such claims and
3732 obligations shall be paid or provided for according to their
3733 priority and, among claims of equal priority, ratably to the
3734 extent of funds legally available therefor. Any remaining funds

HB 0595

2005

3735 shall be distributed to the partners and transferees of the
3736 dissolved limited partnership; however, such distribution may
3737 not be made before the expiration of 150 days after the date of
3738 the last notice of any rejection given pursuant to subsection
3739 (3). In the absence of actual fraud, the judgment of the general
3740 partners of the dissolved limited partnership, or other person
3741 or persons winding up the limited partnership under s. 620.1803,
3742 or the governing persons of such successor entity, as to the
3743 provisions made for the payment of all obligations under
3744 paragraph (9)(d), is conclusive.

3745 (10) A dissolved limited partnership or successor entity
3746 which has not followed the procedures described in subsections
3747 (2) and (3) shall pay or make reasonable provision to pay all
3748 known claims and obligations, including all contingent,
3749 conditional, or unmatured claims known to the dissolved limited
3750 partnership or such successor entity and all claims which are
3751 known to the dissolved limited partnership or such successor
3752 entity but for which the identity of the claimant is unknown.
3753 If there are sufficient funds, such claims shall be paid in
3754 full, and any such provision made for payment shall be made in
3755 full. If there are insufficient funds, such claims and
3756 obligations shall be paid or provided for according to their
3757 priority and, among claims of equal priority, ratably to the
3758 extent of funds legally available therefor. Any remaining funds
3759 shall be distributed to the partners and transferees of the
3760 dissolved limited partnership.

3761 (11) Except for any general partner otherwise liable under
3762 s. 620.1404, s. 620.1405, or s. 620.1607, a partner or

3763 transferee of a dissolved limited partnership the assets of
3764 which were distributed pursuant to subsection (9) or subsection
3765 (10) is not liable for any claim against the limited partnership
3766 in an amount in excess of such partner's or transferee's pro
3767 rata share of the claim or the amount distributed to the partner
3768 or transferee, whichever is less.

3769 (12) A partner, whether or not a general partner, or
3770 transferee of a dissolved limited partnership, the assets of
3771 which were distributed pursuant to subsection (9), is not liable
3772 for any claim against the limited partnership which claim is
3773 known to the limited partnership or successor entity and on
3774 which a proceeding is not begun prior to the expiration of 3
3775 years following the effective date of dissolution.

3776 (13) Except for any general partner otherwise liable under
3777 s. 620.1404, s. 620.1405, or s. 620.1607 and not entitled to the
3778 relief provided under subsection (12), the aggregate liability
3779 of any person for claims against the dissolved limited
3780 partnership arising under this section or s. 620.1807 may not
3781 exceed the amount distributed to the person in dissolution.

3782 (14) As used in this section or s. 620.1807, the term
3783 "successor entity" includes any trust, receivership, or other
3784 legal entity governed by the laws of this state to which the
3785 remaining assets and liabilities of a dissolved limited
3786 partnership are transferred and which exists solely for the
3787 purposes of prosecuting and defending suits by or against the
3788 dissolved limited partnership, enabling the dissolved limited
3789 partnership to settle and close the business of the dissolved
3790 limited partnership, to dispose of and convey the property of

3791 the dissolved limited partnership, to discharge the liabilities
3792 of the dissolved limited partnership, and to distribute to the
3793 dissolved limited partnership's partners any remaining assets,
3794 but not for the purpose of continuing the business for which the
3795 dissolved limited partnership was organized.

3796 620.1807 Unknown claims against dissolved limited
3797 partnership.--

3798 (1) In addition to filing the certificate of dissolution
3799 under s. 620.1801(2), a dissolved limited partnership or
3800 successor entity, as defined in s. 620.1806(14), may also file
3801 with the Department of State on the form prescribed by the
3802 department a request that persons with claims against the
3803 limited partnership which are not known to the limited
3804 partnership or successor entity present them in accordance with
3805 the notice.

3806 (2) The notice must:

3807 (a) Describe the information that must be included in a
3808 claim and provide a mailing address to which the claim may be
3809 sent.

3810 (b) State that a claim against the limited partnership
3811 will be barred unless a proceeding to enforce the claim is
3812 commenced within 4 years after the filing of the notice.

3813 (3) If the dissolved limited partnership or successor
3814 entity files the notice in accordance with subsections (1) and
3815 (2), the claim of each of the following claimants is barred
3816 unless the claimant commences a proceeding to enforce the claim
3817 against the dissolved limited partnership within 4 years after
3818 the filing date:

3819 (a) A claimant who did not receive written notice under s.
 3820 620.1806(9) or whose claim was not provided for under s.
 3821 620.1806(10), whether such claim is based on an event occurring
 3822 before or after the effective date of dissolution.

3823 (b) A claimant whose claim was timely sent to the
 3824 dissolved limited partnership but not acted on.

3825 (4) A claim may be enforced under this section:

3826 (a) Against the dissolved limited partnership, to the
 3827 extent of its undistributed assets; or

3828 (b) If the assets have been distributed in liquidation,
 3829 against a partner or transferee of the dissolved limited
 3830 partnership to the extent of such partner's or transferee's pro
 3831 rata share of the claim or the limited partnership assets
 3832 distributed to such partner or transferee in liquidation,
 3833 whichever is less, provided the aggregate liability of any
 3834 person for all claims against the dissolved limited partnership
 3835 arising under this section or s. 620.1806, or, with respect to a
 3836 limited partner, otherwise, may not exceed the amount
 3837 distributed to the person in liquidation; or

3838 (c) Against any person liable on the claim under s.
 3839 620.1404.

3840 620.1808 Liability of general partner and person
 3841 dissociated as general partner when claim against limited
 3842 partnership barred.--If a claim is barred under s. 620.1806 or s.
 3843 620.1807, any corresponding claim under s. 620.1404, s. 620.1405,
 3844 or s. 620.1607 is also barred.

3845 620.1809 Administrative dissolution.--

3846 (1) The Department of State may dissolve a limited
3847 partnership administratively if the limited partnership does not,
3848 within 60 days after the due date:

3849 (a) Pay any fee or penalty due to the Department of State
3850 under this act or other law;

3851 (b) Deliver its annual report to the Department of State;

3852 (c) Appoint and maintain a registered agent as required by
3853 s. 620.1114; or

3854 (d) Deliver for filing a statement of a change under s.
3855 620.1115 within 30 days after a change has occurred in the name
3856 of the registered agent or the registered office address.

3857 (2) If the Department of State determines that a ground
3858 exists for administratively dissolving a limited partnership, the
3859 Department of State shall file a record of the determination and
3860 send a copy to the limited partnership.

3861 (3) If within 60 days after sending the copy the limited
3862 partnership does not correct each ground for dissolution or
3863 demonstrate to the reasonable satisfaction of the Department of
3864 State that each ground determined by the Department of State does
3865 not exist, the Department of State shall administratively
3866 dissolve the limited partnership by preparing, signing, and
3867 filing a declaration of dissolution that states the grounds for
3868 dissolution. The Department of State shall send the limited
3869 partnership a copy of the filed declaration.

3870 (4) A limited partnership administratively dissolved
3871 continues its existence but may carry on only activities
3872 necessary to wind up its activities and liquidate its assets

3873 under ss. 620.1803 and 620.1812 and to notify claimants under ss.
3874 620.1806 and 620.1807.

3875 (5) The administrative dissolution of a limited partnership
3876 does not terminate the authority of its agent for service of
3877 process.

3878 (6) A partner of a limited partnership is not liable for
3879 the obligations of the limited partnership solely by reason of
3880 the foreign limited partnership's having been administratively
3881 dissolved pursuant to this section.

3882 620.1810 Reinstatement following administrative
3883 dissolution.--

3884 (1) A limited partnership that has been administratively
3885 dissolved under s. 620.1809 may apply to the Department of State
3886 for reinstatement at any time after the effective date of
3887 dissolution. The limited partnership must submit a form of
3888 reinstatement prescribed and furnished by the Department of State
3889 together with all fees then owed by the limited partnership,
3890 computed at a rate provided by law at the time the limited
3891 partnership applies for reinstatement.

3892 (2) As an alternative to submitting the form of
3893 reinstatement referred to in subsection (1), the limited
3894 partnership may submit a current annual report, signed by its
3895 registered agent and a general partner, which contains the same
3896 information described in subsection (1).

3897 (3) If the Department of State determines that the
3898 application for reinstatement, or current annual report described
3899 in subsection (2), contains the information required by

HB 0595

2005

3900 subsection (1) and that the information is correct, the
3901 Department of State shall reinstate the limited partnership.

3902 (4) When the reinstatement becomes effective, the
3903 reinstatement relates back to and takes effect as of the
3904 effective date of the administrative dissolution, and the limited
3905 partnership may resume its activities as if the administrative
3906 dissolution had never occurred.

3907 620.1811 Appeal from denial of reinstatement.--

3908 (1) If the Department of State denies a limited
3909 partnership's request for reinstatement following administrative
3910 dissolution, the Department of State shall prepare, sign, and
3911 file a notice that explains the reason or reasons for denial and
3912 serve the limited partnership with a copy of the notice.

3913 (2) Within 30 days after service of the notice of denial,
3914 the limited partnership may appeal from the denial of
3915 reinstatement by petitioning the circuit court to set aside the
3916 dissolution. The petition must be served on the Department of
3917 State and contain a copy of the Department of State's declaration
3918 of dissolution, the limited partnership's application for
3919 reinstatement, and the Department of State's notice of denial.

3920 (3) The court may summarily order the Department of State
3921 to reinstate the dissolved limited partnership or may take other
3922 action the court considers appropriate.

3923 620.1812 Revocation of dissolution.--

3924 (1) A limited partnership that has dissolved as the result
3925 of an event described in ss. 620.1801(1)(a)-(d) and filed a
3926 certificate of dissolution with the Department of State may
3927 revoke its dissolution at any time prior to the expiration of 120

3928 days following the effective date of its certificate of
 3929 dissolution.

3930 (2) Revocation of dissolution shall be authorized in the
 3931 same manner as the dissolution was authorized.

3932 (3) After revocation of dissolution is authorized, the
 3933 limited partnership shall deliver a certificate of revocation of
 3934 dissolution to the Department of State for filing, together with
 3935 a copy of its certificate of dissolution, that sets forth:

3936 (a) The name of the limited partnership.

3937 (b) The effective date of the dissolution that was
 3938 revoked.

3939 (c) The date that the revocation of dissolution was
 3940 authorized.

3941 (4) If there has been substantial compliance with
 3942 subsection (3), subject to s. 620.1206(3) the revocation of
 3943 dissolution is effective when the Department of State files the
 3944 certificate of revocation of dissolution.

3945 (5) When the revocation of dissolution is effective, the
 3946 revocation of dissolution relates back to and takes effect as of
 3947 the effective date of the dissolution, and the limited
 3948 partnership resumes carrying on its business as if dissolution
 3949 had never occurred.

3950 620.1813 Disposition of assets; when contributions
 3951 required.--

3952 (1) In winding up a limited partnership's activities, the
 3953 assets of the limited partnership, including the contributions
 3954 required by this section, must be applied to satisfy the limited

3955 partnership's obligations to creditors, including, to the extent
3956 permitted by law, partners that are creditors.

3957 (2) Any surplus remaining after the limited partnership
3958 complies with subsection (1) must be paid in cash as a
3959 distribution.

3960 (3) If a limited partnership's assets are insufficient to
3961 satisfy all of its obligations under subsection (1), with respect
3962 to each unsatisfied obligation incurred when the limited
3963 partnership was not a limited liability limited partnership,
3964 subject to s. 620.1808 the following rules apply:

3965 (a) Each person that was a general partner when the
3966 obligation was incurred and that has not been released from the
3967 obligation under s. 620.1607 shall contribute to the limited
3968 partnership for the purpose of enabling the limited partnership
3969 to satisfy the obligation. The contribution due from each of
3970 those persons is in proportion to the right to receive
3971 distributions in the capacity of general partner in effect for
3972 each of those persons when the obligation was incurred.

3973 (b) If a person does not contribute the full amount
3974 required under paragraph (a) with respect to an unsatisfied
3975 obligation of the limited partnership, the other persons required
3976 to contribute by paragraph (a) on account of the obligation shall
3977 contribute the additional amount necessary to discharge the
3978 obligation. The additional contribution due from each of those
3979 other persons is in proportion to the right to receive
3980 distributions in the capacity of general partner in effect for
3981 each of those other persons when the obligation was incurred.

HB 0595

2005

3982 (c) If a person does not make the additional contribution
3983 required by paragraph (b), further additional contributions are
3984 determined and due in the same manner as provided in that
3985 paragraph.

3986 (4) A person that makes an additional contribution under
3987 paragraph (3)(b) or paragraph (3)(c) may recover from any person
3988 whose failure to contribute under paragraph (3)(a) or paragraph
3989 (3)(b) necessitated the additional contribution. A person may not
3990 recover under this subsection more than the amount additionally
3991 contributed. A person's liability under this subsection may not
3992 exceed the amount the person failed to contribute.

3993 (5) The estate of a deceased individual is liable for the
3994 person's obligations under this section.

3995 (6) An assignee for the benefit of creditors of a limited
3996 partnership or a partner, or a person appointed by a court to
3997 represent creditors of a limited partnership or a partner, may
3998 enforce a person's obligation to contribute under subsection (3).

3999 620.1901 Governing law regarding foreign limited
4000 partnerships.--

4001 (1) The laws of the state or other jurisdiction under which
4002 a foreign limited partnership is organized govern relations among
4003 the partners of the foreign limited partnership and between the
4004 partners and the foreign limited partnership and the liability of
4005 partners as partners for an obligation of the foreign limited
4006 partnership.

4007 (2) A foreign limited partnership may not be denied a
4008 certificate of authority by reason of any difference between the

4009 laws of the jurisdiction under which the foreign limited
4010 partnership is organized and the laws of this state.

4011 (3) A certificate of authority does not authorize a foreign
4012 limited partnership to engage in any business or exercise any
4013 power that a limited partnership may not engage in or exercise in
4014 this state.

4015 620.1902 Application for certificate of authority.--

4016 (1) A foreign limited partnership shall apply for a
4017 certificate of authority to transact business in this state by
4018 delivering a signed application to the Department of State for
4019 filing. The application must state:

4020 (a) The name of the foreign limited partnership and, if the
4021 name does not comply with s. 620.1108, an alternate name adopted
4022 pursuant to s. 620.1905(1).

4023 (b) The state or other jurisdiction under whose law the
4024 foreign limited partnership is organized and the date of its
4025 formation.

4026 (c) The principal office and mailing address of the foreign
4027 limited partnership.

4028 (d) The name, street address in this state, and written
4029 acceptance of the foreign limited partnership's initial
4030 registered agent in this state.

4031 (e) The name and principal office and mailing address of
4032 each of the foreign limited partnership's general partners. Each
4033 general partner that is not an individual must be organized or
4034 otherwise registered with the Department of State as required by
4035 law, must maintain an active status, and may not be dissolved,
4036 revoked, or withdrawn.

HB 0595

2005

4037 (f) Whether the foreign limited partnership is a foreign
4038 limited liability limited partnership.

4039 (2) A foreign limited partnership shall deliver with the
4040 completed application a certificate of existence or a record of
4041 similar import signed by the Department of State or other
4042 official having custody of the foreign limited partnership's
4043 publicly filed records in the state or other jurisdiction under
4044 whose law the foreign limited partnership is organized, dated not
4045 more than 90 days prior to the delivery of the application to the
4046 Secretary of State.

4047 620.1903 Activities not constituting transacting
4048 business.--

4049 (1) Activities of a foreign limited partnership which do
4050 not constitute transacting business in this state within the
4051 meaning of s. 620.1902 include:

4052 (a) Maintaining, defending, and settling an action or
4053 proceeding.

4054 (b) Holding meetings of its partners or carrying on any
4055 other activity concerning its internal affairs.

4056 (c) Maintaining accounts in financial institutions.

4057 (d) Maintaining offices or agencies for the transfer,
4058 exchange, and registration of the foreign limited partnership's
4059 own securities or maintaining trustees or depositories with
4060 respect to those securities.

4061 (e) Selling through independent contractors.

4062 (f) Soliciting or obtaining orders, whether by mail or
4063 electronic means or through employees, agents, or otherwise, if

4064 the orders require acceptance outside this state before they
 4065 become contracts.

4066 (g) Creating or acquiring indebtedness, mortgages, or
 4067 security interests in real or personal property.

4068 (h) Securing or collecting debts or enforcing mortgages or
 4069 other security interests in property securing the debts, and
 4070 holding, protecting, and maintaining property so acquired.

4071 (i) Conducting an isolated transaction that is completed
 4072 within 30 days and is not one in the course of similar
 4073 transactions of a like manner.

4074 (j) Transacting business in interstate commerce.

4075 (k) Owning and controlling a subsidiary corporation
 4076 incorporated in or transacting business within this state or
 4077 voting the stock of any corporation which it has lawfully
 4078 acquired.

4079 (l) Owning a limited partnership interest in a limited
 4080 partnership that is doing business within this state, unless such
 4081 limited partner manages or controls the partnership or exercises
 4082 the powers and duties of a general partner.

4083 (m) Owning, without more, real or personal property.

4084 (2) The list of activities in subsection (1) is not
 4085 exhaustive.

4086 (3) For purposes of s. 620.1902, the ownership in this
 4087 state of income-producing real property or tangible personal
 4088 property, other than property excluded under subsection (1),
 4089 constitutes transacting business in this state.

4090 (4) This section does not apply in determining the contacts
 4091 or activities that may subject a foreign limited partnership to

HB 0595

2005

4092 service of process, taxation, or regulation under any other law
4093 of this state.

4094 620.1904 Filing of certificate of authority.--Unless the
4095 Department of State determines that an application for a
4096 certificate of authority does not comply with the filing
4097 requirements of this act, the Department of State, upon payment
4098 of all filing fees, shall authorize the foreign limited
4099 partnership to transact business in this state.

4100 620.1905 Noncomplying name of foreign limited
4101 partnership.--

4102 (1) A foreign limited partnership whose name does not
4103 comply with s. 620.1108 may not obtain a certificate of authority
4104 until it adopts, for the purpose of transacting business in this
4105 state, an alternate name that complies with s. 620.1108. A
4106 foreign limited partnership that adopts an alternate name under
4107 this subsection and then obtains a certificate of authority with
4108 the name need not comply with s. 865.09. After obtaining a
4109 certificate of authority with an alternate name, a foreign
4110 limited partnership shall transact business in this state under
4111 the name unless the foreign limited partnership is authorized
4112 under s. 865.09 to transact business in this state under another
4113 name.

4114 (2) If a foreign limited partnership authorized to transact
4115 business in this state changes its name to one that does not
4116 comply with s. 620.1108, it may not thereafter transact business
4117 in this state until it complies with subsection (1) and obtains
4118 an amended certificate of authority.

4119 620.1906 Revocation of certificate of authority.--

HB 0595

2005

4120 (1) A certificate of authority of a foreign limited
4121 partnership to transact business in this state may be revoked by
4122 the Department of State in the manner provided in subsections (2)
4123 and (3) if the foreign limited partnership does not:

4124 (a) Pay, within 60 days after the due date, any fee, tax,
4125 or penalty due to the Department of State under this act or other
4126 law;

4127 (b) Deliver, within 60 days after the due date, its annual
4128 report required under s. 620.1210;

4129 (c) Appoint and maintain an agent for service of process as
4130 required by s. 620.1114(2); or

4131 (d) Deliver for filing a statement of a change under s.
4132 620.1115 within 30 days after a change has occurred in the name
4133 or address of the agent.

4134 (2) In order to revoke a certificate of authority, the
4135 Department of State must prepare, sign, and file a notice of
4136 revocation and send a copy to the foreign limited partnership.
4137 The notice must state:

4138 (a) The effective date of the revocation, which must be at
4139 least 60 days after the date the Department of State sends the
4140 copy.

4141 (b) The foreign limited partnership's failures to comply
4142 with subsection (1) which are the reason for the revocation.

4143 (3) The authority of the foreign limited partnership to
4144 transact business in this state ceases on the effective date of
4145 the notice of revocation unless before that date the foreign
4146 limited partnership cures each failure to comply with subsection
4147 (1) stated in the notice. If the foreign limited partnership

4148 cures the failures, the Department of State shall so indicate on
4149 the filed notice.

4150 620.1907 Cancellation of certificate of authority; effect
4151 of failure to have certificate.--

4152 (1) In order to cancel its certificate of authority to
4153 transact business in this state, a foreign limited partnership
4154 must deliver to the Department of State for filing a notice of
4155 cancellation. The certificate is canceled when the notice becomes
4156 effective under s. 620.1206. The notice of cancellation shall be
4157 signed by at least one general partner and set forth the
4158 following:

4159 (a) The name of the foreign limited partnership as it
4160 appears on the records of the Department of State.

4161 (b) The jurisdiction of its formation.

4162 (c) The date the foreign limited partnership was authorized
4163 to transact business in this state.

4164 (d) A statement that the foreign limited partnership is
4165 canceling its certificate of authority in this state.

4166 (2) A foreign limited partnership transacting business in
4167 this state may not maintain an action or proceeding in this state
4168 until the foreign limited partnership has a certificate of
4169 authority to transact business in this state.

4170 (3) The failure of a foreign limited partnership to have a
4171 certificate of authority to transact business in this state does
4172 not impair the validity of a contract or act of the foreign
4173 limited partnership or prevent the foreign limited partnership
4174 from defending an action or proceeding in this state.

HB 0595

2005

4175 (4) A partner of a foreign limited partnership is not
4176 liable for the obligations of the foreign limited partnership
4177 solely by reason of the foreign limited partnership's having
4178 transacted business in this state without a certificate of
4179 authority.

4180 (5) If a foreign limited partnership transacts business in
4181 this state without a certificate of authority or cancels its
4182 certificate of authority, the foreign limited partnership shall
4183 appoint the Department of State as its agent for service of
4184 process for rights of action arising out of the transaction of
4185 business in this state.

4186 620.1908 Action by Attorney General.--The Attorney General
4187 may maintain an action to restrain a foreign limited partnership
4188 from transacting business in this state in violation of this
4189 act.

4190 620.1909 Reinstatement following administrative
4191 revocation.--

4192 (1) A foreign limited partnership whose certificate of
4193 authority was administratively revoked under s. 620.1906 may
4194 apply to the Department of State for reinstatement at any time
4195 after the effective date of revocation of the certificate of
4196 authority. The foreign limited partnership must submit a form of
4197 reinstatement prescribed and furnished by the Department of State
4198 together with all fees then owed by the foreign limited
4199 partnership, computed at a rate provided by law at the time the
4200 foreign limited partnership applies for reinstatement.

4201 (2) As an alternative to submitting the form of
4202 reinstatement referred to in subsection (1), the foreign limited

HB 0595

2005

4203 partnership may submit a current annual report, signed by its
4204 registered agent and a general partner, which contains the same
4205 information described in subsection (1).

4206 (3) If the Department of State determines that the
4207 application for reinstatement or the current annual report
4208 described in subsection (2) contains the information required by
4209 subsection (1) and that the information is correct, it shall
4210 reinstate the foreign limited partnership's certificate of
4211 authority.

4212 (4) When the reinstatement becomes effective, the
4213 reinstatement relates back to and takes effect as of the
4214 effective date of the administrative revocation, and the foreign
4215 limited partnership may resume its activities as if the
4216 administrative revocation had never occurred.

4217 620.1910 Amending certificate of authority.--

4218 (1) A foreign limited partnership authorized to transact
4219 business in this state shall make application to the Department
4220 of State to obtain an amended certificate of authority to:

4221 (a) Change its name on the records of the Department of
4222 State;

4223 (b) Amend its jurisdiction;

4224 (c) Change its general partners;

4225 (d) Add or delete its status as a limited liability limited
4226 partnership; or

4227 (e) Amend any false statement contained in its application
4228 for certificate of authority.

HB 0595

2005

4229 (2) Such application shall be made within 30 days after the
4230 occurrence of any change mentioned in subsection (1), must be
4231 signed by at least one general partner, and shall set forth:

4232 (a) The name of the foreign limited partnership as it
4233 appears on the records of the Department of State.

4234 (b) The jurisdiction of its formation.

4235 (c) The date the foreign limited partnership was authorized
4236 to transact business in this state.

4237 (d) If the name of the foreign limited partnership has been
4238 changed, the name relinquished and its new name.

4239 (e) If the amendment changes the jurisdiction of the
4240 foreign limited partnership, a statement of such change.

4241 (f) If the amendment changes the general partners, the name
4242 and address of each new general partner. Each general partner
4243 that is not an individual must be registered with the Department
4244 of State as required by law, must maintain an active status, and
4245 must not be dissolved, revoked, or withdrawn.

4246 (g) If the foreign limited partnership corrects a false
4247 statement, the statement it is correcting and a statement
4248 containing the corrected information.

4249 (3) The requirements of s. 620.1902(2) for obtaining an
4250 original certificate of authority apply to obtaining an amended
4251 certificate under this section.

4252 620.2001 Direct action by partner.--

4253 (1) Subject to subsection (2), a partner may maintain a
4254 direct action against the limited partnership or another partner
4255 for legal or equitable relief, with or without an accounting as
4256 to the partnership's activities, to enforce the rights and

4257 otherwise protect the interests of the partner, including rights
 4258 and interests under the partnership agreement or this act or
 4259 arising independently of the partnership relationship.

4260 (2) A partner commencing a direct action under this section
 4261 is required to plead and prove an actual or threatened injury
 4262 that is not solely the result of an injury suffered or threatened
 4263 to be suffered by the limited partnership.

4264 (3) The accrual of, and any time limitation on, a right of
 4265 action for a remedy under this section is governed by other law.
 4266 A right to an accounting upon a dissolution and winding up does
 4267 not revive a claim barred by law.

4268 620.2002 Derivative action.--A partner may maintain a
 4269 derivative action to enforce a right of a limited partnership
 4270 if:

4271 (1) The partner first makes a demand on the general
 4272 partners requesting that they cause the limited partnership to
 4273 bring an action to enforce the right and the general partners do
 4274 not bring the action within a reasonable time; or

4275 (2) A demand would be futile.

4276 620.2003 Proper plaintiff.--A derivative action may be
 4277 maintained only by a person that is a partner at the time the
 4278 action is commenced and:

4279 (1) Was a partner when the conduct giving rise to the
 4280 action occurred; or

4281 (2) Whose status as a partner devolved upon the person by
 4282 operation of law or pursuant to the terms of the partnership
 4283 agreement from a person that was a partner at the time of the
 4284 conduct.

4285 620.2004 Pleading.--In a derivative action, the complaint
4286 must state with particularity:

4287 (1) The date and content of plaintiff's demand and the
4288 general partners' response to the demand; or

4289 (2) Why demand should be excused as futile.

4290 620.2005 Proceeds and expenses.--

4291 (1) Except as otherwise provided in subsection (2):

4292 (a) Any proceeds or other benefits of a derivative action,
4293 whether by judgment, compromise, or settlement, belong to the
4294 limited partnership and not to the derivative plaintiff.

4295 (b) If the derivative plaintiff receives any proceeds, the
4296 derivative plaintiff shall immediately remit such proceeds to the
4297 limited partnership.

4298 (2) If a derivative action is successful in whole or in
4299 part, the court may award the plaintiff reasonable expenses,
4300 including reasonable attorney's fees, from the limited
4301 partnership.

4302 620.2101 Definitions.--As used in this section and ss.
4303 620.2202-620.2225:

4304 (1) "Constituent limited partnership" means a constituent
4305 organization that is a limited partnership.

4306 (2) "Constituent organization" means an organization that
4307 is party to a merger.

4308 (3) "Converted organization" means the organization into
4309 which a converting organization converts pursuant to ss.

4310 620.2102-620.2105.

4311 (4) "Converting limited partnership" means a converting
4312 organization that is a limited partnership.

4313 (5) "Converting organization" means an organization that
4314 converts into another organization pursuant to s. 620.2102.

4315 (6) "General partner" means a general partner of a limited
4316 partnership.

4317 (7) "Governing law" of an organization means the law that
4318 governs the organization's internal affairs.

4319 (8) "Organization" means a corporation; general
4320 partnership, including a limited liability partnership; limited
4321 partnership, including a limited liability limited partnership;
4322 limited liability company; common law or business trust or
4323 association; real estate investment trust; or any other person
4324 organized under a governing statute or other applicable law,
4325 provided such term does not include an organization that is not
4326 organized for profit unless the not-for-profit organization is
4327 the converted organization or the surviving organization in a
4328 conversion or a merger governed by this act. The term includes
4329 domestic and foreign organizations.

4330 (9) "Organizational documents" means:

4331 (a) For a domestic or foreign general partnership, its
4332 partnership agreement.

4333 (b) For a limited partnership or foreign limited
4334 partnership, its certificate of limited partnership and
4335 partnership agreement.

4336 (c) For a domestic or foreign limited liability company,
4337 its articles of organization and operating agreement, or
4338 comparable records as provided in its governing law.

4339 (d) For a business trust, its agreement of trust and
4340 declaration of trust.

4341 (e) For a domestic or foreign corporation for profit, its
4342 articles of incorporation, bylaws, and other agreements among its
4343 shareholders which are authorized by its governing law, or
4344 comparable records as provided in its governing law.

4345 (f) For any other organization, the basic records that
4346 create the organization and determine its internal governance and
4347 the relations among the persons that own such organization, have
4348 an interest in the organization, or are members of the
4349 organization.

4350 (10) "Personal liability" means personal liability for a
4351 debt, liability, or other obligation of an organization which is
4352 imposed on a person that coowns, has an interest in, or is a
4353 member of the organization:

4354 (a) By the organization's governing law solely by reason of
4355 the person's coowning, having an interest in, or being a member
4356 of the organization; or

4357 (b) By the organization's organizational documents under a
4358 provision of the organization's governing law authorizing those
4359 documents to make one or more specified persons liable for all or
4360 specified debts, liabilities, and other obligations of the
4361 organization solely by reason of the person or persons' coowning,
4362 having an interest in, or being a member of the organization.

4363 (11) "Surviving organization" means an organization into
4364 which one or more other organizations are merged. A surviving
4365 organization may preexist the merger or be created by the merger.

4366 620.2102 Conversion.--

4367 (1) An organization other than a limited partnership may
4368 convert to a limited partnership, and a limited partnership may

HB 0595

2005

4369 convert to another organization, other than an organization which
4370 is also a domestic limited partnership governed by this act,
4371 pursuant to this section and ss. 620.2103-620.2105 and a plan of
4372 conversion, if:

4373 (a) The other organization's governing law authorizes the
4374 conversion.

4375 (b) The conversion is permitted by the law of the
4376 jurisdiction that enacted the governing law.

4377 (c) The other organization complies with its governing law
4378 in effecting the conversion.

4379 (2) A plan of conversion must be in a record and must
4380 include:

4381 (a) The name and form of the organization before
4382 conversion.

4383 (b) The name and form of the organization after conversion.

4384 (c) The terms and conditions of the conversion, including
4385 the manner and basis for converting interests in the converting
4386 organization into any combination of money, interests in the
4387 converted organization, and other consideration.

4388 (d) The organizational documents of the converted
4389 organization.

4390 620.2103 Action on plan of conversion by converting limited
4391 partnership.--

4392 (1) A plan of conversion must be consented to by all of the
4393 general partners of a converting limited partnership. Subject to
4394 s. 620.2110, the plan of conversion must also be consented to by
4395 those limited partners who own a majority of the rights to
4396 receive distributions as limited partners at the time the consent

HB 0595

2005

4397 is effective, provided, if there is more than one class or group
4398 of limited partners, the plan of conversion must be consented to
4399 by those limited partners in each class or group which owns a
4400 majority of the rights to receive distributions as limited
4401 partners in that class or group at the time the consent is
4402 effective. The consents required by this subsection must be in,
4403 or evidenced by, a record.

4404 (2) Subject to s. 620.2110 and any contractual rights,
4405 after a conversion is approved, and at any time before a filing
4406 is made under s. 620.2104, a converting limited partnership may
4407 amend the plan or abandon the planned conversion:

4408 (a) As provided in the plan.

4409 (b) Except as prohibited by the plan, by the same consent
4410 as was required to approve the plan.

4411 620.2104 Filings required for conversion; effective date.--

4412 (1) After a plan of conversion is approved:

4413 (a) A converting limited partnership shall deliver to the
4414 Department of State for filing a certificate of conversion,
4415 signed by each general partner listed in the certificate of
4416 limited partnership, and must include:

4417 1. A statement that the limited partnership has been
4418 converted into another organization.

4419 2. The name and form of the organization and the
4420 jurisdiction of its governing law.

4421 3. The date the conversion is effective under the governing
4422 law of the converted organization.

4423 4. A statement that the conversion was approved as required
4424 by this act.

4425 5. A statement that the conversion was approved as required
4426 by the governing law of the converted organization.

4427 6. If the converted organization is a foreign organization
4428 not authorized to transact business in this state, the street and
4429 mailing address of an office which the Department of State may
4430 use for the purposes of s. 620.2105(3).

4431 (b) If the converting organization is not a converting
4432 limited partnership, the converting organization shall deliver to
4433 the Department of State for filing:

4434 1. A certificate of limited partnership containing the
4435 information required by s. 620.1201, signed by each general
4436 partner as required by s. 620.1204(1)(a).

4437 2. A certificate of conversion, which certificate of
4438 conversion must include:

4439 a. A statement that the limited partnership was converted
4440 from another organization.

4441 b. The name and form of the converting organization and the
4442 jurisdiction of its governing law.

4443 c. A statement that the conversion was approved as required
4444 by this act.

4445 d. A statement that the conversion was approved in a manner
4446 that complied with the converting organization's governing law.

4447 (2) A conversion becomes effective:

4448 (a) If the converted organization is a limited partnership,
4449 when the certificate of limited partnership takes effect.

4450 (b) If the converted organization is not a limited
4451 partnership, as provided by the governing law of the converted
4452 organization.

HB 0595

2005

4453 620.2105 Effect of conversion.--

4454 (1) An organization that has been converted pursuant to
4455 this act is for all purposes the same entity that existed before
4456 the conversion.

4457 (2) When a conversion takes effect:

4458 (a) Title to all real and other property, or any interest
4459 in such property, owned by the converting organization at the
4460 time of its conversion remains vested in the converted
4461 organization without reversion or impairment under this act.

4462 (b) All debts, liabilities, and other obligations of the
4463 converting organization continue as obligations of the converted
4464 organization.

4465 (c) An action or proceeding pending by or against the
4466 converting organization may be continued as if the conversion had
4467 not occurred.

4468 (d) Except as prohibited by other law, all of the rights,
4469 privileges, immunities, powers, and purposes of the converting
4470 organization remain vested in the converted organization.

4471 (e) Except as otherwise provided in the plan of conversion,
4472 the terms and conditions of the plan of conversion take effect.

4473 (f) Except as otherwise agreed, the conversion does not
4474 dissolve a converting limited partnership for the purposes of ss.
4475 620.1801-620.1813.

4476 (3) A converted organization that is a foreign organization
4477 consents to the jurisdiction of the courts of this state to
4478 enforce any obligation owed by the converting limited
4479 partnership, if before the conversion the converting limited
4480 partnership was subject to suit in this state on the obligation.

4481 A converted organization that is a foreign organization and not
4482 authorized to transact business in this state appoints the
4483 Department of State as its agent for service of process for
4484 purposes of enforcing an obligation under this subsection and any
4485 appraisal rights of limited partners under ss. 620.2113-620.2124
4486 to the extent applicable to the conversion. Service on the
4487 Department of State under this subsection is made in the same
4488 manner and with the same consequences as in s. 620.1117(3) and
4489 (4).

4490 (4) A copy of the statement of conversion, certified by the
4491 Department of State, may be filed in any county of this state in
4492 which the converting organization holds an interest in real
4493 property.

4494 620.2106 Merger.--

4495 (1) A limited partnership may merge with one or more other
4496 constituent organizations pursuant to this section and ss.
4497 620.2107-620.2109 and a plan of merger, if:

4498 (a) The governing law of each of the other organizations
4499 authorizes the merger.

4500 (b) The merger is permitted by the law of a jurisdiction
4501 that enacted each of those governing law.

4502 (c) Each of the other organizations complies with its
4503 governing law in effecting the merger.

4504 (2) A plan of merger must be in a record and must include:

4505 (a) The name and form of each constituent organization.

4506 (b) The name and form of the surviving organization.

4507 (c) The terms and conditions of the merger, including the
4508 manner and basis for converting the interests in each constituent

4509 organization into any combination of money, interests in the
4510 surviving organization, and other consideration.

4511 (d) Any amendments to be made by the merger to the
4512 surviving organization's organizational documents.

4513 620.2107 Action on plan of merger by constituent limited
4514 partnership.--

4515 (1) A plan of merger must be consented to by all of the
4516 general partners of a constituent limited partnership. Subject to
4517 s. 620.2110, the plan of merger must also be consented to by
4518 those limited partners who own a majority of the rights to
4519 receive distributions as limited partners at the time the consent
4520 is effective, provided, if there is more than one class or group
4521 of limited partners, the plan of merger must be consented to by
4522 those limited partners who own a majority of the rights to
4523 receive distributions as limited partners in that class or group
4524 at the time the consent is effective. The consents required by
4525 this subsection must be in, or evidenced by, a record.

4526 (2) Subject to s. 620.2110 and any contractual rights,
4527 after a merger is approved, and at any time before a filing is
4528 made under s. 620.2108, a constituent limited partnership may
4529 amend the plan or abandon the planned merger:

4530 (a) As provided in the plan; and

4531 (b) Except as prohibited by the plan,

4532
4533 with the same consent as was required to approve the plan.

4534 620.2108 Filings required for merger; effective date.--

4535 (1) After each constituent organization has approved a
4536 merger, a certificate of merger must be signed on behalf of:

4537 (a) Each preexisting constituent limited partnership, by
4538 each general partner listed in the certificate of limited
4539 partnership.

4540 (b) Each other preexisting constituent organization, by an
4541 authorized representative.

4542 (2) The certificate of merger must include:

4543 (a) The name and form of each constituent organization and
4544 the jurisdiction of its governing law.

4545 (b) The name and form of the surviving organization, the
4546 jurisdiction of its governing law, and, if the surviving
4547 organization is created by the merger, a statement to that
4548 effect.

4549 (c) The date the merger is effective under the governing
4550 law of the surviving organization.

4551 (d) Any amendments provided for in the plan of merger for
4552 the organizational document that created the organization.

4553 (e) A statement as to each constituent organization that
4554 the merger was approved as required by the organization's
4555 governing law.

4556 (f) If the surviving organization is a foreign organization
4557 not authorized to transact business in this state, the street and
4558 mailing address of an office which the Department of State may
4559 use for the purposes of s. 620.2109(2).

4560 (g) Any additional information required by the governing
4561 law of any constituent organization.

4562 (3) Each constituent limited partnership shall deliver the
4563 certificate of merger for filing in the Department of State.

4564 (4) A merger becomes effective under this act:

4565 (a) If the surviving organization is a limited partnership,
 4566 upon the later of:

- 4567 1. Compliance with subsection (3); or
- 4568 2. Subject to s. 620.1206(3), as specified in the
 4569 certificate of merger; or

4570 (b) If the surviving organization is not a limited
 4571 partnership, as provided by the governing law of the surviving
 4572 organization.

4573 (5) A certificate of merger shall act as a statement of
 4574 termination for purposes of s. 620.1203 for a limited partnership
 4575 that is a party to the merger that is not the surviving
 4576 organization, which shall be deemed filed upon the effective date
 4577 of the merger.

4578 620.2109 Effect of merger.--

4579 (1) When a merger becomes effective:

4580 (a) The surviving organization continues.

4581 (b) Each constituent organization that merges into the
 4582 surviving organization ceases to exist as a separate entity.

4583 (c) All property owned by each constituent organization
 4584 that ceases to exist vests in the surviving organization.

4585 (d) All debts, liabilities, and other obligations of each
 4586 constituent organization that ceases to exist continue as
 4587 obligations of the surviving organization.

4588 (e) An action or proceeding pending by or against any
 4589 constituent organization that ceases to exist may be continued as
 4590 if the merger had not occurred.

4591 (f) Except as prohibited by other law, all of the rights,
 4592 privileges, immunities, powers, and purposes of each constituent

4593 organization that ceases to exist vest in the surviving
4594 organization.

4595 (g) Except as otherwise provided in the plan of merger, the
4596 terms and conditions of the plan of merger take effect.

4597 (h) Except as otherwise agreed, if a constituent limited
4598 partnership ceases to exist, the merger does not dissolve the
4599 limited partnership for the purposes of ss. 620.1801-620.1813.

4600 (i) Any amendments provided for in the certificate of
4601 merger for the organizational document that created the
4602 organization become effective.

4603 (2) A surviving organization that is a foreign organization
4604 consents to the jurisdiction of the courts of this state to
4605 enforce any obligation owed by a constituent organization, if
4606 before the merger the constituent organization was subject to
4607 suit in this state on the obligation. A surviving organization
4608 that is a foreign organization and not authorized to transact
4609 business in this state shall appoint the Department of State as
4610 its agent for service of process for the purposes of enforcing an
4611 obligation under this subsection and any appraisal rights of
4612 limited partners under ss. 620.2113-620.2124 to the extent
4613 applicable to the merger. Service on the Department of State
4614 under this subsection is made in the same manner and with the
4615 same consequences as in s. 620.1117(3) and (4).

4616 (3) A copy of the certificate of merger, certified by the
4617 Department of State, may be filed in any county of this state in
4618 which a constituent organization holds an interest in real
4619 property.

4620 620.2110 Restrictions on approval of conversions and
4621 mergers and on relinquishing limited liability limited
4622 partnership status.--

4623 (1) If a partner of a converting or constituent limited
4624 partnership will have personal liability with respect to a
4625 converted or surviving organization, approval and amendment of a
4626 plan of conversion or merger are ineffective without the consent
4627 of the partner, unless:

4628 (a) The limited partnership's partnership agreement
4629 provides for the approval of the conversion or merger with the
4630 consent of fewer than all the partners.

4631 (b) The partner has consented to the provision of the
4632 partnership agreement.

4633 (2) An amendment to a certificate of limited partnership
4634 which deletes a statement that the limited partnership is a
4635 limited liability limited partnership is ineffective without the
4636 consent of each general partner unless:

4637 (a) The limited partnership's partnership agreement
4638 provides for the amendment with the consent of less than all the
4639 general partners.

4640 (b) Each general partner that does not consent to the
4641 amendment has consented to the provision of the partnership
4642 agreement.

4643 (3) A partner does not give the consent required by
4644 subsection (1) or subsection (2) merely by consenting to a
4645 provision of the partnership agreement which permits the
4646 partnership agreement to be amended with the consent of fewer
4647 than all the partners.

4648 620.2111 Liability of general partner after conversion or
4649 merger.--

4650 (1) A conversion or merger under this act does not
4651 discharge any liability under ss. 620.1404 and 620.1607 of a
4652 person that was a general partner in or dissociated as a general
4653 partner from a converting or constituent limited partnership,
4654 but:

4655 (a) The provisions of this act pertaining to the collection
4656 or discharge of the liability continue to apply to the liability.

4657 (b) For the purposes of applying those provisions, the
4658 converted or surviving organization is deemed to be the
4659 converting or constituent limited partnership.

4660 (c) If a person is required to pay any amount under this
4661 subsection:

4662 1. The person has a right of contribution from each other
4663 person that was liable as a general partner under s. 620.1404
4664 when the obligation was incurred and has not been released from
4665 the obligation under s. 620.1607.

4666 2. The contribution due from each of those persons is in
4667 proportion to the right to receive distributions in the capacity
4668 of general partner in effect for each of those persons when the
4669 obligation was incurred.

4670 (2) In addition to any other liability provided by law:

4671 (a) A person that immediately before a conversion or merger
4672 became effective was a general partner in a converting or
4673 constituent limited partnership that was not a limited liability
4674 limited partnership is personally liable on a transaction entered
4675 into by the converted or surviving organization with a third

4676 party after the conversion or merger becomes effective, if, at
4677 the time the third party enters into the transaction, the third
4678 party:

- 4679 1. Does not have notice of the conversion or merger.
- 4680 2. Reasonably believes that:
 - 4681 a. The converted or surviving business is the converting or
4682 constituent limited partnership.
 - 4683 b. The converting or constituent limited partnership is not
4684 a limited liability limited partnership.
 - 4685 c. The person is a general partner in the converting or
4686 constituent limited partnership.

4687 (b) A person that was dissociated as a general partner from
4688 a converting or constituent limited partnership before the
4689 conversion or merger became effective is personally liable on a
4690 transaction entered into by the converted or surviving
4691 organization with a third party after the conversion or merger
4692 becomes effective, if:

- 4693 1. Immediately before the conversion or merger became
4694 effective the converting or surviving limited partnership was not
4695 a limited liability limited partnership.
- 4696 2. At the time the third party enters into the transaction
4697 less than 2 years have passed since the person dissociated as a
4698 general partner and the third party:
 - 4699 a. Does not have notice of the dissociation.
 - 4700 b. Does not have notice of the conversion or merger.
 - 4701 c. Reasonably believes that the converted or surviving
4702 organization is the converting or constituent limited
4703 partnership, the converting or constituent limited partnership is

HB 0595

2005

4704 not a limited liability limited partnership, and the person is a
4705 general partner in the converting or constituent limited
4706 partnership.

4707 620.2112 Power of general partners and persons dissociated
4708 as general partners to bind organization after conversion or
4709 merger.--

4710 (1) An act of a person that immediately before a conversion
4711 or merger became effective was a general partner in a converting
4712 or constituent limited partnership binds the converted or
4713 surviving organization after the conversion or merger becomes
4714 effective, if:

4715 (a) Before the conversion or merger became effective, the
4716 act would have bound the converting or constituent limited
4717 partnership under s. 620.1402.

4718 (b) At the time the third party enters into the
4719 transaction, the third party:

4720 1. Does not have notice of the conversion or merger.

4721 2. Reasonably believes that the converted or surviving
4722 business is the converting or constituent limited partnership and
4723 that the person is a general partner in the converting or
4724 constituent limited partnership.

4725 (2) An act of a person that before a conversion or merger
4726 became effective was dissociated as a general partner from a
4727 converting or constituent limited partnership binds the converted
4728 or surviving organization after the conversion or merger becomes
4729 effective, if:

4730 (a) Before the conversion or merger became effective, the
4731 act would have bound the converting or constituent limited

HB 0595

2005

4732 partnership under s. 620.1402 if the person had been a general
4733 partner.

4734 (b) At the time the third party enters into the
4735 transaction, less than 2 years have passed since the person
4736 dissociated as a general partner and the third party:

4737 1. Does not have notice of the dissociation.

4738 2. Does not have notice of the conversion or merger.

4739 3. Reasonably believes that the converted or surviving
4740 organization is the converting or constituent limited partnership
4741 and that the person is a general partner in the converting or
4742 constituent limited partnership.

4743 (3) If a person having knowledge of the conversion or
4744 merger causes a converted or surviving organization to incur an
4745 obligation under subsection (1) or subsection (2), the person is
4746 liable:

4747 (a) To the converted or surviving organization for any
4748 damage caused to the organization arising from the obligation.

4749 (b) If another person is liable for the obligation, to that
4750 other person for any damage caused to that other person arising
4751 from the liability.

4752 620.2113 Appraisal rights; definitions.--The following
4753 definitions apply to this section and ss. 620.2114-620.2124:

4754 (1) "Affiliate" means a person that directly or indirectly
4755 through one or more intermediaries controls, is controlled by, or
4756 is under common control with another person. For purposes of s.
4757 620.2114(2)(d), a person is deemed to be an affiliate of its
4758 senior executives.

4759 (2) "Appraisal event" means an event described in s.

4760 620.2114(1).

4761 (3) "Beneficial limited partner" means a person who is the
4762 beneficial owner of a limited partner interest held in a voting
4763 trust or by a nominee on the beneficial owner's behalf.

4764 (4) "Fair value" means the value of the limited partner's
4765 partnership interests determined:

4766 (a) Immediately before the effectuation of the appraisal
4767 event to which the partner objects.

4768 (b) Using customary and current valuation concepts and
4769 techniques generally employed for similar businesses in the
4770 context of the transaction requiring appraisal, excluding any
4771 appreciation or depreciation in anticipation of the transaction
4772 to which the partner objects unless exclusion would be
4773 inequitable to the limited partnership and its remaining
4774 partners.

4775 (5) "Interest" means interest from the effective date of
4776 the appraisal event to which the limited partner objects until
4777 the date of payment, at the rate of interest described in s.
4778 620.107(2), determined as of the effective date of the appraisal
4779 event.

4780 (6) "Limited partnership" means the limited partnership
4781 governed by this act that issued the limited partner interest
4782 held by a limited partner demanding appraisal and, for matters
4783 covered in ss. 620.2114-620.2124, includes the converted
4784 organization in a conversion or the surviving organization in a
4785 merger.

4786 (7) "Record limited partner" means each person who is
4787 identified as a limited partner in the current list of partners

4788 maintained in accordance with s. 620.1111 by the limited
4789 partnership or, to the extent the limited partnership has failed
4790 to maintain a current list, each person that is the rightful
4791 owner of a limited partner interest in the limited partnership.
4792 A transferee of a limited partner interest is not a record
4793 limited partner.

4794 (8) "Senior executive" means a general partner or the chief
4795 executive officer, chief operating officer, chief financial
4796 officer, manager, or anyone in charge of a principal business
4797 unit or function of a limited partnership or of a general partner
4798 of the limited partnership.

4799 (9) "Limited partner" means a record limited partner or a
4800 beneficial limited partner.

4801 (10) "Limited partner interest" means all rights and other
4802 interests held by a person in the limited partnership in that
4803 person's capacity as a limited partner under this act and the
4804 limited partnership's partnership agreement, including the
4805 limited partner's transferable interest and management and voting
4806 rights, if any, and subject to any obligations that such person
4807 has in that capacity of limited partner. If the appraisal rights
4808 of the limited partner under s. 620.2114 pertain to only a
4809 certain class or series of a limited partner interest, the term
4810 "limited partner interest" means only the limited partner
4811 interest pertaining to such class or series.

4812 620.2114 Right of limited partners to appraisal.--

4813 (1) A limited partner of a limited partnership governed by
4814 this act is entitled to appraisal rights, and to obtain payment
4815 of the fair value of that limited partner's limited partner

4816 interest, in the following events:

4817 (a) Consummation of a merger of such limited partnership
4818 pursuant to this act and the limited partner possessed the right
4819 to vote upon the merger; or

4820 (b) Consummation of a conversion of such limited
4821 partnership pursuant to this act and the limited partner
4822 possessed the right to vote upon the conversion.

4823 (2) Notwithstanding subsection (1), the availability of
4824 appraisal rights shall be limited in accordance with the
4825 following provisions:

4826 (a) Appraisal rights shall not be available for limited
4827 partner interests which are:

4828 1. Listed on the New York Stock Exchange or the American
4829 Stock Exchange or designated as a national market system security
4830 on an interdealer quotation system by the National Association of
4831 Securities Dealers, Inc.; or

4832 2. Not so listed or designated, but are issued by a limited
4833 partnership that has at least 500 partners and the interests of
4834 all partners in the partnership, including transferable
4835 interests, have a market value of at least \$10 million, exclusive
4836 of the value of any such interests held by its general partners
4837 and other senior executives owning more than 10 percent of the
4838 rights to receive distributions from the limited partnership.

4839 (b) The applicability of paragraph (a) shall be determined
4840 as of the date fixed to determine the limited partners entitled
4841 to receive notice of, and to vote upon, the appraisal event.

4842 (c) Paragraph (a) shall not apply and appraisal rights
4843 shall be available pursuant to subsection (1) for any limited

4844 partners who are required by the appraisal event to accept for
4845 their limited partner interests anything other than cash or a
4846 proprietary interest of an entity that satisfies the standards
4847 set forth in paragraph (a) at the time the appraisal event
4848 becomes effective.

4849 (d) Paragraph (a) shall not apply and appraisal rights
4850 shall be available pursuant to subsection (1) for the holders of
4851 a limited partner interest if:

4852 1. Any of the partners' interests in the limited
4853 partnership or the limited partnership's assets are being
4854 acquired or converted, whether by merger, conversion, or
4855 otherwise, pursuant to the appraisal event by a person, or by an
4856 affiliate of a person, who:

4857 a. Is, or at any time in the 1-year period immediately
4858 preceding approval of the appraisal event was, the beneficial
4859 owner of 20 percent or more of those interests in the limited
4860 partnership entitled to vote on the appraisal event, excluding
4861 any such interests acquired pursuant to an offer for all
4862 interests having such voting rights if such offer was made within
4863 1 year prior to the appraisal event for consideration of the same
4864 kind and of a value equal to or less than that paid in connection
4865 with the appraisal event. For purposes of this subparagraph, the
4866 term "beneficial owner" means any person who, directly or
4867 indirectly, through any contract, arrangement, or understanding,
4868 other than a revocable proxy, has or shares the right to vote, or
4869 to direct the voting of, an interest in a limited partnership
4870 with respect to approval of the appraisal event, provided that a
4871 member of a national securities exchange shall not be deemed to

4872 be a beneficial owner of an interest in a limited partnership
4873 held directly or indirectly by it on behalf of another person
4874 solely because such member is the record holder of interests in
4875 the limited partnership if the member is precluded by the rules
4876 of such exchange from voting without instruction on contested
4877 matters or matters that may affect substantially the rights or
4878 privileges of the holders of the interests in the limited
4879 partnership to be voted. When two or more persons agree to act
4880 together for the purpose of voting such interests, each member of
4881 the group formed thereby shall be deemed to have acquired
4882 beneficial ownership, as of the date of such agreement, of all
4883 voting interests in the limited partnership beneficially owned by
4884 any member of the group; or

4885 b. Directly or indirectly has, or at any time in the 1-year
4886 period immediately preceding approval of the appraisal event had,
4887 the power, contractually or otherwise, to cause the appointment
4888 or election of any senior executives; or

4889 2. Any of the partners' interests in the limited
4890 partnership or the limited partnership's assets are being
4891 acquired or converted, whether by merger, conversion, or
4892 otherwise, pursuant to the appraisal event by a person, or by an
4893 affiliate of a person, who is, or at any time in the 1-year
4894 period immediately preceding approval of the appraisal event was,
4895 a senior executive of the limited partnership or a senior
4896 executive of any affiliate of the limited partnership, and that
4897 senior executive will receive, as a result of the limited
4898 partnership action, a financial benefit not generally available
4899 to limited partners, other than:

4900 a. Employment, consulting, retirement, or similar benefits
 4901 established separately and not as part of or in contemplation of
 4902 the appraisal event;

4903 b. Employment, consulting, retirement, or similar benefits
 4904 established in contemplation of, or as part of, the appraisal
 4905 event that are not more favorable than those existing before the
 4906 appraisal event or, if more favorable, that have been approved by
 4907 the limited partnership; or

4908 c. In the case of a general partner of the limited
 4909 partnership who will, during or as the result of the appraisal
 4910 event, become a general partner, manager, or director of the
 4911 surviving or converted organization or one of its affiliates,
 4912 those rights and benefits as a general partner, manager, or
 4913 director that are provided on the same basis as those afforded by
 4914 the surviving or converted organization generally to other
 4915 general partners, managers, or directors of the surviving or
 4916 converted organization or its affiliate.

4917 (3) A limited partner entitled to appraisal rights under
 4918 ss. 620.2113-620.2124 may not challenge a completed appraisal
 4919 event unless the appraisal event:

4920 (a) Was not effectuated in accordance with the applicable
 4921 provisions of ss. 620.2113-620.2124, the limited partnership's
 4922 certificate of limited partnership, or the partnership agreement;
 4923 or

4924 (b) Was procured as a result of fraud or material
 4925 misrepresentation.

4926 (4) A limited partnership may modify, restrict, or
 4927 eliminate the appraisal rights provided in ss. 620.2113-620.2124

HB 0595

2005

4928 in its partnership agreement.

4929 620.2115 Assertion of rights by nominees and beneficial
4930 owners.--

4931 (1) A record limited partner may assert appraisal rights as
4932 to fewer than all the limited partner interests registered in the
4933 record limited partner's name that are owned by a beneficial
4934 limited partner only if the record limited partner objects with
4935 respect to all limited partner interests of the class or series
4936 owned by that beneficial limited partner and notifies the limited
4937 partnership in writing of the name and address of each beneficial
4938 limited partner on whose behalf appraisal rights are being
4939 asserted. The rights of a record limited partner who asserts
4940 appraisal rights for only part of the limited partner interests
4941 of the class or series held of record in the record limited
4942 partner's name under this subsection shall be determined as if
4943 the limited partner interests as to which the record limited
4944 partner objects and the record limited partner's other limited
4945 partner interests were registered in the names of different
4946 record limited partners.

4947 (2) A beneficial limited partner may assert appraisal
4948 rights as to a limited partner interest held on behalf of the
4949 partner only if such beneficial limited partner:

4950 (a) Submits to the limited partnership the record limited
4951 partner's written consent to the assertion of such rights no
4952 later than the date referred to in s. 620.2118(2)(b)2.

4953 (b) Does so with respect to all limited partner interests
4954 of the class or series that are beneficially owned by the
4955 beneficial limited partner.

4956 620.2116 Notice of appraisal rights.--

4957 (1) If a proposed appraisal event is to be submitted to a
 4958 vote at a limited partners' meeting, the meeting notice must
 4959 state that the limited partnership has concluded that partners
 4960 are, are not, or may be entitled to assert appraisal rights under
 4961 this act.

4962 (2) If the limited partnership concludes that appraisal
 4963 rights are or may be available, a copy of ss. 620.2113-620.2124
 4964 must accompany the meeting notice sent to those record limited
 4965 partners entitled to exercise appraisal rights.

4966 (3) If the appraisal event is to be approved other than by
 4967 a partners' meeting, the notice referred to in subsection (1)
 4968 must be sent to all limited partners at the time that consents
 4969 are first solicited, whether or not consents are solicited from
 4970 all limited partners, and include the materials described in s.
 4971 620.2118.

4972 620.2117 Notice of intent to demand payment.--

4973 (1) If a proposed appraisal event is submitted to a vote at
 4974 a partners' meeting, or is submitted to a partner pursuant to a
 4975 consent vote, a limited partner who is entitled to and who wishes
 4976 to assert appraisal rights with respect to any class or series of
 4977 limited partner interests:

4978 (a) Must deliver to a general partner of the limited
 4979 partnership before the vote is taken, or within 20 days after
 4980 receiving the notice pursuant to s. 620.2116(3) if action is to
 4981 be taken without a partner meeting, written notice of such
 4982 person's intent to demand payment if the proposed appraisal event
 4983 is effectuated.

HB 0595

2005

4984 (b) Must not vote, or cause or permit to be voted, any
4985 limited partner interests of such class or series in favor of the
4986 appraisal event.

4987 (2) A person who may otherwise be entitled to appraisal
4988 rights, but who does not satisfy the requirements of subsection
4989 (1), is not entitled to payment under ss. 620.2113-620.2124.
4990 620.2118 Appraisal notice and form.--

4991 (1) If the proposed appraisal event becomes effective, the
4992 limited partnership must deliver a written appraisal notice and
4993 form required by paragraph (2)(a) to all limited partners who
4994 satisfied the requirements of s. 620.2117.

4995 (2) The appraisal notice must be sent no earlier than the
4996 date the appraisal event became effective and no later than 10
4997 days after such date and must:

4998 (a) Supply a form that specifies the date that the
4999 appraisal event became effective and that provides for the
5000 limited partner to state:

5001 1. The limited partner's name and address.

5002 2. The number, classes, and series of limited partner
5003 interests as to which the limited partner asserts appraisal
5004 rights.

5005 3. That the limited partner did not vote for the
5006 transaction.

5007 4. Whether the limited partner accepts the limited
5008 partnership's offer as stated in subparagraph (b)4.

5009 5. If the offer is not accepted, the limited partner's
5010 estimated fair value of the limited partner interests and a
5011 demand for payment of the limited partner's estimated value plus

5012 interest.

5013 (b) State:

5014 1. Where the form described in paragraph (a) must be sent.

5015 2. A date by which the limited partnership must receive the
 5016 form, which date may not be fewer than 40 or more than 60 days
 5017 after the date the appraisal notice and form described in this
 5018 subsection are sent, and state that the limited partner shall
 5019 have waived the right to demand appraisal with respect to the
 5020 limited partner interests unless the form is received by the
 5021 limited partnership by such specified date.

5022 3. In the case of limited partner interest represented by a
 5023 certificate, the location at which certificates for such
 5024 certificated partnership interests must be deposited, if that
 5025 action is required by the limited partnership, and the date by
 5026 which those certificates must be deposited, which date may not be
 5027 earlier than the date for receiving the required form under
 5028 subparagraph 2.

5029 4. The limited partnership's estimate of the fair value of
 5030 the limited partner interests.

5031 5. An offer to each limited partner who is entitled to
 5032 appraisal rights to pay the limited partnership's estimate of
 5033 fair value set forth in subparagraph 4.

5034 6. That, if requested in writing, the limited partnership
 5035 will provide to the limited partner so requesting, within 10 days
 5036 after the date specified in subparagraph 2., the number of
 5037 limited partners who return the forms by the specified date and
 5038 the total number of limited partner interests owned by them.

5039 7. The date by which the notice to withdraw under s.

HB 0595

2005

5040 620.1119 must be received, which date must be within 20 days
5041 after the date specified in subparagraph 2.

5042 (c) Be accompanied by:

5043 1. Financial statements of the limited partnership that
5044 issued the limited partner interests to be appraised, consisting
5045 of a balance sheet as of the end of the fiscal year ending not
5046 more than 15 months prior to the date of the limited
5047 partnership's appraisal notice, an income statement for that
5048 year, a cash flow statement for that year, and the latest
5049 available interim financial statements, if any.

5050 2. A copy of ss. 620.2213-620.2224.

5051 620.2119 Perfection of rights; right to withdraw.--

5052 (1) A limited partner who wishes to exercise appraisal
5053 rights must execute and return the form received pursuant to s.
5054 620.2118(1) and, in the case of certificated partnership
5055 interests and the limited partnership so requires, deposit the
5056 limited partner's certificates in accordance with the terms of
5057 the notice by the date referred to in the notice pursuant to s.
5058 620.2118(2)(b)2. Once a limited partner deposits that limited
5059 partner's certificates or, in the case of uncertificated
5060 partnership interests, returns the executed form described in s.
5061 620.2118(2), the limited partner loses all rights as a limited
5062 partner, unless the limited partner withdraws pursuant to
5063 subsection (3). Upon receiving a demand for payment from a
5064 limited partner who holds an uncertificated partnership interest,
5065 the limited partnership shall make an appropriate notation of the
5066 demand for payment in its records.

5067 (2) The limited partnership may restrict the transfer of

5068 such limited partner interests from the date the limited partner
5069 delivers the items required by subsection (1).

5070 (3) A limited partner who has complied with subsection (1)
5071 may nevertheless decline to exercise appraisal rights and
5072 withdraw from the appraisal process by so notifying the limited
5073 partnership in writing by the date set forth in the appraisal
5074 notice pursuant to s. 620.2118(2)(b)7. A limited partner who
5075 fails to so withdraw from the appraisal process may not
5076 thereafter withdraw without the limited partnership's written
5077 consent.

5078 (4) A limited partner who does not execute and return the
5079 form and, in the case of certificated partnership interests,
5080 deposit that limited partner's certificates, if so required by
5081 the limited partnership, each by the date set forth in the notice
5082 described in subsection (2), shall not be entitled to payment
5083 under this act.

5084 (5) If the limited partner's right to receive fair value is
5085 terminated other than by the purchase of the limited partner
5086 interest by the limited partnership, all rights of the limited
5087 partner, with respect to such limited partner interest, shall be
5088 reinstated effective as of the date the limited partner delivered
5089 the items required by subsection (1), including the right to
5090 receive any intervening payment or other distribution with
5091 respect to such partnership interests, or, if any such rights
5092 have expired or any such distribution other than a cash payment
5093 has been completed, in lieu thereof at the election of the
5094 limited partnership, the fair value thereof in cash as determined
5095 by the limited partnership as of the time of such expiration or

5096 completion, but without prejudice otherwise to any action or
 5097 proceeding of the limited partnership that may have been taken by
 5098 the limited partnership on or after the date the limited partner
 5099 delivered the items required by subsection (1).

5100 620.2120 Limited partner's acceptance of limited
 5101 partnership's offer.--

5102 (1) If the limited partner states on the form provided in
 5103 s. 620.2118(1) that the limited partner accepts the offer of the
 5104 limited partnership to pay the limited partnership's estimated
 5105 fair value for the limited partner interest, the limited
 5106 partnership shall make such payment to the limited partner within
 5107 90 days after the limited partnership's receipt of the items
 5108 required by s. 620.1119(1).

5109 (2) Upon payment of the agreed value, the limited partner
 5110 shall cease to have any interest in the partnership interests.

5111 620.2121 Procedure if limited partner is dissatisfied with
 5112 offer.--

5113 (1) A limited partner who is dissatisfied with the limited
 5114 partnership's offer as set forth pursuant to s. 620.2118(2)(b)5.
 5115 must notify the limited partnership on the form provided pursuant
 5116 to s. 620.2118(1) of the limited partner's estimate of the fair
 5117 value of the limited partner interest and demand payment of that
 5118 estimate plus interest.

5119 (2) A limited partner who fails to notify the limited
 5120 partnership in writing of the limited partner's demand to be paid
 5121 the limited partner's estimate of the fair value plus interest
 5122 under subsection (1) within the timeframe set forth in s.
 5123 620.2118(2)(b)2. waives the right to demand payment under this

HB 0595

2005

5124 section and shall be entitled only to the payment offered by the
5125 limited partnership pursuant to s. 620.2118(2)(b)5.

5126 620.2122 Court action.--

5127 (1) If a limited partner makes demand for payment under s.
5128 620.2121 which remains unsettled, the limited partnership shall
5129 commence a proceeding within 60 days after receiving the payment
5130 demand and petition the court to determine the fair value of the
5131 partnership interests and accrued interest. If the limited
5132 partnership does not commence the proceeding within the 60-day
5133 period, any limited partner who has made a demand pursuant to s.
5134 620.2121 may commence the proceeding in the name of the limited
5135 partnership.

5136 (2) The proceeding shall be commenced in the appropriate
5137 court of the county in which the limited partnership's principal
5138 office, or, if none, its registered office, in this state is
5139 located. If the limited partnership is a foreign limited
5140 partnership without a registered office in this state, the
5141 proceeding shall be commenced in the county in this state in
5142 which the principal office or registered office of the domestic
5143 limited partnership was located at the time of the transaction.

5144 (3) All limited partners, whether or not residents of this
5145 state, whose demands remain unsettled shall be made parties to
5146 the proceeding as in an action against their partnership
5147 interests. The limited partnership shall serve a copy of the
5148 initial pleading in such proceeding upon each limited partner
5149 party who is a resident of this state in the manner provided by
5150 law for the service of a summons and complaint and upon each
5151 nonresident limited partner party by registered or certified mail

HB 0595

2005

5152 or by publication as provided by law.

5153 (4) The jurisdiction of the court in which the proceeding
5154 is commenced under subsection (2) is plenary and exclusive. If
5155 the court so elects, the court may appoint one or more persons as
5156 appraisers to receive evidence and recommend a decision on the
5157 question of fair value. The appraisers shall have the powers
5158 described in the order appointing them or in any amendment to the
5159 order. The limited partners demanding appraisal rights are
5160 entitled to the same discovery rights as parties in other civil
5161 proceedings. There shall be no right to a jury trial.

5162 (5) Each partner made a party to the proceeding is entitled
5163 to judgment for the amount of the fair value of such limited
5164 partner's limited partner partnership interests, plus interest,
5165 as found by the court.

5166 (6) The limited partnership shall pay each such partner the
5167 amount found to be due within 10 days after final determination
5168 of the proceedings. Upon payment of the judgment, the limited
5169 partner shall cease to have any interest in the limited
5170 partnership interests.

5171 620.2123 Court costs and counsel fees.--

5172 (1) The court in an appraisal proceeding shall determine
5173 all costs of the proceeding, including the reasonable
5174 compensation and expenses of appraisers appointed by the court.
5175 The court shall assess the costs against the limited partnership,
5176 except that the court may assess costs against all or some of the
5177 limited partners demanding appraisal, in amounts the court finds
5178 equitable, to the extent the court finds such partners acted
5179 arbitrarily, vexatiously, or not in good faith with respect to

HB 0595

2005

5180 the rights provided by this act.

5181 (2) The court in an appraisal proceeding may also assess
5182 the fees and expenses of counsel and experts for the respective
5183 parties, in amounts the court finds equitable:

5184 (a) Against the limited partnership and in favor of any or
5185 all limited partners demanding appraisal if the court finds the
5186 limited partnership did not substantially comply with ss.
5187 620.2116 and 620.2118; or

5188 (b) Against either the limited partnership or a limited
5189 partner demanding appraisal, in favor of any other party, if the
5190 court finds that the party against whom the fees and expenses are
5191 assessed acted arbitrarily, vexatiously, or not in good faith
5192 with respect to the rights provided by this act.

5193 (3) If the court in an appraisal proceeding finds that the
5194 services of counsel for any limited partner were of substantial
5195 benefit to other limited partners similarly situated, and that
5196 the fees for those services should not be assessed against the
5197 limited partnership, the court may award to such counsel
5198 reasonable fees to be paid out of the amounts awarded the limited
5199 partners who were benefited.

5200 (4) To the extent the limited partnership fails to make a
5201 required payment pursuant to s. 620.2120, the limited partner may
5202 sue directly for the amount owed and, to the extent successful,
5203 shall be entitled to recover from the limited partnership all
5204 costs and expenses of the suit, including counsel fees.

5205 620.2124 Limitation on limited partnership payment.--

5206 (1) No payment shall be made to a limited partner seeking
5207 appraisal rights if, at the time of payment, the limited

HB 0595

2005

5208 partnership is unable to meet the distribution standards of s.
5209 620.1508. In such event, the limited partner shall, at the
5210 limited partner's option:

5211 (a) Withdraw the notice of intent to assert appraisal
5212 rights, which shall in such event be deemed withdrawn with the
5213 consent of the limited partnership; or

5214 (b) Retain the status as a claimant against the limited
5215 partnership and, if the limited partnership is liquidated, be
5216 subordinated to the rights of creditors of the limited
5217 partnership, but have rights superior to the limited partners not
5218 asserting appraisal rights, and, if it is not liquidated, retain
5219 the right to be paid for the limited partner interests, which
5220 right the limited partnership shall be obliged to satisfy when
5221 the restrictions of this section do not apply.

5222 (2) The limited partner shall exercise the option under
5223 paragraph (1)(a) or paragraph (1)(b) by written notice filed with
5224 the limited partnership within 30 days after the limited
5225 partnership has given written notice that the payment for the
5226 limited partner interests cannot be made because of the
5227 restrictions of this section. If the limited partner fails to
5228 exercise the option, the limited partner shall be deemed to have
5229 withdrawn the notice of intent to assert appraisal rights.

5230 620.2125 Application of other laws to provisions governing
5231 conversions and mergers.--

5232 (1) The provisions of ss. 620.2101-2124 do not preclude an
5233 entity from being converted or merged under other law.

5234 (2) The provisions of ss. 620.2101-620.2124 do not
5235 authorize any act prohibited by other applicable law or change

HB 0595

2005

5236 the requirements of any law or rule regulating a specific
5237 organization or industry, such as a not-for-profit organization,
5238 insurance, banking or investment establishment, or other
5239 regulated business or activity.

5240 620.2201 Uniformity of application and construction.--In
5241 applying and construing this act, consideration must be given to
5242 the need to promote uniformity of the law with respect to its
5243 subject matter among states that enact it.

5244 620.2202 Severability clause.--If any provision of this act
5245 or its application to any person or circumstance is held invalid,
5246 the invalidity does not affect other provisions or applications
5247 of this act which can be given effect without the invalid
5248 provision or application, and to this end the provisions of this
5249 act are severable.

5250 620.2203 Relation to electronic signatures in Global and
5251 National Commerce Act.--This act modifies, limits, or supersedes
5252 the federal Electronic Signatures in Global and National Commerce
5253 Act, 15 U.S.C. ss. 7001 et seq., but this act does not modify,
5254 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
5255 or authorize electronic delivery of any of the notices described
5256 in s. 103(b) of that act, 15 U.S.C. s. 7001(b), except to the
5257 extent permitted pursuant to ss. 15.16, 116.34, and 668.50 of
5258 such act.

5259 620.2204 Application to existing relationships.--

5260 (1) Before January 1, 2007, this act governs only:

5261 (a) A limited partnership formed on or after January 1,
5262 2006.

5263 (b) Except as otherwise provided in subsections (3) and
5264 (4), a limited partnership formed before January 1, 2006, which
5265 elects, in the manner provided in its partnership agreement or by
5266 law for amending the partnership agreement, to be subject to this
5267 act.

5268 (2) Except as otherwise provided in subsection (3), on and
5269 after January 1, 2007, this act governs all limited partnerships.

5270 (3) With respect to a limited partnership formed before
5271 January 1, 2006, the following rules apply except as the partners
5272 otherwise elect in the manner provided in the partnership
5273 agreement or by law for amending the partnership agreement:

5274 (a) The provisions of s. 620.1104(3) do not apply and the
5275 limited partnership has whatever duration such limited
5276 partnership had under the law applicable immediately before
5277 January 1, 2006.

5278 (b) The limited partnership is not required to amend its
5279 certificate of limited partnership to comply with s.
5280 620.1201(1)(d).

5281 (c) The provisions of ss. 620.1601 and 620.1602 do not
5282 apply and a limited partner has the same right and power to
5283 dissociate from the limited partnership, with the same
5284 consequences, as existed immediately before July 1, 2005.

5285 (d) The provisions of s. 620.603(4) do not apply.

5286 (e) The provisions of s. 620.1603(5) do not apply and a
5287 court has the same power to expel a general partner as the court
5288 had immediately before January 1, 2006.

5289 (f) The provisions of s. 620.1801(3) do not apply and the
5290 connection between a person's dissociation as a general partner

5291 and the dissolution of the limited partnership is the same as
 5292 existed immediately before January 1, 2006.

5293 (4) With respect to a limited partnership that elects
 5294 pursuant to paragraph (1)(b) to be subject to this act, after the
 5295 election takes effect the provisions of this act relating to the
 5296 liability of the limited partnership's general partners to third
 5297 parties apply:

5298 (a) Before January 1, 2007, to:

5299 1. A third party that had not done business with the
 5300 limited partnership in the year before the election took effect.

5301 2. A third party that had done business with the limited
 5302 partnership in the year before the election took effect only if
 5303 the third party knows or has received a notification of the
 5304 election.

5305 (b) On and after January 1, 2007, to all third parties, but
 5306 those provisions remain inapplicable to any obligation incurred
 5307 while those provisions were inapplicable under subparagraph (a)2.

5308 620.2205 Savings clause.--This act does not affect an action
 5309 commenced, proceeding brought, or right accrued before this act
 5310 takes effect.

5311 Section 16. Paragraphs (j) and (k) of subsection (2) of
 5312 section 620.8103, Florida Statutes, are amended to read:

5313 620.8103 Effect of partnership agreement; nonwaivable
 5314 provisions.--

5315 (2) The partnership agreement may not:

5316 ~~(j) Change the notice provisions contained in s.~~

5317 ~~620.8902(6) or s. 620.8905(6); or~~

5318 (j)(k) Restrict rights of third parties under this act.

5319 Section 17. Subsections (5), (6), (7), and (8) of section
5320 620.8105, Florida Statutes, are amended to read:

5321 620.8105 Execution, filing, and recording of partnership
5322 registration and other statements.--

5323 (5) A partnership registration statement or other
5324 statement or a certificate of merger or certificate of
5325 conversion ~~must be~~ delivered to the Department of State for
5326 filing, which may be accomplished by electronic filing pursuant
5327 to s. 15.16, ~~and~~ must be typewritten or legibly printed in the
5328 English language. A registration statement or other statement,
5329 or a certificate of merger or certificate of conversion, may
5330 specify a delayed effective time and, if so specified, such
5331 filing shall become effective at the delayed time and date
5332 specified. If a delayed effective date, but no time, is
5333 specified, the filing shall become effective at the close of
5334 business on the delayed effective date. Unless otherwise
5335 permitted by this chapter, a delayed effective date for a
5336 document to be filed may not be later than the 90th day after
5337 the date on which the document is filed.

5338 (6) A registration statement filed by a partnership must
5339 be executed by at least two partners. Other statements must be
5340 executed by a partner or other person authorized by this act.
5341 The execution of a statement by an individual as, or on behalf
5342 of, a partner or other person named as a partner in a filing
5343 constitutes an affirmation under the penalties of perjury that
5344 the facts stated therein are true.

5345 (7) A partnership may amend or cancel its registration
5346 statement, and a person authorized by this act to file a

5347 statement of partnership authority, a statement of denial, a
 5348 statement of dissociation, a statement of dissolution, a
 5349 certificate ~~statement~~ of merger, a certificate of conversion, a
 5350 statement of qualification, or a statement of foreign
 5351 qualification may amend or cancel such document ~~statement~~, by
 5352 filing an amendment or cancellation that:

5353 (a) Identifies the partnership and the statement or
 5354 certificate being amended or canceled. ~~;~~ ~~and~~

5355 (b) States the substance of what is being amended or
 5356 canceled.

5357 (8) A certified copy of a statement or certificate that
 5358 has been filed with the Department of State and recorded in the
 5359 office for recording transfers of real property has the effect
 5360 provided for recorded statements in this act. A recorded
 5361 statement that is not a certified copy of a statement or
 5362 certificate filed with the Department of State does not have the
 5363 effect provided for recorded statements in this act.

5364 Section 18. Paragraph (n) of subsection (1) of section
 5365 620.81055, Florida Statutes, is renumbered as paragraph (o), and
 5366 a new paragraph (n) is added to said subsection, to read:

5367 620.81055 Fees for filing documents and issuing
 5368 certificates; powers of the Department of State.--

5369 (1) The Department of State shall collect the following
 5370 fees when documents authorized by this act are delivered to the
 5371 Department of State for filing:

5372 (n) Certificate of conversion: \$25.

5373 (o)~~(n)~~ Any other document required or permitted to be
 5374 filed by this act: \$25.

5375 Section 19. Subsection (2) of section 620.8404, Florida
 5376 Statutes, is amended to read:

5377 620.8404 General standards of partner's conduct.--

5378 (2) A partner's duty of loyalty to the partnership and the
 5379 other partners is limited to ~~includes, without limitation,~~ the
 5380 following:

5381 (a) To account to the partnership and hold as trustee for
 5382 the partnership any property, profit, or benefit derived by the
 5383 partner in the conduct and winding up of the partnership
 5384 business or derived from a use by the partner of partnership
 5385 property, including the appropriation of a partnership
 5386 opportunity;

5387 (b) To refrain from dealing with the partnership in the
 5388 conduct or winding up of the partnership business as or on
 5389 behalf of a party having an interest adverse to the partnership;
 5390 and

5391 (c) To refrain from competing with the partnership in the
 5392 conduct of the partnership business before the dissolution of
 5393 the partnership.

5394 Section 20. Sections 620.8911, 620.8912, 620.8913,
 5395 620.8914, 620.8915, 620.8916, 620.8917, 620.8918, 620.8919,
 5396 620.8920, 620.8921, 620.8922, and 620.8923, Florida Statutes,
 5397 are created to read:

5398 620.8911 Definitions.--As used in this section and ss.
 5399 620.8912-620.8923:

5400 (1) "Constituent partnership" means a constituent
 5401 organization that is a partnership governed by this act.

HB 0595

2005

5402 (2) "Constituent organization" means an organization that
5403 is party to a merger.

5404 (3) "Converted organization" means the organization into
5405 which a converting organization converts pursuant to ss.
5406 620.8902-620.8905.

5407 (4) "Converting partnership" means a converting
5408 organization that is a partnership governed by this act.

5409 (5) "Converting organization" means an organization that
5410 converts into another organization pursuant to s. 620.8912.

5411 (6) "Governing law" of an organization means the law that
5412 governs the organization's internal affairs.

5413 (7) "Organization" means a corporation; general
5414 partnership, including a limited liability partnership; limited
5415 partnership, including a limited liability limited partnership;
5416 limited liability company; common law or business trust or
5417 association; real estate investment trust; or any other person
5418 organized under a governing law or other applicable law, provided
5419 such term shall not include an organization that is not organized
5420 for profit, unless the not-for-profit organization is the
5421 converted organization or the surviving organization in a
5422 conversion or a merger governed by this act. The term includes
5423 both domestic and foreign organizations.

5424 (8) "Organizational documents" means:

5425 1. For a domestic or foreign general partnership, its
5426 partnership agreement.

5427 2. For a limited partnership or foreign limited
5428 partnership, its certificate of limited partnership and
5429 partnership agreement.

HB 0595

2005

5430 3. For a domestic or foreign limited liability company, its
5431 articles of organization and operating agreement, or comparable
5432 records as provided in its governing law.

5433 4. For a business trust, its agreement of trust and
5434 declaration of trust.

5435 5. For a domestic or foreign corporation for profit, its
5436 articles of incorporation, bylaws, and other agreements among its
5437 shareholders which are authorized by its governing law, or
5438 comparable records as provided in its governing law.

5439 6. For any other organization, the basic records that
5440 create the organization and determine its internal governance and
5441 the relations among the persons that own it, have an interest in
5442 it, or are members of it.

5443 (9) "Personal liability" means personal liability for a
5444 debt, liability, or other obligation of an organization which is
5445 imposed on a person that coowns, has an interest in, or is a
5446 member of the organization:

5447 1. By the organization's governing law solely by reason of
5448 the person's coowning, having an interest in, or being a member
5449 of the organization; or

5450 2. By the organization's organizational documents under a
5451 provision of the organization's governing law authorizing those
5452 documents to make one or more specified persons liable for all or
5453 specified debts, liabilities, and other obligations of the
5454 organization solely by reason of the person or persons' coowning,
5455 having an interest in, or being a member of the organization.

5456 (10) "Record" means information that is inscribed on a
5457 tangible medium or that is stored in an electronic or other
5458 medium and is retrievable in perceivable form.

5459 (11) "Surviving organization" means an organization into
5460 which one or more other organizations are merged. A surviving
5461 organization may preexist the merger or be created by the merger.

5462 620.8912 Conversion.--

5463 (1) An organization other than a partnership may convert to
5464 a partnership, and a partnership may convert to another
5465 organization pursuant to this section and ss. 620.8913-620.8915
5466 and a plan of conversion, if:

5467 (a) The other organization's governing law authorizes the
5468 conversion.

5469 (b) The conversion is permitted by the law of the
5470 jurisdiction that enacted the governing law.

5471 (c) The other organization complies with its governing law
5472 in effecting the conversion.

5473 (2) A plan of conversion must be in a record and must
5474 include:

5475 (a) The name and form of the organization before
5476 conversion.

5477 (b) The name and form of the organization after conversion.

5478 (c) The terms and conditions of the conversion, including
5479 the manner and basis for converting interests in the converting
5480 organization into any combination of money, interests in the
5481 converted organization, and other consideration.

5482 (d) The organizational documents of the converted
5483 organization.

HB 0595

2005

5484 620.8913 Action on plan of conversion by converting
5485 partnership.--

5486 (1) A plan of conversion must be consented to by all of the
5487 partners of a converting partnership. The consents required by
5488 this subsection must be in, or evidenced by, a record.

5489 (2) Subject to s. 620.8920 and any contractual rights,
5490 after a conversion is approved, and at any time before a filing
5491 is made under s. 620.8914, a converting partnership may amend the
5492 plan or abandon the planned conversion:

5493 (a) As provided in the plan.

5494 (b) Except as prohibited by the plan, by the same consent
5495 as was required to approve the plan.

5496 620.8914 Filings required for conversion; effective date.--

5497 (1) After a plan of conversion is approved:

5498 (a) A converting partnership shall deliver to the
5499 Department of State for filing a statement of registration in
5500 accordance with s. 620.8105, if such statement was not previously
5501 filed, and a certificate of conversion, in accordance with s.
5502 620.8105, which must include:

5503 1. A statement that the partnership has been converted into
5504 another organization.

5505 2. The name and form of the organization and the
5506 jurisdiction of its governing law.

5507 3. The date the conversion is effective under the governing
5508 law of the converted organization.

5509 4. A statement that the conversion was approved as required
5510 by this act.

5511 5. A statement that the conversion was approved as required
5512 by the governing law of the converted organization.

5513 6. If the converted organization is a foreign organization
5514 not authorized to transact business in this state, the street and
5515 mailing address of an office which the Department of State may
5516 use for the purposes of s. 620.8915(3).

5517 (b) In the case of a converting organization converting
5518 into a partnership to be governed by this act, the converting
5519 organization shall deliver to the Department of State for filing:

5520 1. A certificate of registration in accordance with s.
5521 620.8105.

5522 2. A certificate of conversion, in accordance with s.
5523 620.8105, which certificate of conversion must include:

5524 a. A statement that the partnership was converted from
5525 another organization.

5526 b. The name and form of the converting organization and the
5527 jurisdiction of its governing law.

5528 c. A statement that the conversion was approved as required
5529 by this act.

5530 d. A statement that the conversion was approved in a manner
5531 that complied with the converting organization's governing law.

5532 e. The effective time of the conversion, if other than the
5533 time of the filing of the statement of conversion.

5534 (2) A conversion becomes effective:

5535 (a) If the converted organization is a partnership, at the
5536 time specified in the plan of conversion or the certificate of
5537 conversion, which may be as of or after the time of the filing of
5538 the certificate of conversion, and, if the certificate of

HB 0595

2005

5539 conversion does not contain such an effective time, the effective
5540 time shall be upon the filing of the certificate of conversion
5541 with the Department of State, provided, if the certificate has a
5542 delayed effective date, the certificate may not be effective any
5543 later than the 90th day after the date it was filed and provided
5544 further, the effective date shall not be any earlier than the
5545 effective date of the statement of registration filed with the
5546 Department of State for the partnership in accordance with s.
5547 620.8105.

5548 (b) If the converted organization is not a partnership, as
5549 provided by the governing law of the converted organization.

5550 620.8915 Effect of conversion.--

5551 (1) An organization that has been converted pursuant to
5552 this act is for all purposes the same entity that existed before
5553 the conversion.

5554 (2) When a conversion takes effect:

5555 (a) Title to all real estate and other property, or any
5556 interest therein, owned by the converting organization at the
5557 time of its conversion remains vested in the converted
5558 organization without reversion or impairment under this act.

5559 (b) All debts, liabilities, and other obligations of the
5560 converting organization continue as obligations of the converted
5561 organization.

5562 (c) An action or proceeding pending by or against the
5563 converting organization may be continued as if the conversion had
5564 not occurred.

5565 (d) Except as prohibited by other law, all of the rights,
5566 privileges, immunities, powers, and purposes of the converting
5567 organization remain vested in the converted organization.

5568 (e) Except as otherwise provided in the plan of conversion,
5569 the terms and conditions of the plan of conversion take effect.

5570 (f) Except as otherwise agreed, the conversion does not
5571 dissolve a converting limited partnership for purposes of this
5572 act and ss. 620.8801-620.8807 shall not apply.

5573 (3) A converted organization that is a foreign organization
5574 consents to the jurisdiction of the courts of this state to
5575 enforce any obligation owed by the converting partnership, if
5576 before the conversion the converting partnership was subject to
5577 suit in this state on the obligation. A converted organization
5578 that is a foreign organization and not authorized to transact
5579 business in this state shall appoint the Department of State as
5580 its agent for service of process for purposes of enforcing an
5581 obligation under this subsection. Service on the Department of
5582 State under this subsection shall be made in the same manner and
5583 with the same consequences as provided in s. 48.141.

5584 (4) A copy of the certificate of conversion, certified by
5585 the Department of State, may be filed in any county of this state
5586 in which the converting organization holds an interest in real
5587 property.

5588 620.8916 Merger.--

5589 (1) A partnership may merge with one or more other
5590 constituent organizations pursuant to this section and ss.
5591 620.8917-620.8919 and a plan of merger, if:

5592 (a) The governing law of each of the other organizations
 5593 authorizes the merger.

5594 (b) The merger is permitted by the law of each jurisdiction
 5595 that enacted those governing laws.

5596 (c) Each of the other organizations complies with its
 5597 governing law in effecting the merger.

5598 (2) A plan of merger must be in a record and must include:

5599 (a) The name and form of each constituent organization.

5600 (b) The name and form of the surviving organization.

5601 (c) The terms and conditions of the merger, including the
 5602 manner and basis for converting the interests in each constituent
 5603 organization into any combination of money, interests in the
 5604 surviving organization, and other consideration.

5605 (d) Any amendments to be made by the merger to the
 5606 surviving organization's organizational documents.

5607 620.8917 Action on plan of merger by constituent
 5608 partnership.--

5609 (1) A plan of merger must be consented to by all of the
 5610 partners of a constituent partnership. The consents required by
 5611 this subsection must be in, or evidenced by, a record.

5612 (2) Subject to s. 620.8920 and any contractual rights,
 5613 after a merger is approved, and at any time before a filing is
 5614 made under s. 620.8918, a constituent partnership may amend the
 5615 plan or abandon the planned merger:

5616 (a) As provided in the plan.

5617 (b) Except as prohibited by the plan, with the same consent
 5618 as was required to approve the plan.

5619 620.8918 Filings required for merger; effective date.--

- 5620 (1) After each constituent organization has approved a
5621 merger, a certificate of merger must be signed on behalf of:
- 5622 (a) Each preexisting constituent partnership, by all of the
5623 partners of such partnership.
- 5624 (b) Each other preexisting constituent organization, by an
5625 authorized representative.
- 5626 (2) The certificate of merger must include:
- 5627 (a) The name and form of each constituent organization and
5628 the jurisdiction of its governing law.
- 5629 (b) The name and form of the surviving organization, the
5630 jurisdiction of its governing law, and, if the surviving
5631 organization is created by the merger, a statement to that
5632 effect.
- 5633 (c) The date the merger is effective under the governing
5634 law of the surviving organization.
- 5635 (d) Any amendments provided for in the plan of merger for
5636 the organizational document that created the organization.
- 5637 (e) A statement as to each constituent organization that
5638 the merger was approved as required by the organization's
5639 governing law.
- 5640 (f) If the surviving organization is a foreign organization
5641 not authorized to transact business in this state, the street and
5642 mailing address of an office which the Department of State may
5643 use for the purposes of subsection 620.8919(2).
- 5644 (g) Any additional information required by the governing
5645 law of any constituent organization.
- 5646 (3) Each constituent partnership shall deliver to the
5647 Department of State for filing a statement of registration in

5648 accordance with s. 620.8105, if such statement was not previously
5649 filed, and a certificate of merger in accordance with s.
5650 620.8105.

5651 (4) A merger becomes effective under this act:

5652 (a) If the surviving organization is a partnership, at the
5653 time specified in the plan of merger or the certificate of
5654 merger, which may be as of or after the time of the filing of the
5655 certificate of merger, and, if the certificate of merger does not
5656 contain such an effective time, the effective time shall be upon
5657 the filing of the statement of merger with the Department of
5658 State, provided, if the certificate has a delayed effective date,
5659 the certificate may not be effective any later than the 90th day
5660 after the date it was filed, and provided further, the effective
5661 date shall not be any earlier than the effective date of the
5662 statement of registration filed with the Department of State for
5663 the partnership in accordance with s. 620.8105.

5664 (b) If the surviving organization is not a partnership, as
5665 provided by the governing law of the surviving organization.

5666 (5) A certificate of merger shall act as a cancellation of
5667 any statement of registration for purposes of s. 620.8105 for a
5668 partnership that is a party to the merger that is not the
5669 surviving organization, which cancellation shall be deemed filed
5670 upon the effective date of the merger.

5671 620.8919 Effect of merger.--

5672 (1) When a merger becomes effective:

5673 (a) The surviving organization continues.

5674 (b) Each constituent organization that merges into the
5675 surviving organization ceases to exist as a separate entity.

5676 (c) Title to all real estate and other property owned by
5677 each constituent organization that ceases to exist vests in the
5678 surviving organization without reversion or impairment.

5679 (d) All debts, liabilities, and other obligations of each
5680 constituent organization that ceases to exist continue as
5681 obligations of the surviving organization.

5682 (e) An action or proceeding pending by or against any
5683 constituent organization that ceases to exist may be continued as
5684 if the merger had not occurred.

5685 (f) Except as prohibited by other law, all of the rights,
5686 privileges, immunities, powers, and purposes of each constituent
5687 organization that ceases to exist vest in the surviving
5688 organization.

5689 (g) Except as otherwise provided in the plan of merger, the
5690 terms and conditions of the plan of merger take effect.

5691 (h) Except as otherwise agreed, if a constituent
5692 partnership ceases to exist, the merger does not dissolve the
5693 partnership for purposes of this act, and ss. 620.8801-620.8807
5694 shall not apply.

5695 (i) Any amendments provided for in the certificate of
5696 merger for the organizational document that created the
5697 organization become effective.

5698 (2) A surviving organization that is a foreign organization
5699 consents to the jurisdiction of the courts of this state to
5700 enforce any obligation owed by a constituent organization, if
5701 before the merger the constituent organization was subject to
5702 suit in this state on the obligation. A surviving organization
5703 that is a foreign organization and not authorized to transact

HB 0595

2005

5704 business in this state shall appoint the Department of State as
5705 its agent for service of process pursuant to the provisions of s.
5706 48.181.

5707 (3) A copy of the certificate of merger, certified by the
5708 Department of State, may be filed in any county of this state in
5709 which a constituent organization holds an interest in real
5710 property.

5711 620.8920 Restrictions on approval of conversions and
5712 mergers and on relinquishing limited liability partnership
5713 status.--

5714 (1) If a partner of a converting or constituent partnership
5715 will have personal liability with respect to a converted or
5716 surviving organization, approval and amendment of a plan of
5717 conversion or merger are ineffective without the consent of the
5718 partner, unless:

5719 (a) The partnership's partnership agreement provides for
5720 the approval of the conversion or merger with the consent of
5721 fewer than all the partners.

5722 (b) The partner has consented to the provision of the
5723 partnership agreement.

5724 (2) An amendment to a statement of qualification of a
5725 limited liability partnership which revokes its status as such
5726 is ineffective without the consent of each general partner
5727 unless:

5728 (a) The limited liability partnership's partnership
5729 agreement provides for the amendment with the consent of less
5730 than all its partners.

5731 (b) Each partner that does not consent to the amendment has
5732 consented to the provision of the partnership agreement.

5733 (3) A partner does not give the consent required by
5734 subsection (1) or subsection (2) merely by consenting to a
5735 provision of the partnership agreement which permits the
5736 partnership agreement to be amended with the consent of fewer
5737 than all the partners.

5738 620.8921 Liability of a partner after conversion or
5739 merger.--

5740 (1) A conversion or merger under this act does not
5741 discharge any liability under ss. 620.8306 and 620.8703 of a
5742 person that was a partner in or dissociated as a partner from a
5743 converting or constituent partnership, but:

5744 (a) The provisions of this act pertaining to the collection
5745 or discharge of the liability continue to apply to the liability.

5746 (b) For the purposes of applying those provisions, the
5747 converted or surviving organization is deemed to be the
5748 converting or constituent partnership.

5749 (c) If a person is required to pay any amount under this
5750 subsection:

5751 1. The person has a right of contribution from each other
5752 person that was liable as a partner under s. 620.8306 when the
5753 obligation was incurred and has not been released from the
5754 obligation under s. 620.8703.

5755 2. Any such rights of contribution and the relative amounts
5756 of contribution shall be determined and settled in the same
5757 manner as provided in s. 620.8807(3).

5758 (2) In addition to any other liability provided by law:

5759 (a) A person that immediately before a conversion or merger
5760 became effective was a partner in a converting or constituent
5761 partnership that was not a limited liability partnership is
5762 personally liable on a transaction entered into by the converted
5763 or surviving organization with a third party after the conversion
5764 or merger becomes effective, if, at the time the third party
5765 enters into the transaction, the third party:

5766 1. Does not have notice of the conversion or merger.

5767 2. Reasonably believes that:

5768 a. The converted or surviving business is the converting or
5769 constituent partnership.

5770 b. The converting or constituent partnership is not a
5771 limited liability limited partnership.

5772 c. The person is a partner in the converting or constituent
5773 partnership.

5774 (b) A person that was dissociated as a partner from a
5775 converting or constituent partnership before the conversion or
5776 merger became effective is personally liable on a transaction
5777 entered into by the converted or surviving organization with a
5778 third party after the conversion or merger becomes effective, if:

5779 1. Immediately before the conversion or merger became
5780 effective the converting or surviving partnership was a not a
5781 limited liability partnership.

5782 2. At the time the third party enters into the transaction
5783 fewer than 2 years have passed since the person dissociated as a
5784 partner, and the third party:

5785 a. Does not have notice of the dissociation.

5786 b. Does not have notice of the conversion or merger.

5787 c. Reasonably believes that the converted or surviving
5788 organization is the converting or constituent partnership, the
5789 converting or constituent limited partnership is not a limited
5790 liability partnership, and the person is a partner in the
5791 converting or constituent partnership.

5792 620.8922 Power of partners and persons dissociated as
5793 partners to bind organization after conversion or merger.--

5794 (1) An act of a person who immediately before a conversion
5795 or merger became effective was a partner in a converting or
5796 constituent partnership binds the converted or surviving
5797 organization after the conversion or merger becomes effective,
5798 if:

5799 (a) Before the conversion or merger became effective, the
5800 act would have bound the converting or constituent limited
5801 partnership under s. 620.8301.

5802 (b) At the time the third party enters into the
5803 transaction, the third party:

5804 1. Does not have notice of the conversion or merger.

5805 2. Reasonably believes that the converted or surviving
5806 business is the converting or constituent partnership and that
5807 the person is a partner in the converting or constituent
5808 partnership.

5809 (2) An act of a person that before a conversion or merger
5810 became effective was dissociated as a partner from a converting
5811 or constituent partnership binds the converted or surviving
5812 organization after the conversion or merger becomes effective,
5813 if:

HB 0595

2005

5814 (a) Before the conversion or merger became effective, the
5815 act would have bound the converting or constituent partnership
5816 under s. 620.8301 if the person had been a partner.

5817 (b) At the time the third party enters into the
5818 transaction, fewer than 2 years have passed since the person
5819 dissociated as a partner, and the third party:

5820 1. Does not have notice of the dissociation.

5821 2. Does not have notice of the conversion or merger.

5822 3. Reasonably believes that the converted or surviving
5823 organization is the converting or constituent partnership and
5824 that the person is a partner in the converting or constituent
5825 partnership.

5826 (3) If a person having knowledge of the conversion or
5827 merger causes a converted or surviving organization to incur an
5828 obligation under subsection (1) or subsection (2), the person is
5829 liable:

5830 (a) To the converted or surviving organization for any
5831 damage caused to the organization arising from the obligation.

5832 (b) If another person is liable for the obligation, to that
5833 other person for any damage caused to that other person arising
5834 from the liability.

5835 620.8923 Application of other laws to provisions governing
5836 conversions and mergers.--

5837 (1) The provisions of ss. 620.8911-620.8922 do not preclude
5838 an entity from being converted or merged under other law.

5839 (2) The provisions of ss. 620.8911-620.8922 do not
5840 authorize any act prohibited by any other applicable law or
5841 change the requirements of any law or rule regulating a specific

5842 organization or industry, including, but not limited to, a not-
 5843 for-profit organization, insurance, banking or investment
 5844 establishment, or other regulated business or activity.

5845 Section 21. Subsection (1) of section 620.9104, Florida
 5846 Statutes, is amended to read:

5847 620.9104 Activities not constituting transacting
 5848 business.--

5849 (1) Activities of a foreign limited liability partnership
 5850 which do not constitute transacting business within the meaning
 5851 of ss. 620.9101-620.9105 include, but are not limited to:

5852 (a) Maintaining, defending, or settling an action or
 5853 proceeding.+

5854 (b) Holding meetings of its partners or carrying on any
 5855 other activity concerning its internal affairs.+

5856 (c) Maintaining ~~bank~~ accounts in financial institutions.+

5857 (d) Maintaining offices or agencies for the transfer,
 5858 exchange, and registration of the partnership's own securities
 5859 or maintaining trustees or depositories with respect to those
 5860 securities.+

5861 (e) Selling through independent contractors.+

5862 (f) Soliciting or obtaining orders, whether by mail or
 5863 through employees or agents or otherwise, if the orders require
 5864 acceptance outside this state before they become contracts.+

5865 (g) Creating or acquiring indebtedness, mortgages, or
 5866 security interests in real or personal property.+

5867 (h) Securing or collecting debts or foreclosing mortgages
 5868 or other security interests in property securing the debts, and
 5869 holding, protecting, and maintaining property so acquired.+

5870 (i) Conducting an isolated transaction that is completed
 5871 within 30 days and is not one in the course of similar
 5872 transactions of like nature. ~~;~~ ~~and~~

5873 (j) Transacting business in interstate commerce.

5874 (k) Owning and controlling a subsidiary corporation
 5875 incorporated in or transacting business within this state or
 5876 voting the stock of any corporation which it has lawfully
 5877 acquired.

5878 (l) Owning a limited partnership interest in a limited
 5879 partnership that is doing business within this state, unless
 5880 such limited partner manages or controls the partnership or
 5881 exercises the powers and duties of a general partner.

5882 (m) Owning, without more, real or personal property.

5883 Section 22. Effective January 1, 2006:

5884 (1) Section 608.4384, Florida Statutes, is repealed.

5885 (2) Sections 620.101, 620.102, 620.103, 620.105, 620.1051,
 5886 620.106, 620.107, 620.108, 620.109, 620.112, 620.113, 620.114,
 5887 620.115, 620.116, 620.117, 620.118, 620.119, 620.122, 620.123,
 5888 620.124, 620.125, 620.126, 620.127, 620.128, 620.129, 620.132,
 5889 620.133, 620.134, 620.135, 620.136, 620.137, 620.138, 620.139,
 5890 620.142, 620.143, 620.144, 620.145, 620.146, 620.147, 620.148,
 5891 620.149, 620.152, 620.153, 620.154, 620.155, 620.156, 620.157,
 5892 620.158, 620.159, 620.162, 620.163, 620.164, 620.165, 620.166,
 5893 620.167, 620.168, 620.169, 620.172, 620.173, 620.174, 620.175,
 5894 620.176, 620.177, 620.178, 620.179, 620.182, 620.1835, 620.184,
 5895 620.185, 620.186, 620.187, 620.192, 620.201, 620.202, 620.203,
 5896 620.204, and 620.205, Florida Statutes, are repealed.

HB 0595

2005

5897 | (3) Sections 620.8901, 620.8902, 620.8903, 620.8904,
 5898 | 620.8905, 6210.8906, 620.8907, and 620.8908, Florida Statutes,
 5899 | are repealed.

5900 | Section 23. Except as otherwise provided herein, this act
 5901 | shall take effect January 1, 2006.